

# **BARNSELY METROPOLITAN BOROUGH COUNCIL**

## **DEVELOPMENT**

### **HIGHWAYS AND ENGINEERING**

#### **SECTION 278 WORKS UNDER THE HIGHWAYS ACT (1980)**

##### **FULL SECTION 278 AGREEMENT WORKS PROCEDURE**

The Developer is to notify the Council of a requirement for work in the existing highway as part of the planning conditions for a development.

The Council will check the planning conditions and provisionally advise the Developer if works are required under a section 278 agreement.

A meeting may be arranged to discuss the proposal in detail.

The Developer will be issued with forms requesting information necessary for the drafting of an abortive fee agreement and a Section 278 agreement. (Copies of the forms are attached in Appendices 1 & 2).

The Developer is to fill in the forms as far as possible and return them to the Council.

An abortive fee agreement is required to protect the Council against financial losses in the event of it expending fees for schemes that are not progressed.

The abortive fee is to be paid by the Developer prior to the commencement of any design checking work. The amount of the abortive fee is determined by the Council. Generally, it is in the range of £3000 - £5000. However the abortive fee is dependent on the size and technical complexity of the scheme. It is intended to reflect the likely cost of the design check and other procedures up to the completion of the Section 278 agreement itself. If the fee is exceeded, the Council may seek reimbursement for any additional costs that it incurs.

Upon receipt of the completed abortive fee agreement form, the Council shall draft the abortive fee agreement. The Council shall send the abortive fee agreement to the Developer for his consideration. The Developer is to sign / seal the agreement and return it to the Council along with a cheque for the abortive fee. The signatures of at least two directors are required to make the agreement enforceable. The cheque for the abortive fee shall be made payable to Barnsley Metropolitan Borough Council and sent FAO Mr D Lacey, Barnsley Metropolitan Borough Council, PO Box 601, Barnsley, S70 9FA. The envelope is to be marked "Addressee only".

The Developer shall notify the Council of the identity of the Designer he proposes to appoint for the works. The Council shall approve the Designer prior to the commencement of any design work. In order to obtain approval, the Designer shall provide three satisfactory references for works of a similar nature to that proposed.

The Council can (in some circumstances) design the works for the Developer. The Council can provide details of fee charges on request.

The Developer is to submit drawings and specifications for the Section 278 works. These drawings and specifications should provide all the technical information necessary to construct the works. The Council shall check the details provided and inform the Designer and Developer as to whether or not

they are satisfactory. In the event of the design being unsatisfactory, the Council shall notify the Developer of any additional information required along with advice with regards to details that require revision, amplification or deletion. The process of design submission and checking shall continue until the Council is satisfied that the design satisfies the requirements of the relevant planning conditions and provides sufficient technical information to allow the works to be constructed.

The Developer shall at this stage submit a plan showing the extent of land in his ownership. This plan should ideally be a copy of a Land Registry drawing. The Developer shall also submit a plan showing the development site with the planning consent boundary edged in red and the extent of any land to be dedicated as highway edged in blue. This plan shall be bound into the land dedication agreement. Any land dedication agreement shall form part of the Section 278 agreement.

Upon approval of the drawings and specifications, the Developer shall submit a cost estimate for the section 278 works for the Council's approval. The Council shall assess and approve the estimate once it is satisfied that the estimate accurately reflects the cost of the works.

The approved estimate shall form the basis of the calculation of the Council's supervision fee for the works. In general, the supervision fee will be 7 % of the works cost. However, this fee may vary depending on the technical complexity of the scheme. The supervision fee is an addition to the abortive fee previously paid. In the event of the supervision fee being exceeded, the Council may seek reimbursement for any additional costs that it incurs.

The Council will advise the Developer as to the requirements for safety audits for each scheme. The Developer is responsible for ordering and paying for the audits. The Developer shall ensure that the results of any safety audits are incorporated into the design except when instructed not to do so by the Council.

In the event of Traffic Regulation Orders (TROs) being required for the scheme, the Council shall carry out the necessary procedures and the Developer shall pay for the services provided. The cost of a Traffic Regulation order varies but it is generally in the order of £3000 - £4000. The Council's Traffic Engineer will set the exact figure for the TRO.

The Developer shall pay the Council's legal fees for drawing up the section 278 agreement. These fees vary but are generally in the region of £1000.

If the scheme involves the installation of traffic signals, signalised pedestrian crossings, zebra crossings, retaining walls, flow control devices, flow attenuation tanks or soakaways, the Developer will be required to pay a commuted sum for future maintenance of the installations for an agreed number of years. Other facilities and installations may attract commuted sum if they were only required as a result of the developers' works. Requirements for commuted sums shall be set out in the Section 278 agreement. The value of commuted sums shall be calculated in accordance with "Commutated Sums For Maintaining Infrastructure Assets" as issued by the County Surveyors Society.

The Developer (or Designer) shall liaise with the Council's Street Lighting section with regard to any lighting issues associated with the Section 278 works (Contact Diane Goodyear 01226 774201 [dianegoodyear@barnsley.gov.uk](mailto:dianegoodyear@barnsley.gov.uk) ).

The Developer is responsible for liaising with Statutory Undertakers and shall make all arrangements and pay for all service diversions or protective measures that are required for the Section 278 works. All statutory undertakers' protection and diversion costs are to be identified prior to the completion of the section 278 agreement.

The Developer will be required to provide a bond in the sum of 100% of the estimated cost of the section 278 works plus the cost of any necessary diversion and/or protection works required by statutory undertakers. The bond is to be provided prior to the commencement of the works. A bond is not required if the works are constructed by the Council's Engineering Services. The bond may be a cash bond or it may be provided by a surety who will be bound into the Section 278 agreement.

The Developer shall supply details of the Contractor he proposes to use to construct the works. The Contractor will be required to be accredited under the Contractors Health and Safety Assessment Scheme (CHAS). Details of CHAS can be obtained at [www.chas.gov.uk](http://www.chas.gov.uk) The Contractor will also be required to produce three acceptable technical references (preferably from other local authorities) for work carried out in live highways. The Contractor shall be approved by the Council if these conditions are met.

No section 278 work is to commence in the public highway until the Section 278 Agreement is completed. The Developer shall also pay the supervision fee to the Council before the commencement of work on site.

The section 278 agreement may also include provisions relating to the approval of contractors, programmes and traffic management arrangements. Any such requirements shall also be met prior to the commencement of the site works.

The Developer or his contractor should keep any local residents or businesses, affected by the Section 278 works, informed of his proposals by carrying out a letter drop before works start on site.

The Developer should be aware that entering into a Section 278 agreement does not relieve him of any obligations under the Traffic Management Act.

The Council shall supervise the quality of the on-site work. It should be emphasised that the Council is only concerned that the works are built in accordance with the details in the Section 278 agreement or such variations as may be agreed. The Council shall communicate only with the Developer (or appointed agent) and will not instruct the Contractor.

Upon the satisfactory completion of the work, the Council shall issue a dated completion certificate. 90% of the bond will be released upon the issue of the completion certificate. There will be a maintenance period of one year commencing from the date of the completion certificate. Shortly before the expiration of the maintenance period, the Council will carry out an inspection of the works and give the Developer a list of any defects to be rectified. Upon the satisfactory completion of any remedial works, the Council shall issue a final certificate to discharge the Developer from his obligations. The remaining 10% of the bond shall be released at this stage. The Developer shall not discharge the Contractor from his obligations until the Council issues the final certificate.

If the section 278 works are notifiable under the terms of the Construction (Design and Management) Regulations (2007) then a copy of the Health and Safety file shall be supplied to the Council within a year (or such other period as may be notified by the Council) of the completion of the works.

## APPENDIX 1

### INFORMATION REQUIRED FROM DEVELOPER FOR ABORTIVE FEE AGREEMENT

	<u>ABORTIVE FEE AGREEMENT</u>
<b>Scheme Title</b>	
<b>Planning Consent</b> (Date/ Reference No)	
<b>Developer</b> Contact name and details of address, phone number and E-mail	
<b>Developer's Agent (if any)</b> Contact name and details of address, phone number and E-mail	
<b>Solicitor</b> Contact name and details of address, phone number and E-mail	
<b>Designer</b> Contact name and details of address, phone number and E-mail	
<b>Outline schedule of works proposed</b>	
<b>Initial abortive fee</b>	
<b>Initial estimate of works cost</b>	
<b>BMBC Role</b> Designer or checker of developer's design	

## APPENDIX 2

### INFORMATION REQUIRED FROM DEVELOPER FOR FULL SECTION 278 AGREEMENT

<b>Scheme Title</b>	
<b>Planning Consent</b> Date/Reference No	
<b>Developer</b> Contact name and details of address, phone number and E-mail	
<b>Developer's Agent (if any)</b> Contact name and details of address, phone number and E-mail	
<b>Solicitor</b> Contact name and details of address, phone number and E-mail	
<b>Safety Audits</b>	
<b>Schedule</b> (Description of The Works)	
<b>Contractor (if known)</b> Contact name and details of address, phone number and E-mail	
<b>Bond</b> =Works cost + stats costs. Details of bondsman to be supplied	
<b>BMBC Fees, TROs &amp; Commuted Sums</b>	
<b>Works Costs</b>	
<b>Details of land to be dedicated as highway</b>	
<b>Drawing numbers</b>	