

**Planning Advice Note**

# **Section 38 Agreements**

**Adopted November 2019**



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## Planning Advice Note: Section 38 Agreements

### 1. About this Guidance

- 1.1** The National Planning Policy Framework (NPPF) indicates that Local Development Documents form the framework for making decisions on applications for planning permission. Decisions have to be taken in accordance with the development plan unless other material considerations indicate otherwise. NPPF advises that a local planning authority may prepare Supplementary Planning Documents to provide greater detail on the policies in its Local Plan. Supplementary Planning Documents are a 'material' consideration when planning applications are decided.
- 1.2** As required by the Planning and Compulsory Purchase Act 2004 we have prepared a Statement of Community Involvement (SCI) which sets out how we will involve the community in preparing our Local Plan and consulting on planning applications. In accordance with the SCI we have involved people who may be interested in this Supplementary Planning Document and asked them for their comments. We have produced a consultation statement which summarises all the comments people made to us and our response. This is available on request.

### 2. Introduction

- 2.1** This Planning Advice Note provides guidance on the Council's approach to Section 38 Agreements. The purpose of this document is to guide developers through the process of establishing a Section 38 Agreement (S38 Agreement) with the Council and ensure that highway works are delivered to the satisfaction of all parties. The guide outlines what Developers and the Council can expect from each other.

### 3. Adopted Roads

- 3.1** Where a road has been 'adopted', the Council will be responsible for maintaining and repairing it. Until a road has been adopted, responsibility for repair and maintenance remains the responsibility of the owner. Section 38 of the Highways Act 1980 enables the Council to adopt , roads, footways, footpaths, cycle lanes, cycle tracks and other areas constructed by a third party by way of a formal agreement.

### 4. Existing Private Streets

- 4.1** Private streets are 'un-adopted' roads that are not maintained at public expense, which means that the Council is not responsible for cleaning or repairing them.
- 4.2** Usually, the landowner or the owners of the properties fronting the street are responsible for its repair and maintenance.
- 4.3** The term 'Private Street' simply deals with maintenance liability. A Private Street may still be subject to public highway rights.

## 5. New Private Streets

- 5.1** The Council will only adopt new private streets where they have been constructed in accordance with the Specification and in all respects to the satisfaction of the Council.
- 5.2** The Council will not adopt existing private streets if they're in poor condition, for example if they don't have pavements, drainage or street lighting.

## 6. Getting an existing road (private street) adopted

- 6.1** Where a road has been constructed without a S38 Agreement the owner can request the Council to adopt it by serving a notice on the Council under Section 37 of the Highways Act 1980.
- 6.2** Having an existing road adopted can be a long and costly process, potentially running into thousands of pounds.
- 6.3** The owner of the road will need to satisfy the Council that the road has been constructed to a satisfactory standard and will have to meet all of the Council's costs in carrying out any inspections, testing of materials, surveys etc.

## 7. Liability for Street Works Charges

- 7.1** Section 219 of the Highways Act 1980 makes it an offence to commence any works for the purpose of erecting a building which will have a frontage onto a private street unless the owner of the land on which the building is to be erected has paid to, or otherwise secured to the satisfaction of the Council, the relevant sum of street works charges for that building. (known as an Advance Payments Code Deposit – APC) The Council is the Street Works Authority for the purposes of the Highways Act 1980 will issue a notice under Section 220 of the Highways Act 1980 which sets out the sums required to be paid or secured for each building which fronts onto the proposed new private street. The owner (developer) must not commence building works until they have paid the required sum to the Council for each individual building as and when works commence.
- 7.2** Security can be provided by:
- Making payment of the individual APC's to the Council;
  - Providing a bond in favour of the Council from a reputable financial institution to the full value of the Street Works Charges.

The APC's or bond will be held until the new private street has been constructed to an adoptable standard.

- 7.3** Alternatively, the owner (developer) can enter into a S38 Agreement with the Council with a bond to guarantee the carrying out of the works required to bring the new road to an adoptable standard. This provides the owner/developer with the certainty of a formal mechanism for having the new road adopted as a highway maintainable at the public

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expense. While a S38 is the preferred method it should be noted that the Council is under no obligation to enter into a S38 Agreement if owner/developer is unable to satisfy the Council's requirements, in which case the owner/developer will have to provide the alternative means of security described above.

### Process

#### 8. Section 38 Agreement

- 8.1** Applications to enter into a S38 Agreement should be made to the Council as soon as practicable during the planning process; ideally at the pre application stage. Section 38(6) of the Highways Act 1980 says: "An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other related matters as the authority making the agreement think fit".
- 8.2** The Council may require the owner/developer to make payment(s) of commuted sums by which to contribute towards the future maintenance costs of certain features. This allows greater flexibility to adopt non-standard materials and other items where development increases future maintenance liability.
- 8.3** The Agreement will set out the:
- Details of the proposed highway layouts, designating which are to remain private and which are to be offered up for adoption;
  - Developer's liability;
  - Barnsley MBC fees and charges;
  - Arrangements for dealing with statutory undertakers, connections of existing services, and grants of rights for drainage;
  - Arrangements for dealing with traffic regulation orders, consultation, street lighting, traffic signals and road safety audits;
  - Arrangements for dealing with all necessary notices to allow works to be undertaken on or adjacent to the Adopted Highway;
  - Approach to dealing with the Construction (Design and Management) Regulations 2015: The need and value of the financial Bond of Surety required at inception of the S38 Agreement;
  - Arrangements for design checks and technical approvals (where necessary);
  - Scope of Part 1 and Part 2 works, inspection procedures, and certification;
  - Developer obligation during the maintenance period;
  - Approach to reporting and timing of adoption.
- 8.4** The highway layout agreed when planning permission is granted will only be regarded as a general arrangement and may be subject to change as a consequence of the subsequent technical and statutory consultations and the detailed design.

## 9. Section 278 Works

- 9.1** It may be necessary in some instances to alter the existing Adopted Highway. Where this is required, the works will be subject to either a separate agreement under the provisions of Section 278 of the Highways Act 1980 (S278 Agreement), or a combined S38 and S278 Agreement. Further information about S 278 Agreements can be found in our Section 278 Agreement Supplementary Planning Document.
- 9.2** Works associated with the development will not be allowed to commence on any publicly maintained highway until either the S278 Agreement or S38/S278 Combined Agreement is signed by both parties and a Bond is in place unless those works have been authorized by the Council under section 171 and/or 184 of the Highways Act 1980 (see below).

## 10. Developer Responsibility

- 10.1** Proof of land ownership is required to ensure that all parties with freehold or leasehold interests in the land enter into the Section S38 Agreement and consent to its terms.
- 10.2** The Developer must commission an external Road Safety Auditor, whose competence must be demonstrated to the Council and the same auditor should be retained for all subsequent audit stages.

## 11. Notices, Permits, Licences & Other Agreements

- 11.1** When any work is undertaken on the existing adopted highway (Adopted Highway) it will be necessary to provide several notices to allow these works to take place, namely:

### **(a) Permit Scheme Notice (Traffic Management Act 2004 – Part 3) [TMA]**

The Developer will need to apply to the Council for a permit to undertake any works on the Adopted Highway in advance of the works starting. This is required to ensure that the Council can identify causes, or potential causes, of road congestion or other disruption to the movement of traffic on their road network, including the management of its own works for road purposes.

The advance notice period varies due to the size, scope and duration of the activities being undertaken. The main activity designations are:

- Major Activities
  - Activity duration (11 days or more);
  - initial notice period (3 months for Provisional Advance Authorisation); and
  - permit application (10 days before starting on site)
- Standard Activities
  - Activity duration (4 to 10 days); and

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- Notice period (10 days before starting on site).
- Minor Activities
  - Activity duration (3 days or less); and
  - Notice period (3 days before starting on site).
- Immediate Activities
  - Activity definition – emergency; and
  - Notice period (within 2 hours with explanation why).

### **(b) Section 171 Licence (Highways Act 1980) [S171]**

Before any works are carried out on or adjacent to the Adopted Highway the Developer is required to obtain a licence from the Council (section 171 Licence) This licence permits the Developer and his contractors to undertake works on or adjacent to the highway with the approval of the Council acting as the Highway Authority.

### **(c) Temporary Traffic Regulation Order**

If it is necessary to close the Adopted Highway or introduce a speed limit or other restriction temporarily to enable the works to be carried out safely the Developer must make a separate application to the Council for a Temporary Traffic Regulation Order (TTRO). Note the traffic team need a minimum of 6 weeks' notice. For further information regarding the form and fee, visit the following address: <https://www.barnsley.gov.uk/services/roads-travel-and-parking/roadworks-and-road-maintenance/apply-to-close-a-road/>.

### **(d) Section 184 Licence (Highways Act 1980) [S184]**

If a Developer requires the construction of a new site access, or requires alterations to an existing site access in advance of the main works under a S278 or S38 Agreement, the Developer must obtain prior approval of the Council under section 184 of the Highways Act 1980 The scope of these works may, in some instances, be extended to cover other minor works like re-positioning a road gully or a street lighting column.

The Council will check the Developer's design and inspect the S184 works. The Developer will pay the Council costs for the administration of the agreement, legal services, technical approval, site inspections and issue of certificate.

A S184 Agreement is appropriate where a developer intends to construct an access on to the Adopted Highway of a higher specification than a simple dropped footway or verge crossing, such as "bell mouth" junctions or heavy duty industrial types of access - and that such works are the only works required within the highway to enable a development.

**(e) Section 50 Licence (New Roads & Street Works Act 1991) [NRASWA]**

If a development requires works within the Adopted Highway to excavate, or break through it to work on or install new apparatus, the Developer must apply to the Council for a Section 50 Licence (NRSWA).

When applying for a Section 50 Licence (S50) the Developer must be aware of the following:

- Those granted a S50 Licence become "works undertakers" (for the purposes of NRSWA), and because of that take on responsibility for carrying out the duties and responsibilities imposed by the Act and its associated Codes of Practice.
- If the Developer is unfamiliar with the NRASWA requirements they must appoint a contractor with the proper knowledge and accreditation, who can ensure that the works are conducted properly. An appointed contractor lacking the proper knowledge or accreditation will not be allowed to work within the Adopted Highway.
- Within NRASWA, as the licence holder the Developer may incur financial penalties if they do not meet the necessary statutory duties and licence conditions. This liability cannot be delegated to any other person or organisation.
- The requirement to get a S50 Licence applies to any person or organisation (other than anyone acting under a statutory right) who wishes to place, retain and subsequently inspect, maintain, adjust, repair, alter, or renew apparatus or change its position, or remove it from the highway. This includes drains, cables, ducts, sewer pipes, water and gas pipes under, over, across, along, or upon the Adopted Highway.
- The Developer must apply for a S50 Licence prior to the proposed works start. The guidance given here does not describe all the requirements of the licence.

**(f) Section 58 Notice (New Roads & Street Works Act 1991) [S58, NRASWA]**

This notice is required to ensure that:

- Recently resurfaced or reconstructed streets will not be affected by subsequent activities and works undertaken by others; and,
- Activities in the same street or immediate area which may conflict are not carried out at or within a short period time of each other.

The Council will on behalf of the Developer in advance of any proposed works on the Adopted Highway give the relevant notice to all Statutory Undertakers in advance of any proposed works on particular streets. Notification should be submitted as soon as the scope of the required S278 works is known. The longer the notice period the more likely

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any programmed statutory undertakers works can be accommodated to suit the Developer's programme of delivery.

The period of time from the completion of the works when other works cannot be undertaken depends upon the classification of the street and its traffic sensitivity designation.

### (g) Section 104 Agreement (Water Industry Act 1991)

The Developer must demonstrate a right to discharge surface water from **the highway**, either by way of a Sustainable Drainage System (SUDS) or an existing or proposed public sewer.

Where it is proposed to drain the **new private street** into an existing sewer, the developer must make arrangements for the Water Authority to take over the maintenance responsibility for the connecting sewers by way of a **vesting declaration under section 102 of the Water Industry Act 1991** or by entering into an agreement under Section 104 of the Water Industry Act 1991 (S104 Agreement), the S104 Agreement will need to be completed with the drainage statutory undertaker (Yorkshire Water) before the Council will issue the Part 1 Certificate of the Section 38 agreement.

## Finance

### 12. Bond

- 12.1** The Developer is required to provide a Bond in favour of the Council which is sufficient to cover the cost of carrying out the new road works, the Council's fees and costs and any Commuted Sums required to be paid. This bond ensures the Council (the public purse) does not incur any costs in the event the developer defaults on his obligations.
- 12.2** In the event of default the Council can call – in the Bond and use the monies to complete the works itself, recover all of its fees and charges, and any Commuted Sums to cover future maintenance costs.
- 12.3** The bond usually forms part of the standard form of S38 Agreement. In cases where it is done as a separate document, this must be completed at the same time as the Section 38 Agreement.
- 12.4** The value of the Bond will be reduced incrementally in accordance with Table 3.1, except where a Commuted Sum is payable in which case the sum of the Bond shall not be reduced at any time to a value less than the Commuted Sum plus 10% of the original Bond value.

Table 3.1

Stage	Bond Value Reduced to "X" of Original Value
Part 1 Certificate	50%
Part 2 Certificate	10%
Final Certificate	0%

### 13. Fees and Charges

**13.1** The Developer must pay the costs which the Council incurs in the preparation, completion and administration of the S38 Agreement, which will include the following:

- Application fee;
- Preparing, executing and managing the Agreement;
- Design Checks;
- Technical Approval;
- Inspecting the works on site.

#### Application Fee

**13.2** An application fee of £2,500 is payable when submitting the application form. This fee will be not be returned if the scheme is aborted.

### 14. Technical Administration

**14.1** The charge for administration, design checks and site inspection is currently 8.5% of the estimated cost of constructing the new road works. This is calculated by the Council and must be paid prior to the Council commencing any S38 related activities.

**14.2** The 8.5% fee does not include costs associated with checking/approving/input to:

- Highway Structures;
- Street Lighting;
- Traffic Signals (Civil & Electrical) works and equipment;
- SUDS, and non-standard surface water drainage proprietary systems;
- Geo-technical approval or inspection;
- Conducting surveys for inventory information;
- Undertaking Road Safety Audits.

**14.3** Additional fees for the services above shall be based on "actual costs" incurred on a time related basis.

**14.4** If more than 2 years elapses after issue of the Part 1 Certificate, without the Part 2 Certificate being issued, BMBC will charge a further fixed fee (4.5% of Bond) for additional administration and inspection work.

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### 15. Legal Costs

- 15.1** The developer is required to pay the Council's legal costs in the preparation and completion of the S38 Agreement, which is charged at £1,000.00. The sum is payable on completion of the S38 Agreement.

### 16. Commuted Sums

- 16.1** Commuted Sums are necessary when any development increases the Council's future maintenance liability. Typical circumstances where this may occur are:
- Maintenance costs for any construction that is not required for the safe and satisfactory functioning of the Adopted Highway (including alterations to the existing highway which are only required to serve the development) with no general benefits;
  - Maintenance costs for additional features, such as highway structures, additional street lighting, traffic signal installations, non-essential street furniture/ fencing/walls, public transport infrastructure and landscaping;
  - Additional maintenance costs for permitted alternative materials and features, for example, higher quality paving materials, bespoke street furniture, exceeding BMBC's standard specification.
- 16.2** Developers should discuss their requirements with the Council ideally during pre-planning application discussions, in advance of a formal Planning Application being submitted.
- 16.3** A commuted Sum list can be found in the South Yorkshire Residential Design Guide.
- 16.4** Where items, materials or features are not standard they will need to be calculated on a site-by-site basis by the Council, which will be notified to the Developer.
- 16.5** Commuted Sum values stated in the S38 Agreement are provisional, as development will be assessed on a case by case basis. A recalculation mechanism, based on actual quantities, and the price fluctuation factor specified in the S38 Agreement, will be used to determine the actual Commuted Sum values.

### 17. Insurance Liabilities

#### Design

- 17.1** The Developer must indemnify the Council against any claims by third parties arising from any work included in the S38 Agreement that that Council subsequently adopt.
- 17.2** Written evidence must be provided that the Developer's designer of the S38 highway works has a minimum of £5 million of professional indemnity insurance, with no limit on the number of claims.

#### Construction

- 17.3** The Developer must indemnify the Council against any claims by third parties arising from any work.
- 17.4** Written evidence must be provided that the Developer's contractor undertaking the S38 highway works has a minimum of £5 million of public liability insurance, with no limit on the number of claims.

## **18. Traffic Measures**

- 18.1** Where a development requires changes to an existing Traffic Regulation Order (TRO), creation of a new TRO, or provision of a temporary TRO to facilitate the works, the Developer must pay all of the costs incurred by the Council in the preparation of the scheme, consultations and publication of the proposals. As this is subject to public consultation the outcome cannot be guaranteed.
- 18.2** Where objections are received to the proposed TRO which officers are unable to resolve the objections must be reported to the Council's Cabinet for a decision whether to proceed, change or abandon the proposals all together. This may delay the development.

## **19. Design**

### **General**

- 19.1** The design of the S38 highway works must be in accordance with the South Yorkshire Residential Design Guide document.
- 19.2** The Developer must provide the Council with details of their chosen designer prior to the design commencing to avoid abortive works. The information provided will need to be sufficiently detailed to allow the competency of the designer to be assessed.
- 19.3** The proposed development must relate to the existing Adopted Highway boundary, the Council's design standards and take into account the highway requirements. The Developer is responsible for ensuring that the development's horizontal and vertical alignments tie back in to the existing Adoptable Highway boundaries which they impact upon.

### **Highway Design**

- 19.4** A Road Safety Audit (RSA) Stage 1 must be procured by the Developer prior to the start of the detailed design.
- 19.5** The Developer must commission an external Road Safety Auditor, whose competence must be demonstrated to the Council, and the same auditor should be retained for all subsequent audit stages.
- 19.6** The Council must consider the recommendations in the RSA Stage 1 report and determine the need for further consultation and information required from the Designer.
- 19.7** On the completion of the detailed design the Developer must commission a Road

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- 19.8** Safety Audit Stage 2 in accordance with the S38 Agreement. The Audit may recommend changes to the detailed design which the Designer will need to consider.
- 19.9** Once the RSA Stage 2 outcomes have been incorporated and the design completed, the Developer's Designer shall provide enough information to allow BMBC to carry out a Design Check.
- 19.10** BMBC will submit a Design Check report highlighting any issues that need to be discussed further. Once all the issues raised by the Design Check have been addressed, BMBC will write to the Developer's Designer to confirm that the design is acceptable.

### Highway Structures Design

**19.11** If the development includes a structure where any of the following apply:

- Structure will be offered up for adoption;
- Where the structure supports or is supported by the Adopted Highway.

Then structural details must be submitted to the Council for Technical Approval.

### Street Lighting Design

**19.12** The street lighting works required to illuminate the new road shall be undertaken by the Council's Street lighting design and installation department. The Developer is responsible for commissioning these works and paying the associated costs.

### Traffic Signals Design

**19.13** Where traffic signals are required, the design will be undertaken by the Council's Traffic Signals Team to meet timescales stated in the S38 Agreement. The Developer is responsible for commissioning these works and paying the associated costs.

## 20. Documents Required From Developer

### General

- 20.1** For the Section 38 Agreement, electronic PDF copies of the adoption layout plan shall be submitted to the Council.
- 20.2** For Technical Approval, the following information is required:
- Site Layout Plan
  - Proposed Highway Adoption Plan
  - Surface Finishes Plan
  - Road Construction Details with typical cross-sections
  - Surface Water Drainage Layout

## Layout Plan

- 20.3** The layout plan should be drawn to 1:500 scale and incorporate a location plan, drawn to either 1:1250 or 1:2500 scale, as appropriate. The location plan should show the outline of the new roads by a broken line and the boundary of the land in the ownership of the applicant defined by red edging.
- 20.4** The following details should be shown on the layout plan:
- The layout of any proposed dwellings with plot numbers and driveways;
  - Details of sewers and surface water drains (private and highway);
  - Landscaping details;
  - A typical cross section showing the construction to be used;
  - Signing and road marking details;
  - Retaining wall details and other highway structures;
  - Carriageway and other associated dimensions;
  - Junction visibility and forward visibility splays;
  - Horizontal and vertical alignment;
  - Street lighting; and
  - The number and positions of any grit bins

## Road Safety Audit Report

- 20.5** A Road Safety Audit Stage 2 Report and Designer's response may also be required (see Section 11 for further information).

## Geotechnical Report

- 20.6** A Geotechnical Report (including CBR test results at formation) and details of any statutory undertakers' service protection or diversion works.

## Contractor Approval

- 20.7** All highway works must be carried out by a Contractor, including any sub-contractor, who has relevant experience and capabilities.
- 20.8** Where the Council has no previous experience of a Contractor's work, the Developer will be required to provide the Council with satisfactory references, and examples of similar work successfully completed to the satisfaction of another Highway Authority.
- 20.9** We recommend that the Developer only considers employing experienced and competent Contractors to avoid abortive works and subsequent delays.

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### 21. Construction

#### Notification of Start of Works

- 21.1** The Developer must give the Council a minimum of 2 weeks advance notice, in writing, of the intended start date on site.
- 21.2** Construction of any work on site must not start until the Developer has met all of the following conditions:
- Section 38 agreement signed;
  - All necessary fees and charges paid to the Council;
  - Written confirmation that an adequate Bond of Surety is in place;
  - Written confirmation that the Developer will pay all Commuted Sums;
  - Written confirmation that the Developer has notified the HSE that he is the Client for the development
  - Statutory procedures completed;
  - Non-statutory consultation processes completed;
  - Design checks satisfactorily completed;
  - Technical approvals given for structures within/abutting the highway;
  - Road safety audits satisfactorily completed up to, and including, RSA Stage 2;
  - The Council's S38 Engineer has been provided with approved construction drawings for site inspections; and
  - The Council has been provided with adequate information to enable the contractor to be approved
- 21.3** The Council will not inspect any of the works until the above conditions have been met. Any works constructed before this time will be subject to retrospective inspections at the developer's expense, which may include excavations to expose construction depths and materials used.

#### Site Inspection

- 21.4** The Developer is responsible for the day-to-day supervision of the construction of these works.
- 21.5** The Council will inspect the works to check that they are being constructed in accordance with the approved drawings and to the appropriate specification. Sufficient advance notice must be given to the Council's Inspector for any item of adoptable highway work being constructed on site and requiring approval. The Inspector must be given access to the highway works at all times.
- 21.6** If unforeseen issues arise, the Council's Inspector will discuss possible solutions, but it is the responsibility of the Developer to instruct the S38 highway works contractor, and make sure that the works are satisfactorily completed in accordance with the Council's requirements.

- 21.7** It is the responsibility of the Developer's contractor to provide, at their own expense, detailed laboratory reports or material analysis as requested by BMBC's Inspector. The Developer's contractor must be able to prove the technical suitability of any proposed construction material.

### Completing the Highway Works

- 21.8** It is the Developers responsibility to complete all of the work included in the S38 Agreement to the satisfaction of the Council.
- 21.9** In order to safeguard the interests of householders and highway users, the Council expects the Developer to ensure that the highway works are completed, either:
- within 6 months after all buildings fronting or served by the highway works are completed; or
  - within 24 months after completion of the S38 agreement whichever is sooner.

The Developer must then ensure that adoption takes place within a reasonable period of time to minimise any potential risks or inconvenience to residents.

- 21.10** Where the Developer does not complete the highway works within the specified timescales, he must seek approval to an extension of time from both the Council and any Surety. Where an extension of time is agreed, the Council will charge extra fees towards additional administrative and inspection/supervision costs. At a rate of (4.5% of the Bond)
- 21.11** If the Developer does not complete the highway works in accordance with the Agreement or any authorised extension of time the Council reserves the right to use the Bond to complete the works.

### Certification of the Highway Works

- 21.12** The Developer must apply to the Council separately in writing for the issue of the Part 1, Part 2 and Final Certificates.
- 21.13** The Developer must carry out all notified remedial works without delay and at their own cost.
- 21.14** The Council will inspect the works again and, subject to all remedial works being completed to its satisfaction, will issue the Developer with a Part 2 Certificate within 28 working days of the completion of the remedial works.
- 21.15** In addition, where the Works are also subject to a Section 104 Agreement of the Water Industry Act 1991, and the sewer is situated within the highway or is an integral part of the highway drainage system, the Part 1 Certificate will only be issued after a "Provisional Certificate" has been issued by the drainage Statutory Undertaker.
- 21.16** Once the Part 2 Certificate is issued the maintenance period of 12 months will commence and the road is deemed to have been dedicated to the public for highway purposes.

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### Obligations During the Maintenance Period

**21.17** When the Developer's contractor has constructed the highway works, the following applies:

- The Developer remains the Street Manager for the purposes of Section 49(4) of the New Roads and Street Works Act 1991.
- The Developer is responsible for the maintenance of all work included in the Agreement, including highway verges, and must carry out road sweeping and gully emptying to the Council's published current standards and maintenance regimes until the Final Certificate is issued
- The Developer is responsible for the removal of abandoned vehicles, rubbish or other unauthorized materials or obstructions as may be necessary, in order to facilitate the use of highway areas by residents and the public
- The Developer is responsible for the routine maintenance of the street lights and illuminated traffic signs, and will pay for all associated energy charges, during the Maintenance Period
- The Developer must ensure that the highway areas are maintained to a high standard during the Maintenance Period and are completely safe to use by all pedestrians.

**21.18** Site inspections will be carried out during wet weather conditions to check that there are no problems with surface water drainage.

### Final Certificate

**21.19** The Developer must arrange a joint inspection with the Council, in order to agree a definitive list of maintenance repairs deemed necessary, prior to the end of the 12 Month Maintenance.

**21.20** Within 20 working days of the joint inspection, the Council will send the Developer a list, in writing of all necessary repairs to be completed before the issue of the Final Certificate.

**21.21** The Final Certificate will only be issued when:

- All S38 works, including remedial works, are satisfactorily completed;
- All payments under the Agreement, including any additional inspections and administration fees, and commuted sums have been paid to the Council;
- The Developer has supplied the Council with two (2) sets of "As Built" drawings, including highway surface water drainage and any drainage situated outside the highway limits;
- The Developer has provided the Council with a certificate that the sewers the subject of any S104 Agreement in relation to the development have been vested in the Water Authority

**21.22** Following satisfactory completion of all the above requirements, BMBC will issue the Final Certificate and the works included in the Agreement will become maintainable at the public expense.

## Street Lighting – Inspection

- 21.23** Routine maintenance of the street lights and illuminated traffic signs during construction works is the responsibility of the developer. Also including the maintenance period and until the development is adopted, will be the responsibility of the Developer including the payment of energy charges.
- 21.24** However where the Council has installed the street lighting and illuminated traffic signs, the responsibility for maintenance will transfer to the Council once the development is placed on to the maintenance stage.

## 22. Road Safety Audit

### Application

- 22.1** A Road Safety Audit (RSA) process may be required, subject to the scope and scale of the proposed highway infrastructure being offered up for formal adoption. A RSA will be required when any of the proposed highway infrastructure incorporates the provision of any of the following:-
- Principal Roads;
  - Classified Roads;
  - Local Distributor Roads
  - Collector Streets (Residential Streets incorporating Bus Routes);
  - Any Residential Street, Shared Surface Street or Home Zone that requires the creation of a new access or formal junction off any of the above street types; and
  - The development is creating more than eight (8) new residential units/properties.
- 22.2** The need for a RSA will be determined at the pre-application stage as part of the discussions with the Planning and Transportation Developments officers.

### Definition

- 22.3** A Road Safety Audit (RSA) is the staged evaluation of changes to the highway during design, construction and operation. It looks to identify potential safety hazards that may affect any road user.
- Stages 1 and 2 evaluate the design
  - Stage 3 is carried out as soon as possible after measures become operational; and
  - Stage 4 is carried out approximately 12 months after the measures became operational
- 22.4** A RSA considers the road safety implications of all measures and their impact on the highway network – the effects on all road users are considered. Particular attention is paid to the effects on vulnerable groups, for example the very young, the elderly, people with a disability and more generally pedestrians, cyclists and riders of powered two-wheeled vehicles.

## Planning Advice Note: Section 38 Agreements

- 22.5** A RSA may be applicable to a particular junction or section of the network. However, it is important that the road safety implications of the measures being proposed are considered, along with any impact on adjacent or other parts of the network.
- 22.6** A RSA does not consider non-road safety related issues and is not a technical check. However, in order to clearly explain a safety problem or make a recommendation to resolve a problem, the audit may make reference to a design standard.
- 22.7** A RSA is not to be used:
- As a means of selecting between various design options under consideration;
  - To query why other measures are not being proposed; nor
  - To comment on the effectiveness of the proposals where there are no adverse safety implications.

### Audit Stages

- 22.8** A RSA shall be undertaken after the completion of four specific stages of project development, which are:

#### Stage 1

A Stage 1 RSA must be commissioned by the Developer as soon as possible after completion of the preliminary design. The design should be sufficiently progressed so that all significant features are clearly shown. This is likely to have been undertaken prior to defining the scope of the S278 works. The Developer will provide BMBC with the Stage 1 report prior to the start of detailed design.

#### Stage 2

The Developer must commission a Stage 2 RSA upon substantial completion of the detailed design and before the preparation of works orders or tender documents. The design should be sufficiently progressed so that it could be constructed with the information produced to that point. Once the Developer has provided TC with the Stage 2 report, the detailed design can be completed in line with recommendations.

#### Stage 3

A Stage 3 RSA must be commissioned by the Developer just before or just after the issue of the Practical Completion Certificate depending upon what is most appropriate. The timing will be dictated by the earliest opportunity to observe actual road user behaviour.

On occasions it may be necessary to carry out an RSA before the road is (re)opened to traffic, so that any identified issues can be addressed prior to (re)opening. The need for this will be discussed with the Developer and should be included in the Section 38 Agreement where possible.

**Stage 4**

The Developer must commission a Stage 4 RSA just before or just after the issue of the Final Completion Certificate depending upon what is most appropriate. The RSA should take account of actual road user behaviour and the following data will be analysed:

- Locations at which personal injury collisions occurred;
- Personal injury collisions that appear to have similar causes or show common factors;  
and
- How the scheme may have affected collision patterns and rates.



# BARNLSLEY

## Metropolitan Borough Council

Please complete using black ink in BLOCK capitals or type.

It is important that all sections of this form are completed as incorrect or missing information will delay the processing of your application. Please refer to the guidance notes for advice.

Before you can apply to enter into a Section 38 Agreement you must obtain full planning permission for the development from the Local Planning Authority this **must include** approval of all reserved matters relating to the highway works.

### FOR OFFICE USE ONLY

Officer:		Recv'd Date:	
Validated:			
TCO/SAP	Bond Calc	TCO Fee	Legal

### 1 Your Details

Applicant Name:	Agent Name:
Registered Address:  Postcode:	Agent Address:  Postcode:
Email:	Email:
Daytime Tel No:	Daytime Tel No:

### 2 Solicitor and Surety Details

Solicitor Name:	Surety Name:
Solicitor Address:  Postcode:	Registered Address:  Postcode:
Contact Name:	Contact Name:
Daytime Tel No:	Reference:
Email:	(or)
Reference:	<input type="checkbox"/> Tick (✓) here if <b>No Surety is required</b> as a Cash Deposit will be placed with the Council.

### 3 Planning Application Details

Please note that until a valid planning permission has been obtained the Council will not be able to process an application for a Section 38 Agreement. If you are currently awaiting a decision on your planning application please contact the S38 officer via the email address at the end of this form.

Planning Application Reference:	Decision Date:
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### Description of the Highway Works

Please provide an accurate, detailed description of the proposed highway works required as a result of the planning permission. (continue on a separate sheet of paper if necessary)

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### Off-site Highway Works Ancillary Items

Modifications of the existing highway to form a junction or other amendments to the existing highway will require a S278 agreement, this can be a separate agreement or combined with the S38 Agreement, please indicate in the following section if your proposed development involves the following matters:

- Waiting / Loading Restrictions
- Resident's Permit Parking Zones
- Vehicular Access Restrictions
- Speed Limit modifications
- Creation of New Highway
- Widening of Existing Highway
- Bus Shelters/Canopies

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### Statutory Undertakers' Diversions

Please indicate below if the Highway Works will require diversion of any statutory undertakers' plant or equipment. Please also indicate if these costs are Preliminary Estimated values and whether or not the costs have been paid to the respective body.

	Affected?	Diversion Cost	Tick (✓) to indicate		
		£	Estimated	Final	Paid
Virgin Media / Cable Company	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
British Telecom	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yorkshire Electricity	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yorkshire Water (Mains)	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yorkshire Water (Foul)	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Northern Gas Networks	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify _____)	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7

### Creation, or modification of Highway Assets

Please indicate if your off-site highway works will require **modification**, or **creation** of a new highways assets by ticking (✓) below.

- Modification of Street Lighting
- Modification of Traffic Signals
- Modification of Highway Structures
- New Street lighting equipment
- New Traffic Signals
- New Highway Structures
- Modification of Road Signing (other than TRO signing) (e.g. ADS, VMS Signs)
- New Road Signing (other than TRO signing) (e.g. ADS, VMS Signs)

Please provide details of the proposals indicated above

Sustainable Urban Drainage Solution

Please give details of your SUDS solution:

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### Plans and supporting information

Please specify plans/details that have been submitted in support of this application. Failure to include information in the following section may result in your application not being validated for processing and a request for additional information being issued by the Council. **If you are submitting electronic PDF copies of the plans/details please indicate this by ticking (✓) the electronic submission box below.**

I am making an **electronic submission** and PDF versions of the supporting information have been supplied.

\*  Full set of drawings including long sections, cross sections, drainage and construction details.

\*  A RED line site boundary (not less than 1:500) showing the area of the development.

\*  Indicative layout of the off-site Highway Works to be delivered (not less than 1:500)

\*  Plan of the new highway to be adopted (Scale 1:200 or 1:500 only)

\*  Proof of land title. (and address of landowner if different to applicant)

Land Registry Numbers:

\*  £2,500 Application Fee

**PLEASE NOTE:**

**\* indicates mandatory attachments to ensure validation of application. Failure to submit these items will invalidate your application and this will be returned to you unprocessed.**

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### Programme Information

Please provide details of any programming constraints or deadlines which you are aware of at this time.

## Declaration Undertaking

In recognition that an Agreement under Section 38 and Section 278 of the Highways Act 1980 ("the 1980 Act") will be required by the Council to facilitate works in the existing highway for the special benefit of the Applicant or his/her adjacent development ("the Section 38 Agreement") the Applicant is required to pay the Council's legal costs in connection with the Agreement.

In consideration of the agreement by the Council to negotiate the Agreement I/we undertake to pay the Council's reasonable costs in preparation and negotiation of the Agreement whether or not the Agreement is completed by me/us. If I/we withdraw from the planning permission for the above development I/we shall pay the reasonable costs of the Council incurred to the date of that withdrawal as notified by the Council. If the Section 38 Agreement has not been completed by a date 3 months after the date of this Undertaking I/we will be deemed to have withdrawn from negotiations and upon a request in writing I/we shall pay to the Council their reasonable legal costs incurred up to and including that date.

I/we understand that any agreement as the payment of legal costs contained in the completed Section 38 Agreement will take precedence over this Undertaking.

Signed (Applicant):	Signed (witness):
Name:	Name:
Address:	Address:
Date:	Date:

**Please return two copies of the completed form, plans and supporting information to (or submit electronically via email):**

Highway Development Control, Regeneration and Property, Place Directorate, 1 Westgate, Barnsley, S70 2DR

Tel: (01226) 772078

highwaysS38@barnsley.gov.uk