



Department
for Transport

Advice Note

Highways Adoption

The Adoption of Roads into the Public Highway (1980 Highways Act)

August 2022

Department for Transport
Great Minster House
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London
SW1P 4DR



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Foreword

This advice note sets out information and best practice on road adoption for all those who are involved in the development and purchase of homes. It was first published in 2017 with the expectation that users of the document would come to us with views on how the guidance might be amended in the future to ensure that the process of highways adoption works effectively.

As a consequence, we have added advice on technical submissions provided to local authorities, in support of their evaluation to ensure any proposed highways adoption meets their standards. In addition to this, we have provided further advice to assist prospective home purchasers along with information on how utility connections can impact road adoption. I would like to take this opportunity to thank all those who have worked with my Department to enhance the effectiveness of this document.



Baroness Vere of Norbiton

Parliamentary Under Secretary of State

Summary

This Advice Note explains how new and existing roads can be adopted by highway authorities so that they become maintainable at public expense, pursuant to the 1980 Highways Act (as amended) (the 1980 Act).

It should be of interest to planning authorities, local highway authorities, developers, people living in private streets, and people planning to purchase property (prospective purchasers may especially wish to note the contents of **Annex C**).

The guidance applies to England and English local highway authorities. In unitary authority areas, planning and highways matters are managed by the same authority. In county council areas these functions are administered by two separate authorities.

Development of this document

The DfT sought comments from stakeholders on a draft document in April 2017. The DfT, supported by the road adoption task group, made textual amendments based on the comments received as well as including additional information on how to commence development (how to get on site as soon as practicable). The main additions are in 3 annexes:

- In **Annex A**, we have provided the text for the draft planning conditions (and notes) for adoption of new roads that the DfT published in 2012;
- In **Annex B**, we have provided information on how fees, charges and bonds are formulated; and
- In **Annex C**, we provide a guide ('handy hints') that should assist purchasers.

Following publication on 20th April 2017, we invited readers to work together and apply the advice provided in this note. We also invited views by end of March 2018 on what, if anything, may need to be considered to further support successful road adoption. Following feedback received, further textual amendments have been made along with the addition of:

- **Annex C**, updated and expanded;
- **Annex D**, setting out what a technical submission to a local authority should contain and consist of to improve consistency and quality of submissions; and
- **Annex E**, setting out how utility companies and associated services and their provision can affect highway adoptions and how collaborative working and early engagement can address many such issue.

Introduction

Scope of this document

It should be noted that this Advice Note is provided for guidance only. It is not a substitute for independent legal advice. The potential issues that have been highlighted are common examples. Other issues may arise as any part of the process of road adoption is progressed.

This Advice Note is set out in four parts. Not all the parts will apply to everyone but, of course, everyone may benefit from reading the whole document. In order that the reader can direct their attention to the section that may be most appropriate, at the right time, each section described below starts with a suggested readership.

It should be noted that:

- not all streets or roads are suitable for, nor do all residents or developers wish or require, their roads to receive adoption into the highway to be maintained at public expense;
- until roads are adopted, the developer and/or an appointed management company remains the streets works manager. Their responsibilities include all legal responsibilities and liabilities in respect of other users' 'slips', 'trips' and 'spills' – see legislation (such as 1984 Occupiers Liability Act);
- until roads are adopted, the buyer of any house on a 'new build' may be liable for the access ways outside their properties, (from their building to their property boundary), in respect of other users' 'slips', 'trips' and 'spills';
- all roads that become a highway maintained at public expense will be an on-going cost to the public purse; and
- the term 'local authority' in this Advice Note refers, in particular, to the local highway authority function within a two tier or unitary authority.

Parts of the Advice Note

Part 1 - The Operation of Section 38 Agreements (between developers and local authorities)

- a) **Suggested readership - expected to be developers and local authorities.**
- b) It will be of interest to house purchasers on new developments and their legal advisors. Those planning to purchase homes may wish to ask their legal advisors if a 'Section 38 Agreement' is in place.
- c) Agreements made under Section 38 of the 1980 Act are the most common method of adopting new roads. Such Agreements ensure the road is built to the required standard for it to be adopted into the public highway network.

Part 2 - The Private Street Works Code (PSWC) and Part 2A the adoption of a private street after the execution of works (Section 228)

- a) **Suggested readership – is expected to be those individuals or groups of homeowners who seek to have their private street adopted.**
- b) The operation of this 'Code' enables the local authority to make up private streets so that they become highways maintained at public expense.
- c) As this Code gives the local authority the power to apportion all of the costs to each owner with a frontage (usually a person who lives on the street), the process may not be straightforward and can be expensive and time consuming. Working closely with the local authority and legal advisors is strongly recommended.
- d) Section 228 of the 1980 Act details how, in specific circumstances, new roads may be adopted when any works undertaken by the local authority (not by a statutory undertaker) have been executed in a private street. For instance, it can be used where the owner of the land is not traceable; the land is not registered; or where a developer has a right of way over the land but does not own the land.

Part 3 - The Advance Payments Code (APC)

- a) **Suggested readership – is likely to be developers and local authorities.**
- b) The APC is intended to provide sums to the local authority such that, if approached via the PSWC, it can use such sums to make up the private street to facilitate adoption without or with less recourse to those with a frontage to fund such works.
- c) The operation of the APC is linked to the passing/approval of building plans submitted under the Building Regulations or 'initial notice' by an approved building regulation inspector and not planning permission.

Part 4 - Road adoption using Section 37 of the 1980 Act

- a) **Suggested readership – is likely to be developers and local authorities. It will be of interest to house purchasers on new developments and their legal advisors.**
- b) No agreement is made but the owner or developer can inform the local authority of their intention that they want their road to become adopted.
- c) This part covers best practice in such circumstances, but it should be noted that this process can involve lengthy disputes and, where necessary, reference to court.

Early discussions between parties

- a) For all aspects of road adoption, early discussion between all parties is required to help achieve a more seamless process. This is particularly important for those buying homes on new residential developments.
- b) A collaborative approach and clear communication at all stages should be taken by all parties involved including planning and highway authorities, whether they are unitary or two-tier administrations. Each party will have their own specialism and approach which should be acknowledged and respected by all others involved.
- c) Engagement at the crucial land acquisition stage is of fundamental importance. The collective involvement of the highway authority, lead local flood authority, drainage/sewerage company, utility companies, planning authority, parish/town councils, and those that need to agree plans and proposals, should be at the centre of the chosen process of road adoption.
- d) A new residential street can only be adopted into the public highway by the relevant highway authority. This Advice Note uses the term 'local authority' as the role and function of the highway authority which may be discharged by councils that may also have other functions. Where functions affecting road adoption fall within a single administrative authority (such as a unitary council), internal conflicts between policies and advice between different council functions should be eradicated.
- e) In many cases, issues and impediments to adoption identified in this Advice Note are avoidable if appropriate early engagement occurs. It is incumbent upon a development promoter to seek such engagement and for all parties to provide advice based on their area of expertise. Whilst some parties will, reasonably, charge for such advice to cover their costs, such early investment can benefit all parties with greater certainty in the process.
- f) Local authority standards for adoption of streets into the public highway should be fit for purpose and accommodate all the demands on them including all movements by all modes, utility provision (taking note of spacing criteria, (see **Annex E**) and place making criteria. Early engagement with authorities ensures such matters can be accommodated from an early stage. Such standards should where reasonable remain consistent from pre-application, through the application process and technical audit processes associated with adoption.



Developments involve substantial investment; multiple parties that must work together; affect existing communities and create new neighbourhoods

Part 1 - The Operation of Section 38 Agreements

Introduction

Agreements made under Section 38 of the 1980 Act are the most common method of achieving road adoption. It is mostly used where roads are planned by developers on new residential or commercial developments. The agreement should clear the way to a seamless process to achieve road adoption. The agreement will only be finalised once all highway related planning requirements are in place. However, discussions on the requirements for the agreement should, where possible, have been on-going throughout the planning stages. It is important that the local authority's advice regarding its adoption standards, where reasonable, remains clear and consistent throughout the planning and agreement stages.

The most common process for the adoption of existing roads, Section 37 adoption, is covered in Part 4 of this Advice Note.

Once roads are adopted into the highway to be maintained at the public expense, we have referred to them in this Advice Note as a 'highway'. The accompanying flow chart (see page 23) provides an overview of the process associated with Section 38 Agreements.

Section 38 of the 1980 Highways Act

Section 38 of the 1980 Act provides local authorities with the powers to enter into an agreement to take over (adopt) and thereafter maintain at public expense a newly constructed road.

The 'Section 38 Agreement' is made between a developer and the local authority. Although any prospective purchaser is also likely to have an interest, especially in knowing that there is in fact an agreement in place - please see **Annex C**.

The completion of the agreement may be subject to legal processes over which the local authority has no control. Such processes may relate to third party negotiations and agreements, land matters, easements, private rights, private covenants (and their removal if necessary), drainage discharge consents and agreements etc.

In order to ensure the agreement can be implemented as soon as possible, developers should ensure they have considered, at the earliest possible stage, all other matters such as the provision of street lighting (for which a parish, town, district/borough, county or unitary council may be responsible) and drainage and surface water for which separate drainage consent and permissions may be required.

In addition, the layout and provision of utilities, their network capacity and service layout can affect the layout of a development and failure to adequately consider such matters can delay or inhibit the process. See also **Annex E**.

Before entering into a Section 38 Agreement, the local authority will require that developers (or landowners where this is different) obtain full planning permission, or reserved matters consent where outline permission has been granted, for the development from the relevant planning authority.

A local authority may be prepared to draft the agreement and progress technical approvals, pending such planning permission. However, there are risks that such an approach may result in abortive work as layouts and some legal provisions may change prior to planning consent.

Any pre-planning consent technical submissions are made at the developer's risk and a local authority will act on a non-prejudicial basis prior to planning consent.

The local authority is likely to require that developers have absolute title to the land to be dedicated as highway, so that the developer has legal capacity to dedicate, but they may choose to consider other titles. This should be discussed with the individual local authority.

If the developer is not the landowner, then the landowner can become party to the Section 38 Agreement for the purposes of dedicating the land required. Similarly, a third-party landowner may need to become party to the Section 38 Agreement to grant a deed of easement to the local authority for drainage or access purposes. Some agreements can be held up significantly due to third party landowner issues. It remains the developer's responsibility to negotiate and secure all necessary agreements, rights etc., with such third parties and pay all required fees or sums as such third parties may require for such rights or easements.

It should be noted that, where the developer is unable to obtain absolute title or where there are charges or difficulties with the title that are unacceptable to the local authority such that the land cannot be dedicated appropriately for highway purposes by the developer, the roads may well remain private streets (not be adopted into the public highway to be maintained at public expense). House purchasers need to be aware of this.

Developers are strongly advised to consider the implications of their submission of a planning application (pre-application discussion). They are strongly advised to engage with all relevant local authorities during the planning process and ensure that any plans and designs submitted are of the correct standard.

It is also important that the local authority's advice regarding what is or is not adoptable remains clear and consistent throughout the planning and agreement process.

Planning authorities may impose specific planning conditions for the approval of details, and these may include those set out in **Annex A**. It is recommended that all parties (including the developer, the local authority and the lead local flood authority) sit down together to discuss the way forward.

The provision by the local authority of a standardised draft Section 38 Agreement would assist this process. Developers will need to ensure issues related to surface water have been considered and submitted such that appropriate advice can be given.

It is important that there is coordination and alignment between lead local flood authority requirements and standards and those of the local authority in respect of drainage features within highway adoptable areas. This will avoid the lead local flood authority approving a

system that renders a road unadoptable, from the highway authority's perspective, when such authorities are within the same local authority.

The local authority will be able to advise developers of any local design standards for new roads at an early stage, with initial/potential fees along with items that may attract commuted sums. These design standards should inform the developer's planning application submission.

For most residential estate roads, the local authority will likely have its own design and construction specification in place. Local authorities should publish their local design standards, technical submission requirements, fee structures and commuted sum requirements to enable developers to engage earlier and in an informed manner. Once published, they should ensure that such guidance and requirements are kept up to date with local or national standards or legislative changes.

The *Design Manual for Roads & Bridges* (DMRB) should have little relevance (other than GG119 Road Safety Audits) when designing and constructing low traffic residential estate roads, although reference to the DMRB may be required for more complex highway infrastructure, structures and spine roads etc.

DMRB standards are more likely to be applicable to works on existing highways, junction improvements and major works for which agreements under Section 278 of the 1980 Highways Act would be required.

Developers are encouraged to discuss and agree with the local authority what parts, if any, of the DMRB may apply and to do this at the earliest opportunity.

In practice, if highway design standards are considered at an early stage in the planning process, it can save time within the process of achieving an agreement and help extinguish planning conditions such as those in **Annex A**.

It should be noted that a Section 38 Agreement should only be entered into where the roads concerned directly link to an existing adopted street or road or other roads already covered by a Section 38 Agreement.

Where a new street connects to a Byway Open to All Traffic (BOAT), most highway authorities would require the BOAT to be upgraded and improved to their adoptable standards under a Section 278 Agreement. Any Section 38 Agreement would only be completed after completion of the associated Section 278 Agreement.

Technical Approval

Once full planning permission is obtained, and the developer decides to offer new roads for adoption by a local authority, the local authority is likely to require the provision of a 'technical submission'.

This is likely to comprise of a package of drawings showing how the developer intends to build the roads. It needs to be consistent with the local authority's design standards.

Annex D of this Advice Note provides guidance on the nature and extent of drawings and documentation required for a technical submission.

It should be noted that the granting of planning permission is not a pre-requisite for the consideration of a technical submission but, in some cases, a local authority will not wish

to proceed if it considers it prejudices its position on a proposal or it considers third parties may perceive there to be a conflict of interest. In addition, pre-permission technical submissions may not accommodate all planning requirements, leading to abortive work.

We have provided in **Annex D** to this Advice Note information on the content required for a technical submission, including best practice examples. However, it should be emphasised that each local authority will have its own submission requirements, which will be in line with their legal duties; design standards; and policies for adoption. A developer is strongly advised to work with the local authority at an early stage to establish what these are and avoid abortive work.

A local authority will require written evidence that all appropriate permissions, easements and consents for taking prospective highway drainage have been obtained from the appropriate body. These can include the Environment Agency, the lead local flood authority, the drainage board, the landowner (riparian or otherwise) through which prospective highway water may run, or water company etc.

It should be noted that local authorities are very likely to charge for the costs associated with checking the proposed design, and some may require that payment upfront. Early contact with the local authority is, therefore, encouraged.

Where the local authority does not receive the correct fee from the developer at the required time it can result in a delay.

The developer will require 'technical approval' from the local authority. This process can be lengthy if the submitted drawings are not of an acceptable standard and/or do not meet the design standards. Therefore, the developer is strongly advised to check that the drawings meet the local authority's requirements. A local authority is highly unlikely to enter into a Section 38 Agreement without 'technical approval'.

Most local authorities will require the developer to have absolute title to the land over which the roads are proposed to run.

If the developer does not own the land concerned, the person who does own the land becomes party to the Section 38 Agreement for it to be "dedicated" as highway. Such land (dedicated as highway) should be retained for that purpose and not sold to adjacent or other third parties.

It is possible that a local authority may, in exceptional circumstances, consider other title to the land. The required title will need to be discussed with the individual local authority.

Where land is being developed under licence from Homes England (or successor agency), Homes England would be party to the Section 38 Agreement. In such cases it is common for title to remain with Homes England rather than the developer.

Road Safety Audits

Most local authorities now seek that the design of new roads are the subject of a 'road safety audit' in accordance with GG119 of the *Design Manual for Roads and Bridges*. Where a local authority considers a road safety audit would be required at technical submission stage, it should ensure that this is conducted at the planning stage as such audits, (which form part of a quality audit as promoted by *Manual for Streets*) can directly influence the layout of proposed streets and junctions.

The use of a stage 1 road safety audit at the planning stage can inform design and junction mitigation choices and reduce the risk of significant changes at the detailed design stage.

Road safety audits may be carried out at four stages of the design and build process:

- Preliminary design;
- Detailed design;
- Shortly following construction; and
- 12 to 36 months after the roads are open to use.

The developer is advised to contact the relevant local authority at an early stage to establish any requirements for road safety audits.

It should be stressed that there is no requirement for road safety audits within the 1980 Act and they may not be needed in all cases. Any requests for such a process should be both reasonable and proportionate. They may be used to identify if the design the developer proposes will be safe for all road users. Developers will have a duty to provide a health and risk assessment, sometimes referred to as the 'health and safety file', in accordance with the 2015 Construction (Design and Management) Regulations SI 2015/51.

Advance Payments Code (APC)

An APC will apply if the developer applies for 'building regulation approval' and the plans are passed for the buildings on the development prior to signing the Section 38 Agreement for the adoption of the new roads within the development. For further information on the APC see Part 4 of this Advice Note.

Entering into a Section 38 Agreement

The developer will need to provide the local authority with certain information to allow them to draft the Section 38 Agreement for the development. This will include copies of the drawings that have received technical approval, proof of ownership of land etc. It is essential that the developer contacts the relevant local authority to obtain a copy of their standard Section 38 Agreement and list of required documents.

Payments to the Local Authority

A Section 38 Agreement is very unlikely to be completed by a local authority until all fees have been paid and a 'bond' is in place to cover the full cost of constructing the new roads in the development. See **Annex B**.

The local authority should provide clear information on the form of bond that would be acceptable, as well as stating at what stages a percentage, part or the whole of the bond will be returned.

Many local authorities reduce bonds to 25% of the full works costs that they have calculated plus the value of the commuted sum for the duration of the maintenance/defects correction period.

On large schemes, some local authorities may agree to other certifiable stages of construction to facilitate a bond value review or reduction.

The bond value should reflect the costs to the local authority of constructing and completing the road(s) in accordance with the details that have received a technical approval should the developer default on the agreement.

The value of the bond may differ from the costs incurred by the developer in constructing and completing the road(s).

Some local authorities use a risk-based approach in calculating bond values while others may use linear rates. In any event, the local authority's methodology and criteria should be published and maintained.

Most local authorities will include the value of any commuted sums within the bond to ensure that the public purse is protected if the developer defaults prior to the payment of such sums.

The local authority should provide clear information on the level and timing of fees that will be required which are likely to include, but not exclusively, costs associated with design checking, preparation of the legal agreement, and site inspection. It should be stressed that the level of costs imposed should be reasonable and proportionate. Please also refer to the information on fees provided in **Annex B**.

The developer should not begin construction of the road works unless:

- All pre-commencement planning conditions have been discharged by the planning authority that may prohibit the commencement of construction works (see also Commencing Development, below);
- the local authority has provided technical approval;
- all fees have been paid;
- a Section 38 Agreement is in place;
- a bond has been secured; and
- the developer has met any other requirements specific to the local authority.

Any local authority requirements should not exceed those set out in the 1980 Act or other legislation or legal duties. They may include booking of road space on the existing highway, if this is needed to allow works to be carried out; approval of the appointed contractor; as well as the need to arrange a 'pre-start meeting' etc.

Invariably, the developer will be responsible for the day to day supervision of the works, the accuracy of any setting out as well as the quality of the construction materials used. However, the local authority will inspect the works at various stages. These inspections are to ensure the local authority is satisfied with the workmanship, compliance with the drawings and details that have received technical approval (as may reasonably have been amended by agreement with the local authority due to site conditions and circumstances) in order to ensure that the roads are being constructed in accordance with the Section 38 Agreement.

Local authorities should publish guidance and thereafter keep it up to date with changes in local and national standards or legislation. They should ensure that agreements are clear

on the developer's responsibilities in respect of works supervision and the role of the local authority's engineer on site.

A local authority should be clear on any features or materials that may attract commuted sums and should publish its rates for such features and rationale for requiring such sums. Most local authorities require such sums to be paid when adopting roads but will require their value to be included within the bond value.

All parties are encouraged to complete their respective responsibilities in a timely manner to avoid undue delay.

Commencing Development - site access using various licences and Section 278 Agreements

The commencement of development is controlled by the 1990 Town and Country Planning Act (as amended).

Whilst not recommended, a developer may commence their development in advance of a Section 38 Agreement within their land. However, the following matters may affect such a start: -

- All pre-commencement planning conditions have been discharged by the planning authority;
- An appropriate and safe means of temporary construction access is established. In most cases, this will be at the location of the permanent access but such works may be sacrificial.
- If a temporary construction access is in a different location, planning consent may be required and, in any event, the agreement of the local authority will be required for any works within the highway;
- Where served, an APC notice sum should be paid prior to commencing any works to a new building; and
- Compliance with noticing under the 1991 New Roads and Street Works Act (as amended) or permitting under the 2004 Traffic Management Act. Some permits may limit working hours that affect the free flow of traffic.

No works by the developers may commence within or onto any highway without the consent of the local authority. Provision of access to the construction site needs to be discussed with and authorised, by the local authority. The authorisation of an access is at the discretion of the local authority and will be subject to: -

- A licence under Section 171 of the 1980 Act. Such licences enable temporary works within a highway that will subsequently be removed and reinstated. The licence may stipulate the duration and nature of access and subsequent reinstatement;
- A licence under Section 184 of the 1980 Act. This may only be for vehicular use and can also be used for widening of an existing private means of vehicular access. The licence may stipulate the duration and extent of works;

- An agreement under Section 278 of the 1980 Act. Such an agreement will require the submission of appropriate constructional details of the permanent access works within an existing highway compliant with national and, where appropriate, local standards and the planning consent;
- Street works requirements under the 1991 New Roads and Street Works Act, (as amended) and 2004 Traffic Management Act (as amended); and
- The local authority having approved the appointed contractor to work within the highway where applicable.

Subject to the above criteria being met, all works within a development are undertaken at the developer's risk.

In some cases where a Section 38 Agreement is being considered but not yet completed, and subject to an appropriate fee, the local authority may agree to inspect such works on a non-prejudicial basis. Such inspections may be limited in scope and duration.

As and when a technical approval has been confirmed and a Section 38 Agreement is completed, it is possible that some works will need to be modified to comply with the technical approval and appropriate testing of works may be required to confirm compliance with an approved specification.

Some local authorities may insist on undertaking the design and construction of works within the highway themselves under Section 278 of the 1980 Act.

Maintaining and adopting the road

Once the construction and the layout of the roads are substantially complete, and the local authority is satisfied that they meet their standards, including the need for a stage 3 road safety audit, where required, the local authority will issue the developer with a 'first certificate'. The 'first certificate' may also be referred to as "substantial completion" or a "practical completion certificate".

Once this stage is completed and the appropriate certificate issued, it is expected that the local authority will reduce the amount of bond held in accordance with the agreement.

Following issue of the appropriate certificate, the developer will be responsible for maintaining the works in good and safe repair for a minimum period. This period is known as the maintaining or "maintenance" period.

Whilst this period may usually be twelve months, some local authorities may accept shorter maintenance periods in some cases. Longer maintenance periods, such as twenty-four months, may also be required to accommodate stage 4 safety audits and associated works. Such longer periods also align with street works guarantee periods. Local authorities should publish local guidance on their maintenance period requirements.

At the end of the maintenance period, the developer will be required to rectify any defects in road construction identified by the local authority and address any issues that arise out of the stage 4 road safety audits, if this is required.

To reach the adoption stage of the agreement, the local authority will need to be sure that any defects in the proposed highway have been addressed. It will also need to be sure that any required commuted sums have been paid.

The developer is likely to need to provide the local authority with confirmation that the drainage/sewage has been adopted by the relevant body.

Since the introduction of the 1980 Act, the requirements related to dealing with surface water and drainage have changed. Current legislation in this area must be followed.

In some cases where drainage is subject to a drainage adoption agreement with the relevant body, but has not actually been adopted by that body, the local authority may agree to adopt the road but subject to a licence under Section 50 of the 1991 New Roads and Street Works Act for the drainage concerned. Such licences have limitations and are not a permanent resolution in such cases. Further advice on the use and limitations of Section 50 licences is included in **Annex E**.

In respect of other utility services, (gas, water, electricity, telecommunications etc.) the local authority would seek comfort that such plant has been accepted by the relevant body/company, (where such plant may not have been laid by the adopting company) to ensure that there are no outstanding works required that may affect the surfacing of the road(s) concerned.

This reduces the risk that newly adopted streets are subjected to utility company works and reinstatements which introduce weaknesses and potential maintenance liabilities into the surface of the newly adopted street.

In some cases, a local authority may wish to consider restricting work from being carried out for a period of time by serving a notice under Section 58 of the 1991 New Roads and Street Works Act.

If for whatever reason, plant/services owned and managed by parties other than statutory undertakers may exist within the prospective highway, the local authority would require licences under Section 50 of the 1991 New Roads and Street Works Act to cover such plant.

Developers should ensure that adequate and robust arrangements are in place to provide for the maintenance of such apparatus in perpetuity (see glossary), to assure the highway authority that the structural integrity of the road is not at risk of being compromised. Such arrangements could include a properly constituted management company.

Where adequate and robust management arrangements cannot be demonstrated by the developer, a local authority may require either a bond or commuted sum to provide for any future maintenance requirements. See also **Annex E** regarding the use and limitations of Section 50 licences.

Confirmation is needed that the respective Fire and Rescue Service has checked any fire hydrant installation as being acceptable for their use.

It is suggested that developers consult the lead local flood authority in relation to dealing with surface water and drainage (Sustainable Drainage Systems (SuDS)) as well as the current information which will be provided on the website for the Department for Environment, Food & Rural Affairs.

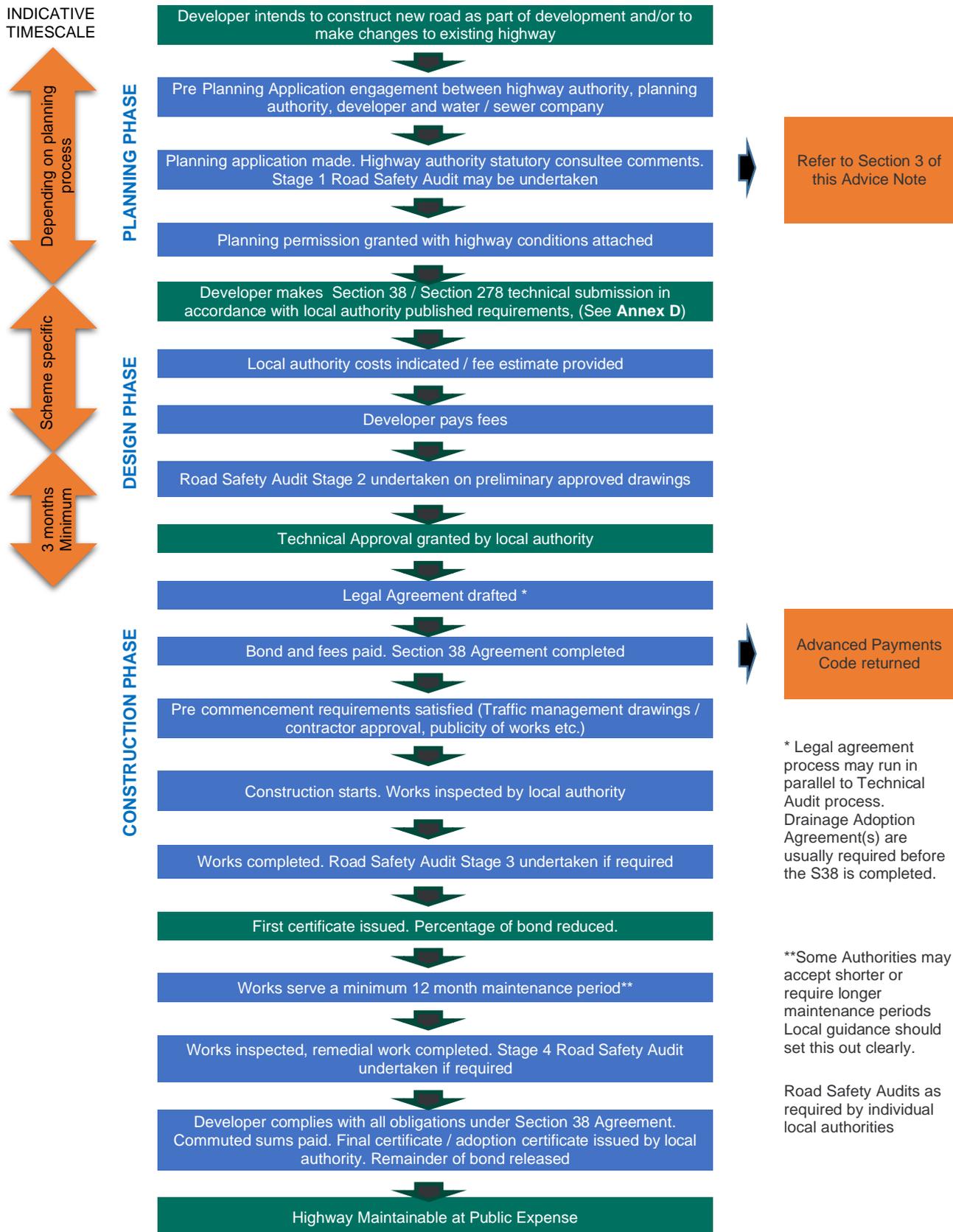
The local authority should, in accordance with the Section 38 Agreement, cancel any outstanding bond and issue a 'final certificate'. This is sometimes referred to as the 'adoption certificate'.

From the date of issue of the 'final certificate', the roads are adopted and become a highway maintained at public expense.

An adopted street may take many forms but should, above all, be safe and fit for purpose.



Flowchart describing adoption using Section 38 of the 1980 Highways Act, as detailed in the section titled Section 38 of the 1980 Highways Act and subsequent sections



Part 2 - The Operation of Private Street Works Code (PSWC) (Sections 205 to 218) and Part 2(A) operation of Section 228 - adoption after execution of street works

Introduction

The local authority has the power to "make up" private streets under Sections 205 to 218 of the 1980 Act. They can undertake works to bring a private street up to an adoptable standard. The effective completion of action using the "Private Street Works Code" (PSWC) means that a private street becomes a highway maintainable at public expense.

The PSWC is used in rare circumstances predominantly due to the costs and time incurred to those that ultimately benefit from the adoption of the streets concerned. It should also be noted that as ultimate adoption is via Notice served under Section 228 of the 1980 Act, adoption may fail at that point.

The local authority has the power to apportion all (or some) of the costs to each owner with a **frontage** (a "frontager"). This would be someone whose property immediately faces/abuts the private street, irrespective of whether such frontage provides any benefit to the resident in terms of vehicular or pedestrian access. This also includes those without a frontage but who, in the opinion of the local authority, would gain benefit from the making up and adoption of the private street.

It will be very unlikely that the local authority will be able to provide any timing for the PSWC process. Each individual application will be different, but the flow chart for this part illustrates the process that should be followed.

Most local authorities do not make the decision to use the powers in Section 205 to 218 of the 1980 Act unless: -

- They have been approached, for example, through a petition by a high proportion of those wishing to seek adoption of the private street. This is usually about 80 – 100% of frontagers;
- There is understanding and commitment from the frontagers to fund all works, less any sum retained by a local authority from an associated APC, and associated legal, administrative and technical approval processes, irrespective of outcome;
- Those seeking **adoption** have legal title to the land over which the private street runs, and the frontage property or property gaining benefit / access from the private street;
- The private street links directly to an existing adopted street (see Section 219(4)(f) of the 1980 Act);

- The private street complies or can be made to comply with the local authority's layout and constructional adoptable standards. It should be noted that alterations to bring a private street up to an adoptable standard may be extensive and may also involve movement or diversion of utility apparatus; and
- The private street, if adopted, would provide enough wider public benefit.

Process

In some cases, third parties may complain or object to the action proposed. In most cases, those promoting the process would be expected to resolve matters themselves, to reduce costs.

Frontagers may make an initial approach to a local authority because of a new or existing defect with the private street. In discussion with the local authority they may decide that the costs of making up the private street, along with the lengthy process and associated costs outweigh the costs of rectifying the defect. Many PSWC approaches are withdrawn at that stage.

Where the process is taken forward, delays may result from difficulties obtaining the required consents and cooperation between those promoting the adoption of the private street and others that will be affected. Applicants should be aware that this process can cause neighbour disputes and complications with rental properties. Those considering this process may want to first ensure that all those concerned understand and agree with the proposed action.

Where the process is to go forward the local authority will provide a provisional apportionment under Section 207 of the 1980 Act which will divide the cost of making up the private street between those who own land / property fronting a private street (irrespective of whether they benefit from the street for access) those that gain access from the private street and those that own the land over which the private street runs (if different).

In some cases, those gaining benefit will agree to cover apportionments of those without such benefit. Some local authorities may weight or adjust apportionments based on perceived benefit. Clearly any such weighting in favour of some would not favour others and may result in a challenge based on fairness.

Under Section 208 of the 1980 Act, an owner may challenge the provisional apportionment (within one month of notification) if: -

- It is not a private street;
- There is an error in the resolution, notice, plans, sections or estimate;
- The proposed works are insufficient or unreasonable;
- The estimate of the proposed works is excessive;
- Any premises should be excluded from or added to the provisional apportionment. Certain premises, such as places of worship, (Section 215 of the 1980 Act), attached church yards or burial grounds, certain railways and canals (Section 216 of the 1980 Act) are exempted;

- The provisional apportionment is wrong.

Where there is a challenge under Section 208 1980 Act, it may be heard at the Magistrates Court (Section 209 of the 1980 Act). The judgement may adjust provisional apportionments and add court costs to them.

In respect of payment for the works, (Section 212), some local authorities may agree to receive payment by instalment, others will want a lump sum they will recover through land charges. Most local authorities will require written agreement to a specified payment mechanism before works are commissioned. If payment is made after 28 days of completion of the works, it is common that interest is charged as it can take years to recover all sums. It should be noted that local authorities therefore work at financial risk in some cases.

On completion of the works, adoption is made by 'notice' under Section 228 of the 1980 Act. Where third party contractors undertake some or all of the works commissioned directly by those seeking adoption, to reduce costs paid to the local authority, a 12-month maintenance period on such works may be required prior to such a 'notice' being made.

Uncooperative owners of the land over which the private street runs can significantly delay or cause abandonment of the proposal. Early written agreement with such owners, if they can be traced, is essential.

The final apportionment (see Section 211 of the 1980 Act) is calculated based on the actual cost of the works and associated administrative charges and fees on the same basis as the provisional apportionment.

Payment can then be made in accordance with the method and timing of payments agreed before the works commenced.

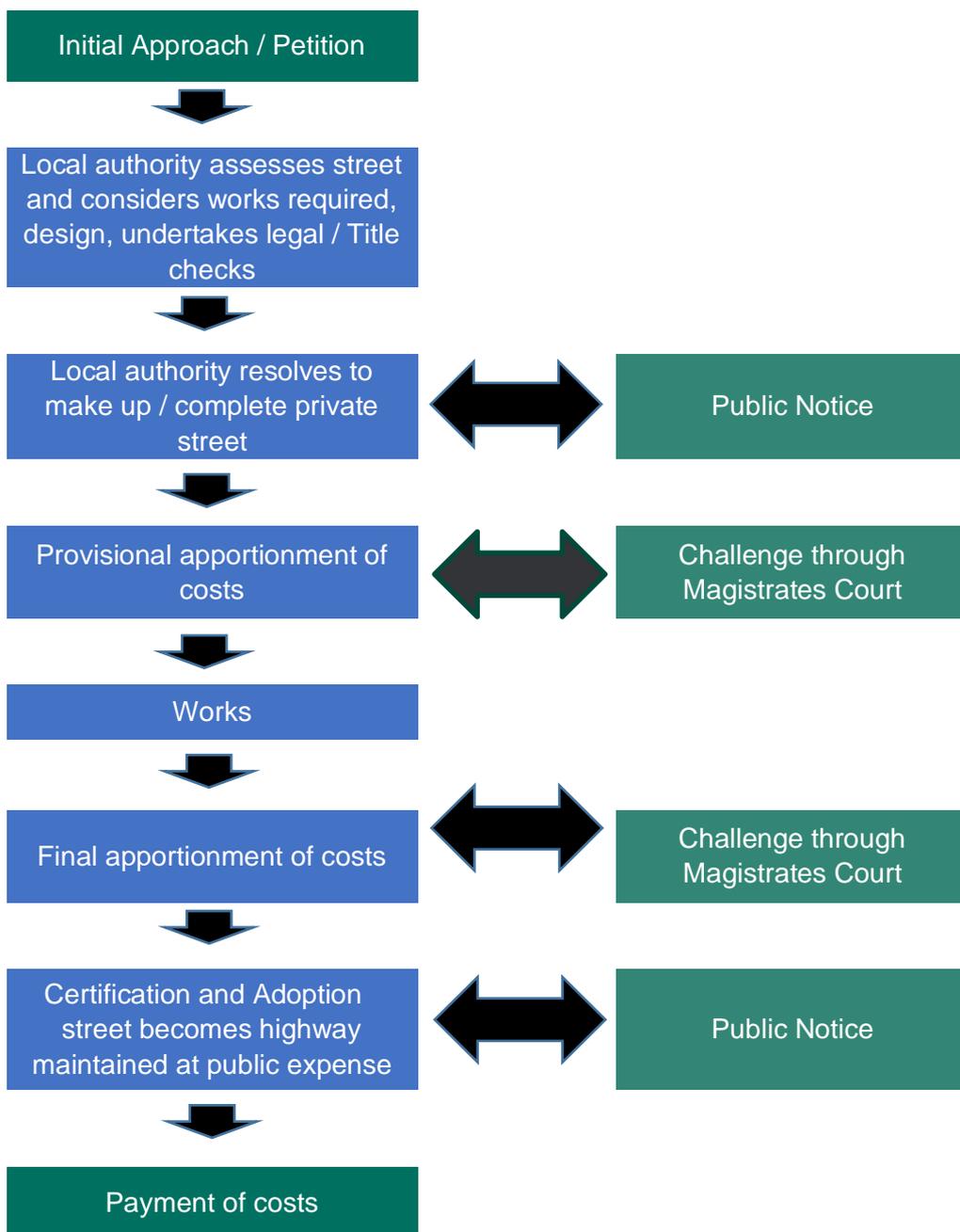
An owner can object to the final apportionment (see Section 211 of the 1980 Act) if:-

- there has been an unreasonable departure from the specification, plans and sections;
- the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than 15%; and / or
- the method of apportionment of the final cost has not followed exactly that of the provisional apportionment

If these objections cannot be resolved by discussion, they may be considered by a Magistrates Court. There is also a right of appeal against the decision of the Magistrates Court to the Crown Court (see Section 317 of the 1980 Act).

It is important to ensure that those promoting the adoption of a private street using this mechanism are fully aware that there can be significant costs, time delays, legal challenges and court action and uncertainties with the process.

Flow chart to support the operation of the Private Street Works Code as detailed in the proceeding process section



Part 2 (A). Adoption of a private street after the execution of street works - Section 228 of the 1980 Highways Act

Section 228 of the 1980 Act can be used in specific circumstances to enable new roads and private streets to be adopted, provided it would connect to an existing adopted highway. The local authority may, by a 'notice' displayed in a prominent position in the street, declare the street to be a highway maintained at public expense.

This process can also be useful when works have been undertaken by a developer but the owner of the land is unknown or unregistered or where a new access road is to be constructed or made up. It can also be used where a developer has a right of way over the land but does not own it.

In such cases, it should be noted that, if used, the owner has an effective veto over the adoption, subject to an application by the local authority, as set out below. In such a circumstance an owner may seek ransom value to remove their objection. As in most cases the mechanism is used to facilitate the adoption of development roads, most local authorities would look to the developer to resolve any disputes of this nature.

In all such cases, the developer cannot enter into a Section 38 Agreement with the local authority as they are not the landowner, but they can ask the local authority to adopt the private street on completion of the works under Section 228 of the 1980 Act.

The local authority will still be likely to inspect the works during construction and may seek reimbursements of any costs before action is taken to adopt, even though there can be no formal agreement in place between the parties.

The owner(s) of the street may be frontagers, i.e. those whose property immediately faces / abuts the street, but could also be the landowners. The title of each frontager should be checked in case they have undeclared rights or responsibilities that may affect this process.

If a frontager or landowner objects, the local authority can apply to the Magistrates Court for an order overruling the objection and declaring the street to be a highway. The Magistrates Court has a wide discretion in these cases and may take into account the wider public benefit of the private street.

If the Magistrates Court confirms the frontager or owner's objection the road remains a private street. Where this occurs, the owner(s) is likely to have to arrange for a management company to be set up for the future maintenance of the private street.

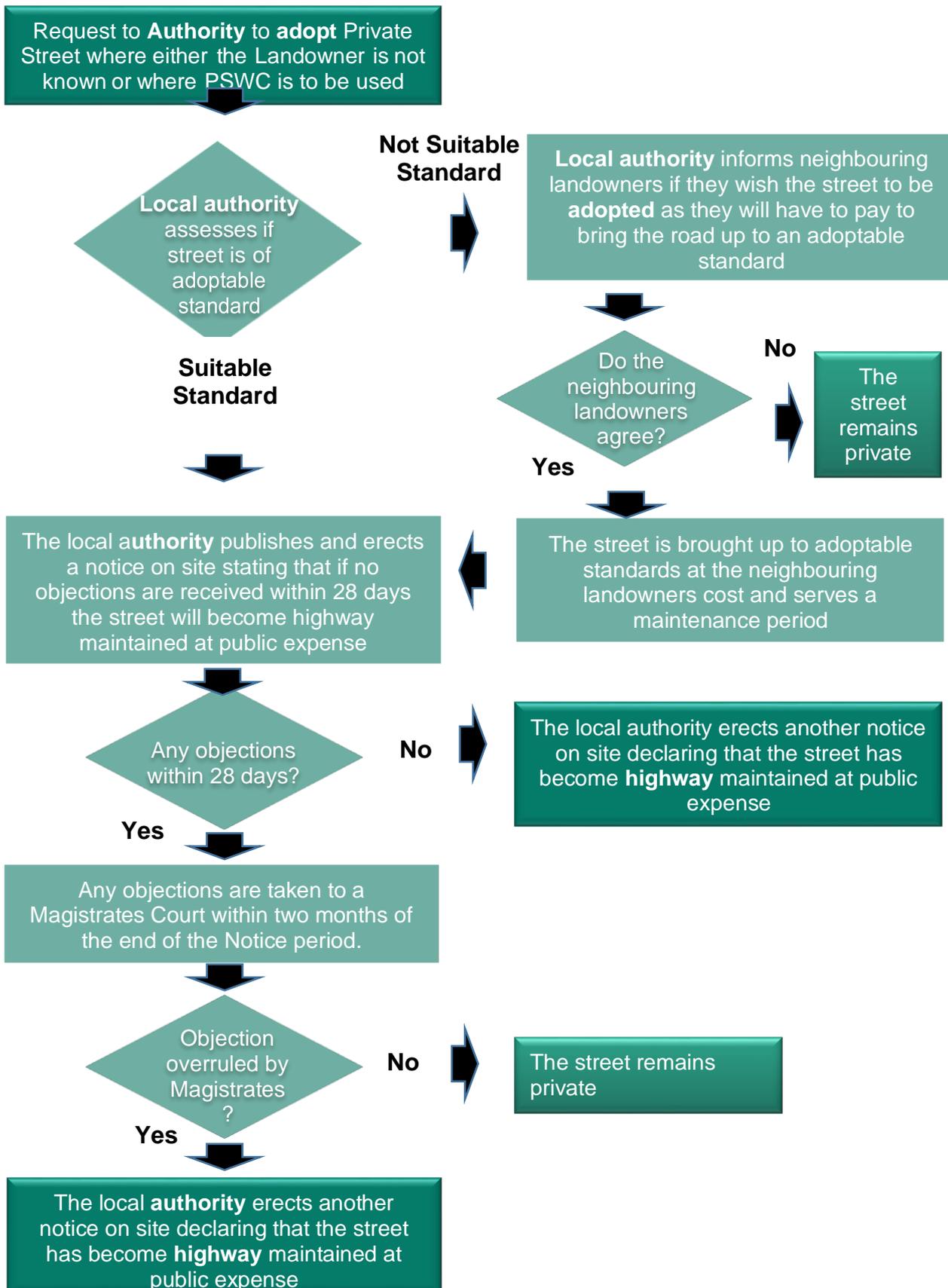
Such action may add unforeseen costs onto the owner(s) and where this is on a new private street, residents or new householders are likely to be required to pay an annual maintenance charge for the private street.

When works are completed, costs have been reimbursed and a maintenance period (usually 12 months but may be longer) has elapsed, the actual adoption process can take place. The local authority will erect a notice stating that, subject to no valid objections being received from landowners, the private street will become a highway maintained at public expense after a "one month" period (see Section 228 (1) of the 1980 Act).

Subject to no objections being received the local authority would erect a further notice on site confirming that the street is now maintained at public expense.

As there are a number of risks and potential challenges associated with the process, those considering this action should seek early discussion with the local authority so that the process can go forward as smoothly as possible.

Flow chart to support the operation of Section 228 of the 1980 Highways Act as detailed in the preceding section



Part 3 - Advance Payment Code (APC) works Section 219 to Section 225 of the 1980 Highways Act

Introduction

The Advance Payments Code (APC) is contained in Section 219 to Section 225 of the 1980 Act. It is intended to secure funds for a local authority to use to make up or complete a private street serving a new residential development. Also, to facilitate their adoption in order that it will be maintained at the public expense in the event that the private street works code (See Part 2 of this Advice Note) is pursued by frontagers. Securing funds via the APC does not guarantee that a private street will get adopted.

Certain buildings/developments are exempt, (Section 219(4) of the 1980 Act) for various reasons including: -

- The owner is exempt under the Private Street Works Code;
- The building is within another building's curtilage;
- The local authority does not apply the APC. The APC may not apply to all local authorities (e.g. London) and not all local authorities choose to apply the APC;
- A Section 38 Agreement has been completed (see Part 1 of this Advice Note);
- Where the local authority is reasonably content that they would not need to call on the sum;
- Where a building is to be on land belonging to certain boards, unitary, district or county councils or commissions; and / or
- Where the building is for industrial / commercial purposes. Some local authorities have their own acts of Parliament that require them to apply APCs to industrial premises.

Process

The APC is not linked to planning permission. It is linked to the passing / approval of plans or 'initial notice' which is issued under ss47-48 of the Building Act 1984 by an

approved inspector. The 2010 Building (Approved Inspectors etc.) Regulations (SI 2010/2215) prescribe the forms to be used and the grounds under which it can be rejected by the highway authority.

APCs can be served on layouts or plans for development with building regulation approval, but no planning approval. In addition, a developer can secure building regulation approval on land they do not own which may affect the sale of that land as a land charge will be in place.

It should be stressed that a district, or part of a unitary authority must 'notify' / inform the relevant authority within one week of the passing of plans or receipt of an 'initial notice'. This requirement is set out in Section 220(2) of the 1980 Act.

In many cases, such notification is dependent on a district or unitary authority being notified by the approved inspector. While the actual process may differ across the country, the requirement is clear. Joint and collaborative working between all parties is essential.

A local authority has six weeks (see Section 220(1) of the 1980 Act) from the "...passing of any required plans relating to the erection of a building..." to serve 'notice' on the developer, or owner of the land over which the proposed streets run / whoever submitted the plans if different, if an APC sum is required. The process links back to the preceding paragraph and the role of the approved inspector.

A developer, or owner of the land over which the proposed streets run if different, may appeal within one month against the value of the sum contained in the APC notice to the Secretary of State for Transport (Section 220(6) of the 1980 Act) who may then appoint someone to hear the case.

In some cases, where developers start work on site as soon as they receive Building Regulation approvals, an APC Notice may be legally served after such works have started, placing the developer at an immediate breach.

Self-build and some small infill developments entail additional complications not considered in this Advice Note.

As the APC is linked to the commencement of building works on buildings, a developer can complete all of the roads covered by the APC notice and not be liable to pay the APC sum until they commence construction of the buildings associated with it. In such a case they would only then be liable for the sum associated with each building as it is started.

Without prejudice to any other restriction on the commencement of development in respect of any planning consent, if a developer commences work on a building covered by the APC notice without paying the relevant APC sum to the local authority, they are committing an offence and are liable to prosecution and a fine.

It should be noted that, the commencement of each building is a separate offence. If the developer continues to build, the offences increase as can the potential fines whilst still being liable to pay the APC sum.

The local authority has six months after a breach has occurred to take appropriate legal action. This action may be to invoice the sum and pursue payment and / or proceeding through the courts to prosecute the offence(s).

If an APC notice is served, it is registered as a Land Charge (Section 224 of the 1980 Act).

If an APC notice is subsequently cancelled or substituted with a Section 38 Agreement (see Part 1 of this Advice Note) that change is also registered as a Land Charge.

Use of the APC sum is linked to the use of the PSWC (see Sections 205 to 218 of the 1980 Act). If sums deposited do not meet the costs of the outstanding works, third parties (usually the residents) are required to contribute. Issues associated with legal challenge to apportionments can slow the process. If any owner, including the owner of the land over which the road runs, is uncooperative then the process can be delayed or fail. See Part 2 of this Advice Note on the PSWC for further information.

The application of the APC is currently inconsistent across England.

In some cases, the developer may wish to keep the roads on their development as private. However, this will not provide an exemption from or preclude a local authority from serving an APC Notice.

Where a local authority has applied the APC within its administrative area, it should continue to follow it. In such cases a local authority is not obliged to return such sums as they should be retained for their purpose.

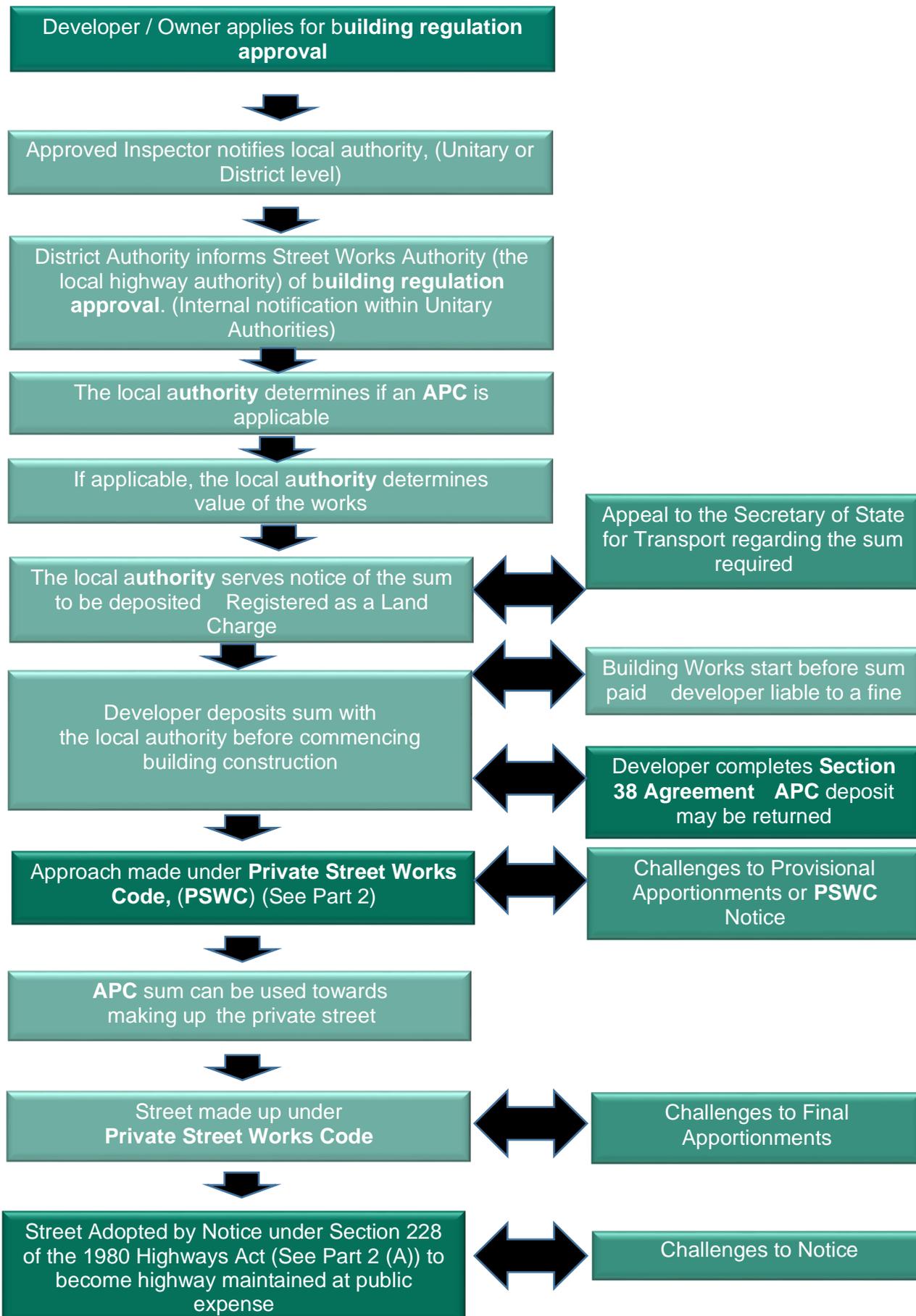
Some local authorities that apply the APC may, by appropriate agreement, return paid sums (see Section 221 of the 1980 Act) or in some cases determine not to serve an APC notice if a road(s) are to remain private.

A local authority may take such action as they see fit to ensure they content that the private street(s) will be suitably managed and maintained without future recourse to them such that an exemption under Section 219 (4) of the 1980 Act applies.

Some local authorities that apply the APC are prepared, by appropriate agreement, to exempt developments from applying the APC.

Local authorities that are prepared to delay, and in some cases waive, the APC notice should ensure that they are still able to lawfully serve an APC notice to reserve their position and protect future residents' interests, even if they are actively negotiating a Section 38 Agreement. The exemption available for a Section 38 Agreement is not available until such an Agreement is actually in place.

Flow chart detailing the operation of the Advance Payments Code as detailed in the preceding process section



Part 4 – Road adoption using Section 37 of the 1980 Highways Act

Introduction

This section covers the process that the owner of the road(s) will follow where they are seeking that road(s) becomes a highway maintained at public expense using Section 37 of the 1980 Act.

It should be noted that the process laid down in the 1980 Act has a number of stages at which there is the potential for referral to the Magistrates Court. As such, there are risks that the adoption of a road via this Section 37 process may fail at such stages.

Proceedings towards potential adoption of a road via Section 37 of the 1980 Act do not provide an exemption from the serving of APCs. In addition, it should be noted that the burden of proof of compliance with a local authority's standards rests fully with the owner.

Process

The owner of the land over which the road(s) runs, usually the developer, serves a notice on the local authority declaring their intention to dedicate the road(s) as a highway. Three months is the statutory minimum notice period (see Section 37 (1) of the 1980 Act).

A local authority should publish its general requirements in respect of the level of information that it requires to consider a notice and keep such information up to date with local and national standards and changes to legislation. Most local authorities recommend that such a notice is accompanied by a 1:500 layout plan showing the road(s) in question, coloured or shaded in pink (or different colours if more than one owner involved), and a clear plan signed by the relevant owner(s) for each title affected by the road(s), declaring their intention to dedicate.

It is expected that the owner(s) has all the required easements and consents to drain the road(s) concerned.

The local authority will assess whether the road would constitute sufficient wider public benefit (public utility) to be considered for adoption. If it considers they do not have wider public benefit the local authority may apply to the Magistrates Court for an Order not to adopt (see Section 37(2) of the 1980 Act). If the Magistrates Court agree with the local authority, then the road remains a private street.

If the local authority does consider the road(s) to be of sufficient wider public benefit, they may, after obtaining a suitable sum from the owner to cover inspection fees (including any necessary laboratory testing, traffic regulation order costs and legal title checks), arrange for the road(s) to be inspected.

The owner may also be requested by the local authority to provide evidence that any foul / surface water sewers under the potential highway have been adopted by the relevant body. This will include appropriate easements, discharge consents and utility **adoptions**.

The local authority will carry out checks to establish that the owner(s) have absolute title to the land over which the road(s) run. (See also Part 1 - paragraph 1.12 of this Advice Note).

A local authority should publish the general level and nature of information it may require to consider the constructional integrity of the road(s) involved for certification purposes. In general, this will be the same as that required for a technical submission under Section 38 of the 1980 Act (see **Annex D** of this Advice Note), along with construction records, site condition, structural records, geotechnical information etc. There may be site specific circumstances which require the local authority to request additional testing and other work to ensure compliance.

Should the owner not engage the local authority to inspect or review the works prior to requesting certification, it will be incumbent on the owner to ensure that appropriate independent constructional records and testing are kept and can be produced, if required. A local authority should consider such records but may (acting reasonably) require further testing and verification.

It should be noted that Section 37 of the 1980 Act does not provide for the imposition of commuted sums, although they may be payable by agreement.

When the owner considers the road(s) are complete they will invite the local authority to inspect them and request that the local authority issue a certificate. The certificate, if issued, will confirm that the road(s) are complete to the local authority's satisfaction and the terms of the notice of dedication (as either accepted by the local authority or as determined by the Magistrates Court) have been complied with.

If the local authority has received satisfactory results from all inspections, they will issue the relevant certificate, (equivalent to a first certificate). The road(s) shall then begin a 12-month maintenance period, during which time it will be owners' responsibility to keep the road in good repair.

If upon request the local authority considers that, for whatever reason, the road(s) has not met their requirements or complied with the dedication notice then the owner may refer the matter to the Magistrates Court who will hear the views of both parties as to compliance and rule accordingly.

If the Magistrates Court support the local authority's position further works may be required. When complete the owner requests certification. If compliant the local authority will issue a certificate.

If the local authority, for whatever reason, declines to certificate the further works, the owner may refer the matter back to the Magistrates Court. This may happen multiple times.

If the Magistrates Court support the owner, then they may make an order such that a certificate should be issued, and the maintenance period will begin.

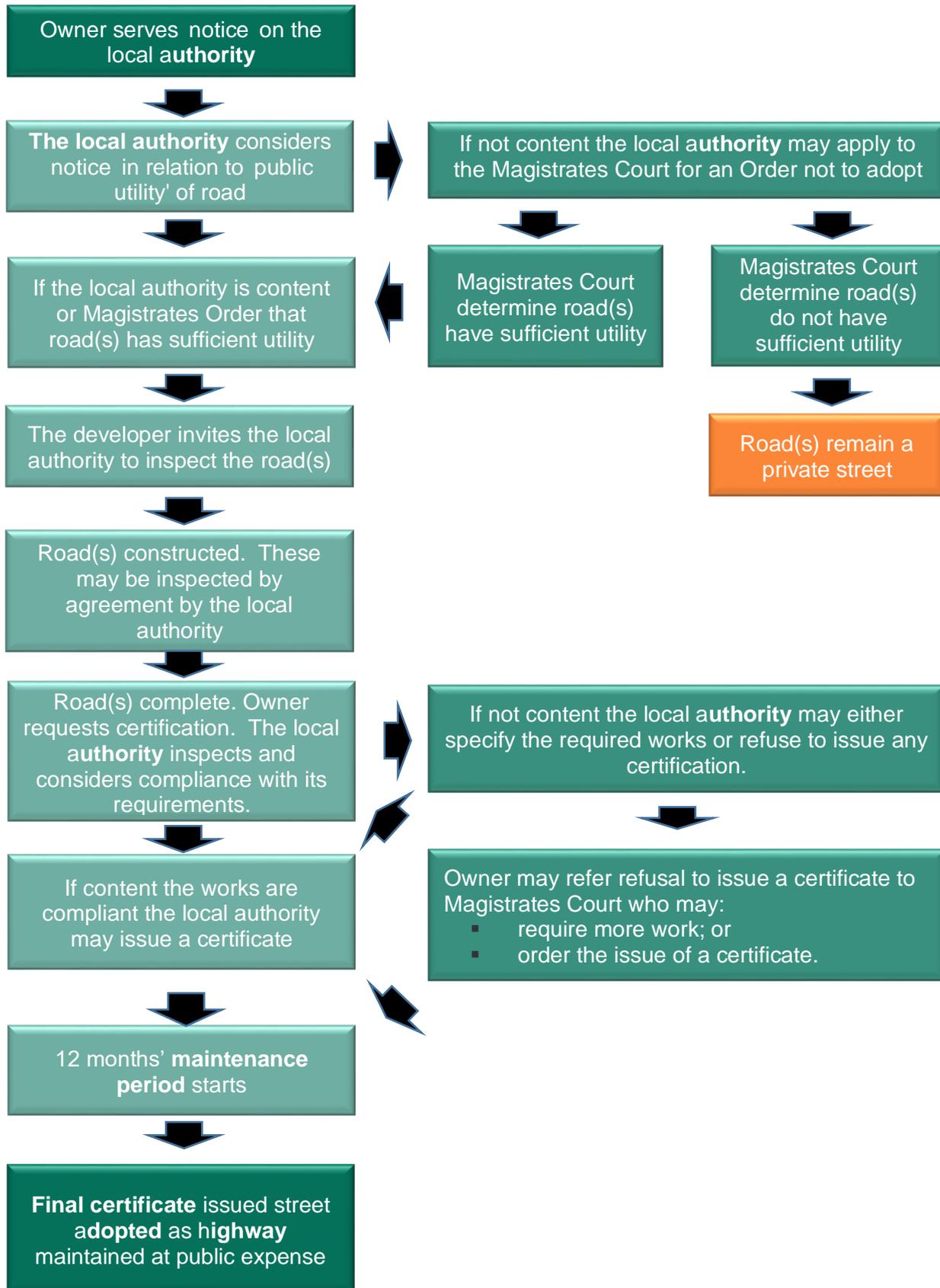
It is suggested that at least one month before the end of the 12-month maintenance period the local authority should undertake a final inspection. Subject to the satisfactory completion of any identified remedial works the local authority may then issue a final certificate to declare that the road has become a highway maintainable at public expense.

The developer / owner may engage with the local authority during the planning process to mutually agree the principle of adoption under Section 37 of the 1980 Act from the outset.

If the road specification is approved and routine supervision has taken place on a co-operative basis, then it may not be necessary to carry out more stringent laboratory testing (including core sampling) to establish whether the road construction is suitable.

If, during the construction of the street(s) the local authority visits the site or inspects the works either following payment to do so or voluntarily any such visit should be recorded.

Flow chart - Adoptions using Section 37 of the 1980 Highways Act as detailed in the preceding process section



Appendix 1 - Glossary of Terms

Absolute title - The highest class of title to land awarded by the Land Registry.

1980 Act - the 1980 Highways Act (as amended).

1991 Act – the New Roads and Street Works Act (as amended) also referred to as NRSWA www.legislation.gov.uk/ukpga/1991/22/contents

Adoption / Adopted – The process where new roads / private streets may in specific circumstances become highways maintained at public expense by a local authority.

Advance Payments Code (APC) – Sections 219 to 225 of the 1980 Highways Act is intended to ensure that a Highway Authority has the funds to complete works to a private street if approached to do so via the **Private Street Works Code, (PSWC)**.

Bond – a form of financial surety which ensures that a local authority has the funds available to complete road works if developers fail to do so.

Building Regulations Approval – Any new or extended building requires such approval under the Building Regulations. The approval of building regulation plans or an initial notice by an approved inspector triggers the **Advance Payments Code** process.

Commutated sums – a sum of money that a **local authority** may require to be paid by a developer to cover future maintenance costs of: non-standard materials; structure; or areas not necessary for the safe functioning of the public **Highway**.

Final Certificate – a certificate (usually in the form of a letter) issued by a local authority following a **maintenance period**. This may also be known as the adoption certificate.

First Certificate – certificate (usually in the form of a letter) issued by a local authority following substantial completion of the road works. This is sometimes referred to as a 'provisional certificate' or a 'certificate of substantial completion'.

Frontagers - The owners of property fronting or abutting a street irrespective of whether they gain access from it. They may also be those who benefit from the street but do not directly abut / adjoin the street.

Highway - a road or street which may include a carriageway, pedestrian / cycle route, verge etc. over which the public has the right to pass and re-pass without hindrance or obstruction. A **highway** may not necessarily be maintained at public expense.

Local Authority / Authorities - this means the relevant local highway (transport) authority (county or unitary council) as set out in Section 121A of the 1984 Road Traffic Regulation Act and Part 1 Section 1 of the 1980 Highways Act.

Maintenance Period – a period of time (usually no less than 12 months but may be longer) for which the developer is responsible for the maintenance of new **highway** (including defects or other damage howsoever caused).

Management Company (residential property) - A company that holds an interest or has been made responsible for the management and maintenance of a private street, other communal or private areas, open space, drainage and / or other amenities. They may not necessarily own structures or the land over which the private street runs. Most management companies are funded by those who benefit from the services and areas maintained via annual or monthly charges.

Perpetuity – a period of time, which is not “forever” but a period of time that may be defined or limited within a legal agreement.

Pre-start meeting - meeting held prior to road works commencing on site.

Private Street Works Code (PSWC) - The process by which the local authority can make up a private street to become highway maintainable at public expense.

Road Safety Audit – An audit of an existing or proposed road during the design and construction process and at least a year after completion, to identify any road safety problems and to suggest measures to address those problems. Refer to GG119 of the *Design Manual for Roads and Bridges*.

Section 37 - The process set out in Section 37 of the 1980 Highways Act where the owner of a private street serves a Notice on the local authority declaring their intention to dedicate the roads as public highway.

Section 38 Agreement – legal agreement on mutually agreed terms under Section 38 of the 1980 Highways Act.

Statutory Undertaker – an organisation, often referred to as a utility or a utility company with powers, duties and responsibility under Act of Parliament and regulations to provide and maintain particular infrastructure for a public service (some provide services using that infrastructure). There are four main statutory undertakers (utilities); gas, water, electricity and telecommunications.

Such services are subject to controls and scrutiny from national regulators such as Ofwat, (www.ofwat.gov.uk), Ofgem (www.ofgem.gov.uk) and Ofcom, (www.ofcom.org.uk). Network Rail is considered to be a utility company.

Street - The definition in the 1980 Highways Act of a "street" has been redefined in Section 48 (1) of the 1991 New Roads and Street Works Act (as amended). Where it meets the definition there is a requirement for the street to be of a specific standard as detailed in the Specification for the Reinstatement of Openings in the Highway.

SuD / SuDs system – a sustainable means of drainage for a site.

Technical approval – approval of a **technical submission**.

Technical submission – package of engineering drawings showing details of new roads. See **Annex D**.

Traffic Regulation Order - an order made by the local authority under the 1984 Road Traffic Regulation Act designed to manage traffic, including parking restrictions.

Utility (Company) – see **Statutory Undertaker**.

Utility Plant – this may be pipework, cables, chambers, feeder pillars or other such equipment as may be installed by a Utility Company.

Wider Public Benefit (public utility) - Each local **authority** should illustrate to applicants how they view this. Through roads and those that serve public buildings and destinations may be seen as having greater **wider public benefit** while residential cul-de-sacs would have limited if any such utility as they only benefit the residents who live there and no third parties or through movements.

Annex A: Draft Planning Conditions (and Notes) for Adoption of New Roads

- A.1 The draft conditions contained in this Annex were placed on the Department for Transport's website in 2012. Their purpose was to ensure that arrangements for the future management and maintenance of new roads, within residential developments, was both confirmed at the planning stage, and then completed and maintained to an appropriate standard in advance of adoption, via a Section 38 Agreement (Section 38 of the 1980 Act), or until a suitable private management and maintenance company / agreement was in place.
- A.2 They remain an important tool for local authorities and planning authorities to ensure that new roads are at least completed to appropriate levels prior to the occupation of new houses in the interests of safety and residential amenity.
- A.3 With the objective of increasing housing delivery, the Government is currently considering further planning reforms, in particular the effectiveness and necessity of certain planning conditions. Those using this 'Advice Note' and/or other material planning documents should be conscious of all the guidance issued by Government related to planning conditions.
- A.4 The conditions are set out as general guidance only and any local planning authority should consider:
- The appropriateness of using these or any other conditions in England having regard to the detailed policy and guidance of the *National Planning Policy Framework* and the "Use of Planning Conditions" section of the *National Planning Policy Guidance*.
 - Where any local planning authority is in any doubt in seeking to use these or any other conditions, they should take their own legal advice.
- A.5 Notwithstanding suggested reasons for each condition below, when using these draft conditions clear, precise and full reasons must be given (in decision notices) for each condition used, (see Article 35(1) (a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015/595).
- A.6 The suggested reasons stated below, should be considered along with any others pertinent to each case.

Completion of Streets / Estate Street Phasing Plan - Conditions

The construction of any new estate street shall not be commenced until an estate street phasing and completion plan has been submitted to and approved in writing by the local planning authority. The estate street phasing and completion plan shall set out the development phases and the standards that estate streets serving each phase of the development will be completed.

Reason: - To ensure that the estate streets serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential / highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the development; and to safeguard the visual amenities of the locality and users of the highway, in accordance with Policies [X, Y and Z] of the development plan.

[No dwelling or dwellings / No dwelling or dwellings within phase 1 / No more than X number of dwellings] * shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the Estate Street Development Plan.

* delete as applicable

Reasons: - To ensure that the estate streets serving the development are completed and maintained to the approved standard, and are available for use by the occupants, and other users of the development, in the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway, in accordance with Policies X, Y and Z of the Development Plan.

Completion of Streets / Estate Street Phasing Plan – Note

The applicant is advised to obtain the written approval of the local highway authority for the details required under condition X, prior to the submission of such details to the local planning authority in seeking to discharge the said condition. Such details, as may be submitted to the local highway authority, could be subject to technical and safety assessments / audits, which may result in changes to the layouts and alignments, as shown on any indicative layout(s), approved by virtue of the planning permission. The applicant is advised that the local planning authority may reject details submitted to them for the discharge of the condition without evidence of technical approval from the local highway authority.

Management and Maintenance of Estate Streets – Condition

The construction of any new estate street shall not be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. [The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established].

Management and Maintenance of Estate Streets – Note

The applicant is advised that to discharge condition X that the local planning authority requires a copy of a completed agreement between the applicant and the local highway authority under Section 38 of the Highways Act 1980 or the constitution and details of a private management and maintenance company confirming funding, management and maintenance regimes.

Submission of Details – Adoptable Streets – Condition

The construction of any new estate street shall not be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the local planning authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the local planning authority.

Reason: - In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway in accordance with Policies [X, Y and Z] of the Development Plan.

Submission of Details – Adoptable Streets – Note

The applicant is advised to obtain a technical approval for all estate street details from the local highway authority prior to the submission of such approved details to the local planning authority to discharge condition X of this consent.

Annex B: Fees, Charges and Bonds

Fee Structures

- B.1 Fee structures may vary between local authorities. However, all such fees, charges and the basis calculations used, should be published and kept up to date with local and national standards and changes to legislation
- B.2 Fee structures may also vary between different forms of agreement, for example under Section 278 or Section 38 of the 1980 Act. Where this occurs, the fee structure for each form of agreement should be published.
- B.3 A local authority may charge an initial and non-returnable fee to consider and process an agreement. Such a fee should cover initial costs incurred by the local authority. Any initial fee charged should be credited against the final fee for an agreement payable when the agreement is completed. In addition, a local authority may require an abortive cost undertaking such that if, for whatever reason the agreement is abandoned prior to the completion of an agreement that a local authority's reasonable costs incurred to that point can be recovered.
- B.4 An initial fee should include: -
- Validation of an agreement application and technical submission;
 - Initial technical submission feedback and at least one subsequent iteration; and
 - General technical and procedural advice.
- B.5 Additional fees for site specific technical considerations may be charged. Such elements may include geotechnical, traffic signals, structures, specialist drainage such as SuDS etc. In such cases a clear fee proposal should be issued to the developer with clarity on what the local authority expects in terms of the quality and content of a specialist submission and what the developer may expect in terms of feedback for such a specific fee.
- B.6 Some features or schemes may require traffic regulation orders or notices. Fees for such processes should be published.
- B.7 Some local authorities may offer their services to undertake design and construction of highway works. In such cases individual site-specific fee proposals should be considered.

- B.8 Some local authorities may offer their services to undertake specific elements of a design or process such as signals, structures, street lighting, and where required a road safety audit etc. In such cases individual site-specific fee proposals should be considered.
- B.9 The number of iterations and the extent of the comments between the local authority and the developer on the technical submission will be entirely dependent on its quality and compliance with all the appropriate design standards and local authority technical audit requirements. **Annex D** sets out advice on the content of a typical Technical Submission.
- B.10 It is recommended that a developer ensures that technical details are complete and that they have satisfied themselves that such submissions comply with national and local standards. The reasons for any departures from national or local standards should also be clearly set out.
- B.11 Where a developer intends to commence the development prior to the provision of technical approval and an agreement for works on roads not affecting an existing highway, a local authority may agree to inspect such works on the roads on a non-prejudicial basis, subject to an initial inspection fee. Such a fee should be agreed between the developer and the local authority. The fee may be the final fee in anticipation of the completion of an agreement or partial “inspection only” fee. The scope and duration of such inspections should be clear prior to them being undertaken.
- B.12 Legal fees may be charged separately. A local authority may require a deposit of full fees or seek to recover the balance at completion of the agreement (Section 38 or Section 278 of the 1980 Act). It should be noted that where legal challenges are made, most likely where adoption using Section 37 of the 1980 Act (Part 4 of this Advice Note) or using the Private Street Works Code (Part 2 of this Advice Note) it would involve the applicant paying court fees and the eventual loser costs.
- B.13 Final fees upon completion of an agreement (Section 38 or Section 278 of the 1980 Act) shall be all inclusive of reasonable costs incurred by a local authority in preparing and completing an agreement including:
- Technical audit costs incurred prior to issue of a technical approval;
 - Technical advice / support and administrative costs incurred in preparing the agreement;
 - Legal fees incurred by the local authority; and
 - Inspection fees to ensure that upon completion of the works that it is content that the works comply with the technical audit and that any on-site variations are agreed and acceptable.
- B.14 A local authority should also offer and publish a sliding scale of fees such that the value of fees does not become disproportionate or unreasonable as works values increase.

- B.15 It should be noted that in respect of inspection fees the local authority takes on a considerable risk as it cannot necessarily anticipate or control when works may finish and it may be a number of years before a site is suitable for adoption.
- B.16 Most local authorities will charge their full fees calculated as a percentage of the bond (exclusive of commuted sums). Where this occurs, the percentage should be published along with what services the sum includes and, where appropriate, excludes.
- B.17 Where a developer, for whatever reason, amends their proposals after technical approval has been given then an additional fee proposal should be calculated by the local authority for such amendments. Where such amendments trigger the need for a Deed of Variation to a completed Agreement, the Deed may secure such additional fees.

Bond Values

- B.18 Most local authorities determine the value of the bond required to complete an agreement, or on which to serve an APC notice upon a standardised linear rate schedule. Such rates should be refreshed periodically to ensure that the public purse is not at risk. All rates used should be published.
- B.19 Where a linear rate approach is used it should be clear as to what is and is not presumed to be included in such rates.
- B.20 In general, such rates will be higher than tendered rates that a developer may enjoy. It should be noted that such rates will include elements to cover technical and administrative support required to call in the bond in the event of default by the developer. In addition, elements associated with inflation and other risks may be included as the securities may only be required at some point in the future. Some local authorities may calculate the value of the bond on their linear rates and add a percentage to accommodate the risks and liabilities they inherit. Such percentages should be published.
- B.21 A bond may be in the form of a cash deposit or institution-backed surety provider. In most cases the value of any commuted sums will be added to a linear rate to ensure that in the event of default the public purse is not threatened.
- B.22 A local authority may make provision within an agreement to review the value of the bond retained as works progress. Such a review should include how and when works are undertaken towards completion.
- B.23 It is suggested that in any event, as and when the works are deemed to be completed sufficiently to commence a maintenance period or at the point where a local authority is prepared to issue a first certificate that the bond should be reduced significantly.
- B.24 Many local authorities reduce the financial security to 25% of the full costs of works plus any commuted sums when the maintenance period begins in accordance with the Agreement concerned.
- B.25 A local authority may also offer to review the value of the bond at other key triggers which need to be locally agreed.

- B.26 Whilst some local authorities may use the discretion available to them to reduce the value of the bond should they wish, prior to the issue of any certifiable stage or the site starting its maintenance period, there should be clear governance behind such decisions.
- B.27 It is suggested that a mechanism could be built into any Agreement to allow the developer to apply to have the value of the bond reviewed when they can provide evidence that works have been completed to a satisfactory standard to trigger such a review.
- B.28 If a road has been substantially completed prior to the completion of an agreement, a local authority should consider a bond proportionate to the value of the outstanding works which are required to bring the street up to adoptable standards.

Annex C: A Guide for Home Buyers

General Advice

- C.1 This Advice Note is provided for guidance only. It is not a substitute for independent legal advice. The potential issues that have been highlighted are common examples and other issues may arise.
- C.2 When buying your new home, the standard processes include local authority searches. One of the standard questions a local authority is asked to answer concerns the status of the road / street abutting the property from which it gains access. You or your solicitor will need to ask the local authority about the status of the road(s) / street(s) concerned.
- C.3 The status may reveal that: -
- The road / street specified is a highway maintained at public expense;
 - The road / street is to be adopted and is subject to an agreement under Section 38 of the 1980 Act (see Part 1 of this Advice Note);
 - The road / street is not subject to any adoption agreement;
 - The property / road / street is not subject to any adoption agreement but is subject to an Advance Payment Code notice (see Part 3 of this Advice Note);
 - The property is subject to a charge payable to the local authority for making up the street to become highway maintained at public expense via the Private Street Works Code (see Part 2 of this Advice Note).
- C.4 You may wish to take independent legal advice on the interpretation of the responses given by the local authority to the standard questions. This may generate further questions which may or may not be covered in this Annex. You should obtain as much information from the developer and estate agent as you can. You need to take sufficient professional advice so that you make an informed decision in your property purchase.
- C.5 Consumer rights protect you when you buy goods or services. It is up to the developer and / or estate agent to provide consumers / buyers with “the material information which they need to make an informed decision to purchase”. Should you have questions related to your consumer rights in this area you might wish to consult Citizens Advice (www.citizensadvice.org.uk) or 0345 404 0506.

Private Roads – those never intended to be adopted by the local authority

C.6 Your prospective home may be on a development where there is no intention for the road / street to be adopted by the local authority.



Some private streets may degenerate over time through lack of maintenance.

C.7 Roads / streets may remain private, (most commonly but not exhaustively): -

- on 'gated' developments;
- where a local authority does not consider adoption of the private street would have a wider public benefit;
- where the number of houses falls below the threshold applied by the local authority to consider adoption; and / or
- where the developer and / or residents have decided that the roads / streets should remain private for technical, security, legal or other reasons



Some private streets appear the same as adopted streets. However, signs should ideally be erected to ensure the status of private streets is known.

- C.8 If the road is not adopted by the local authority and it is not intended by the developer to be adopted by the local authority, it is likely to mean that you and other buyers may be liable for on-going maintenance costs as well as other on-going costs and liabilities either directly or via a management company.
- C.9 Such liabilities may relate to utilities and services including, (but not exclusively) drainage (property and road including gullies etc.), street lighting and 'slips' and 'trips'. This may be addressed either through private covenant responsibilities and obligations or through charges paid to a management company. It is important, therefore, that you check the proposed title documentation and take independent legal advice on the implications as charges levied by management companies may rise significantly.
- C.10 For example, with sewerage and drainage you are likely (but this should be confirmed) to have a right to use the drains and sewer, but that right is likely to come with an obligation to maintain and repair it at your cost or part cost shared with your neighbours / others. In these circumstances you may want to have a drainage survey done to ensure it will meet the requirements of the property. Where properties existed before October 2011, sewers serving more than one dwelling automatically transferred to water company control and responsibility. The local water company should be contacted to check if the property concerned is affected by this transfer or not.
- C.11 There may also be on-going issues with other utilities and services as some local authorities may not provide rubbish collection or street-cleaning services and public transport operators may not serve private roads and estates. This could mean that you need to carry or move your bins to the nearest adopted highway for collection, which may be some distance.



Refuse collection and bin storage can easily be overlooked.

- C.12 You should also ensure that you actually have appropriate rights of access to your property, for example can you access your property on foot and also by wheeled access. You should also understand who may also have a right of access or easement, including for utility company access etc. This may restrict what you do with your property in the future. Third parties, such as utilities, may have rights to enter your property / garden without notice to access their plant.
- C.13 It is suggested that you make sure you are aware of exactly what your responsibilities (financial and other) will be to maintain the roads, pathways and any communal areas and services on the development. It is suggested that you seek independent legal advice as soon as possible on these issues.

- C.14 It is the responsibility of the buyer to ensure they fully understand and take appropriate independent legal advice on all fees and charges that they may be liable for. These may include, (but not exclusively) the management and maintenance of any shared or communal access way, road, path, area etc.; who such fees or charges are payable to; mechanisms that may exist to change such fees or charges; and what such fees and charges cover or do not cover.
- C.15 Your property search may reveal that there may be an outstanding notice under the APC (see Part 3 of this Advice Note), which may affect your property even if the road is to remain private.
- C.16 Mechanisms to seek adoption of a road that may not have been intended to be adopted by a local authority are explained in this Advice Note (Please refer to Part 2 of this Advice Note). The requirements for this process are detailed and specific and it is important, as with all aspects of such a significant purchase, that you obtain as much information as possible from the developer or estate agent and seek independent legal advice.

Road adoption on residential developments

- C.17 In most cases developers are likely to intend that the roads and pathways will be adopted by the local authority to be highways maintained at public expense. It will be important for you to know what arrangements have been made between the seller or developer for the adoption of roads and services. You should obtain as much information as possible about this at an early stage from the developer or estate agent. However, at the time of sale there may be no legal agreement in place that the roads and pathways will be adopted. You should not assume that a road will be adopted by a local authority to be a highway maintained at public expense.
- C.18 You should also ensure that you have appropriate rights of access to your property and understand who also has rights of access or easements (for utility company access etc.) that may affect what you can do with your property in the future.
- C.19 Mechanisms for the adoption of private streets and new roads are covered in this Advice Note. Agreements for the adoption of a road are usually under Section 38 of the 1980 Act.
- C.20 Access from an existing road may be subject to an agreement under Section 278 of the 1980 Act (please see Part 1 of this Advice Note). It is suggested that where these agreements are not in place or are not being progressed, for example, where the developer says adoption will take place via Section 37 of the 1980 Act, that the implications for your purchase are clearly understood (please see Part 4 of this Advice Note).
- C.21 If you can hold back some of the purchase money until the road is adopted this could protect you. You may need to obtain advice about the level of the retention of the purchase price considered sufficient to protect your interests in the event that the developer fails to complete the roads or fails to secure adoption by the local authority for the roads to become a highway maintained at public expense.

- C.22 You may need to seek advice from a quantity surveyor about the appropriate amount; your solicitor can secure the retention if agreed with the developer, but they are unlikely to be able to provide an assessment as to whether the amount will be sufficient.
- C.23 It is important to know what needs to happen to enable the appropriate body to become responsible for the drains, if that is proposed. Where it has been agreed that the drains will be transferred to a drainage / utility company, you should obtain as much information as you can about this from the developer or estate agent. You should take appropriate independent legal advice to establish that appropriate legal agreements are, or will be, in place. It is also important to understand whether the lack of any agreement for an appropriate body to take on the drainage needs to be reflected in any retention of the purchase price until the drains have been transferred (if that is proposed).
- C.24 If you are selling a new build property on an un-adopted road or that is subject to a service charge, it is suggested that consideration is given to matters raised in this Annex. Clearly house purchase and transactions are private matters but it should be noted that terms and conditions that may have been acceptable to you when purchasing your property, may not be acceptable to someone buying. Such matters may affect sale price or retention values.

If it goes wrong

- C.25 You should be aware that there is a risk, even where the correct agreements have been entered into, that there may be significant delays before adoption by the local authority, the highway authority or the drainage / utility company. You should also note that in some cases, circumstances may arise where it may not be possible for the local authority to adopt the road. There are several reasons why this may happen. The most likely reasons are that the road is incomplete; is not built to the required standard; or the drainage is not yet adopted by an appropriate body.
- C.26 An agreement under Section 38 of the 1980 Act provides the local authority with a right to step in if a developer defaults on the agreement in some manner. However, the local authority does not have any obligation to do so and any decision is at the discretion of the local authority.
- C.27 You should be aware that if the property is purchased before road adoption takes place, whether there is an adoption agreement in place or not, you will be liable for maintenance costs of the access ways outside your properties (at least between your building threshold and the property limit fronting the road) in respect of other users 'slips' 'trips' and 'spills' (see such legislation as 1984 Occupiers Liability Act). In addition, depending on your property title and its extent you may also have responsibilities and liabilities for the road or part of the road and associated verges and footways. You may wish to take appropriate independent legal advice about this.
- C.28 Where road adoption does not go forward or is not proposed by the developer, you may want to consider seeking adoption using the Private Street Works Code (please see Part 2 and Part 2 (A) of this Advice Note.

- C.29 There may, however be substantial costs involved in pursuing adoption via the Private Street Works Code. The requirements for this process are detailed and specific and it is recommended, as with all aspects of such a significant purchase, that you seek independent legal advice.
- C.30 It should be noted that some sales agreements or covenants may include terms such as “in perpetuity”; this does not necessarily mean “forever” as the term may be defined as a specific period of time within the agreement.

Disputes

- C.31 In some cases, disputes can arise. The contents of this Advice Note can never cover all issues that may be experienced and the circumstances that may surround them. The function of the Advice Note is to provide information and best practice only.
- C.32 In view of this it is strongly recommended that as soon as an issue of concern develops that:
- All relevant documents are collected and retained;
 - A dialogue with relevant parties takes place and is maintained; and
 - Seek independent (legal) advice. The Law Society should be able to direct you to a person whose specialism is best suited to dealing with the issue you raise. www.solicitors.lawsociety.org.uk - ‘find a solicitor’ is a free service to identify local solicitors.
- C.33 The purchase of a property is a matter of contract law on which the Department for Transport has no role.
- C.34 If the matter in dispute involves a new build property, you may wish to review the Consumer Code for Home Builders. www.consumercode.co.uk. In addition to a contact option, there is also advice relating to the fabric of the property itself and suggests that consumers may wish to contact their building warranty provider.
- C.35 If the dispute centres on information or lack of information provided by a developer or estate agent as part of a purchase under the Consumer Protection Regulations, then the National Trading Standards Estate Agency Team (www.nationaltradingstandards.uk/work-areas/estate-agency-team/) may be able to assist.

Ombudsman Complaints

- C.36 If any party considers that a local authority has not followed due process, then a complaint may be a matter for the Local Government Ombudsman, (www.lgo.org.uk). However, it should be noted that in such cases the Local Government Ombudsman requires you to have exhausted an organisation’s own complaints procedures first before referral. A local authority is required to publish its complaints procedures.
- C.37 In addition, the ombudsman role is to investigate complaints in a fair and independent way.

- C.38 There are other ombudsman services covering different services or service providers. However, they generally share the same process and require that you try to resolve the dispute with the organisation concerned first, through the organisation's complaints processes. Always explain your problem clearly and what you want done about it.
- C.39 If the organisation refuses to investigate and resolve the problem, ask for a '[letter of deadlock](#)' to show you've done all you can to resolve the complaint. If the organisation fails to respond to this final letter within a reasonable time (say, 14 days), you can take your complaint to the relevant ombudsman.
- C.40 Different ombudsmen have different complaint procedures. www.ombudsman-services.org/about-us/contact-us or www.lgo.org.uk may be the most relevant.

Member of Parliament

- C.41 For any issue, an individual / company can always contact their Member of Parliament (MP) or the MP within whose constituency the land or building is located. www.parliament.uk.

Private Land Issues

- C.42 Where the issues relate to problems with access to private land it will depend on various easements / wayleaves and documents relating to the ownership of that land. Office copies of the property registers and documents file can be obtained from the Land Registry – a fee is charged for such provision.

www.gov.uk/guidance/contact-hm-land-registry

www.landsearches.co.uk/

Annex D: Information to support successful 'Technical Submissions'

General Advice

- D.1 This Annex is provided for developers, consultants and other interested parties compiling 'technical submissions'.
- D.2 Technical submissions are provided to local authorities in order to enable them to check that a proposed street meets their standards, (or such standards as may have been agreed). Submission of complete and appropriate information compliant with an authority's requirements can lead to the successful (and speedy) adoption of roads on a development.
- D.3 Different local authorities will have different technical submission requirements, so although we have worked to provide an overview it will be essential that each developer, designer and / or consultant engages with the local authority concerned. Local authorities should publish their minimum requirements to ensure that their requirements and criteria are clearly set out to enable the local authority to undertake technical reviews and draft agreements.
- D.4 The purpose of the local authority review of a technical submission is to ensure compliance with the local authority's adoptable standards (or national standards contained within the *Design Manual for Roads and Bridges*) in respect of highway design and construction.
- D.5 It is common that at the detailed design stage prior to technical submission, additional details and constraints may arise that may influence a design. Early and continuous dialogue with the local authority is, therefore, essential. In addition, layouts and schemes used at the planning stage are usually indicative and lack such detail. As such, as greater detail becomes available and as designs evolve some aspects of a scheme shown at the planning stage may differ. Liaison with the planning authority may be required to manage such changes in planning terms.
- D.6 Reasonable efforts to minimise significant changes between indicative planning schemes and detailed design should be taken. If a planning decision is taken based on, for example, a roundabout, but the detailed design shows that only traffic signals will work, that is a material change that will require regularisation through planning.
- D.7 Similarly, if, at the detailed design stage or when further details or constraints become known, for example to accommodate proposed utility plant, address geotechnical issues, or perhaps departures from standards not previously identified become apparent, changes to a planning approved layout may be required.

- D.8 In such cases if the schemes differ in material planning terms this should be addressed with the planning authority where a planning application to vary a permitted layout may be required.
- D.9 To minimise such risks, planning submissions should, where possible, be fully compliant with appropriate local and national design criteria and standards. Where they do not comply any deviations or 'departures' from standards should be clearly identified, considered and resolved with the local authority. It should not be presumed that a local authority will accept any departures from standards and they are under no obligation to do so.
- D.10 In addition, it should be recognised that another purpose of the technical review is to ensure that any competent contractor, not just that employed by the developer for the development, can take the approved plans and specification and build the approved scheme. As such, the technical submission should be compiled with these purposes in mind.

Design Standards

- D.11 The local authority should publish their local adoptable layout and constructional standards and specify where national standards may apply or where local standards may deviate from national standards.
- D.12 It is recommended that the developer's designer checks with the local authority to ensure they understand the local authority's standards and submission criteria before commencing detailed design. Pre-submission liaison and engagement is encouraged.
- D.13 Most local authorities require any works within or affecting existing highways to comply with the desirable standards within the *Design Manual for Roads and Bridges* design criteria. Any proposals to use one or two steps below such standards, (where available) should be justified and may be considered as a departure from standard.
- D.14 It is presumed that all designs submitted are also fully compliant with requirements of all appropriate and applicable legislation including the principles of the 2010 Equalities Act. Failure to do so may result in designs being rejected.

Departures from Standards

- D.15 Only the local authority can determine if it will accept or reject a departure from standard.
- D.16 As stated above, there is no obligation for the local authority to accept any departure from standard or the resultant substandard road as these may present a risk to the travelling public in safety terms or add unnecessary maintenance liabilities that will burden the public purse. As such, it should not be presumed that any departures from standard would be granted.
- D.17 It is the responsibility of the developer to provide enough information to enable the local authority to determine its view on such matters in an informed manner.

- D.18 It is recommended that all known or identifiable departures from standard are brought to the local authority's attention prior to the submission of a planning application so that matters can be considered at the earliest stage. In most cases once identified they can be designed out at that stage with minimal impact on layouts and costs.
- D.19 This ensures that schemes promoted through the planning system are either fully compliant or have agreed departures from standards included so that at technical submission stage there are no new matters raised that may delay the technical audit.
- D.20 If pre-planning engagement has not occurred, then any departures from local and national standards should be identified by the developer's designer and clearly shown on an appropriate plan, along with a fully compliant scheme.
- D.21 Local authorities should have a 'departures from standard' process to ensure there is appropriate scrutiny, challenge and governance behind decisions to accept or reject applications for each departure.
- D.22 If no departures are identified by the developer at the planning stage but are noted at the technical audit stage this can substantially delay technical approval and may result in regularisation back through planning with a compliant scheme.
- D.23 If any departures from standard are identified by the developer's designer prior to technical submission that have not previously been determined, then they should be clearly identified within the technical submission so that they can be explicitly considered.

Documentation and Drawings to be submitted

- D.24 **Tables 1 and 2** below set out the typical documentation and drawings that a local authority may require as part of a Technical Submission.
- D.25 Most local authorities will require detailed design drawings to be at a scale of 1:500 unless they agree to an alternative scale.
- D.26 Many local authorities will agree to drawing details being combined to reduce the number of drawings on simple schemes. However, this should be agreed with the local authority concerned prior to drawing preparation. **Table 2** includes a schedule of Drawings that are typically required.
- D.27 Some local authorities use lists of required documents and drawings as part of their agreement application form to encourage full and complete submissions.
- D.28 A technical review is most efficient when all information is available at the same time. This avoids initial reviews simply listing omitted information.
- D.29 It is incumbent upon the developer to check what is submitted in their name by their appointed designers and to remain engaged in the technical approval process.
- D.30 Many local authorities require Safety Audits and Walking, Cycling and Horse-Riding Audits and / or Quality Audits as part of technical submissions although their use at pre-planning and planning stages is likely to be of benefit.

- D.31 The use of such audits is encouraged to ensure that schemes consider and address the needs of all users and uses of the prospective or existing highway and of the spaces created within new developments.
- D.32 Undertaking appropriate audits at the pre-planning and planning stages to inform designs is encouraged such that amendments and modifications at the detailed design stage can be managed and minimised.
- D.33 Designers should check with the local authority to determine their requirements regarding such audits but also ensure that they consider and address any matters arising or outstanding from previous audits that may have been undertaken at earlier stages.

Table 1 Documents and Information	
Parties to the Agreement	The name, address and contact details of all parties to the agreement. This will include the developer, landowner(s) of land to be dedicated as highway and owners of any land required for easement, the surety provider and any other party as required.
Abortive Costs Undertaking	Most local authorities require an initial fee prior to the consideration of any submission or application for an agreement. In addition, they may also require a letter confirming that the developer will cover their reasonable costs prior to completion of the agreement in the event the agreement fails to proceed for whatever reason.
Planning Permission / Planning Obligation	To ensure that the proposals have planning consent in detail and any planning or other restrictions are identified; All works within the highway required to facilitate a development are identified, (as these may influence an adoption agreement regarding triggers and timescales, the details approved may also be required to discharge planning conditions or obligations); Design Code or other site-specific planning requirements regarding layout, materials etc. are identified and, where appropriate, incorporated into the Technical Audit considerations; and Confirmation from the local planning authority that relevant planning conditions have been discharged.
Nominated Solicitor	This is the legal representative that the developer and other parties to the Agreement, (landowner, surety, authority etc.) agree between them will be the point of legal contact.
Stage 2 or Stage 1&2 Safety Audit and Designer's Response	Many local authorities require Safety Audits in accordance with GG119 of the <i>Design Manual for Roads and Bridges</i> . However, check with the local authority for their local requirements in respect of the specific site. In many cases a Stage 1 Safety Audit may have been required as part of a planning submission.
Health and Safety Executive Form F10	Required under the Construction, Design and Management Regulations 2015. A local authority will require a copy of the F10 form to ensure that the developer is complying with their responsibilities under the regulations.
Walking, Cycling and Horse-Riding Assessment	Some local authorities will require such assessments to ensure that all modes are fully considered as part of a design.
Departures from Standard	Any departures from local or national standards should be clearly shown on an appropriate drawing and / or in a table accompanied with a report by the designer detailing each departure including: - <ul style="list-style-type: none"> • The standard; • How the proposal does not comply; • Justification for the departure; and • Implications of a compliant design, (with associated plan).

Table 1 Documents and Information (continued)	
Geotechnical Information and Earthworks	Geotechnical Reports and Earthworks Design; the scope should be agreed with the local authority.
Drainage Design	Including drainage modelling outputs, compliance with Flood Risk Assessment and Drainage Strategy including any sustainable drainage proposals and clarity on who will be managing and maintaining such features.
Drainage Consents	Including Environment Agency approvals, Discharge Consent, (from Lead Local Flood Authorities) and Land Drainage consent, (for culverting).
Lighting Authority approval	Where the local authority adopting the road is not the Lighting Authority.
Traffic Regulation Order / Notice confirmation (where required)	Any requirements for Traffic Regulation Orders or Notices should be identified at the planning stage but should, in any event, be in place prior to the associated feature being installed or becoming operational. Traffic Regulation Orders are subject to statutory processes outside and exclusive of the planning process and the success of any Order should not be presumed.
Ecclesiastical Faculty Consent	Where works may affect a church or ecclesiastical land.
Environmental licences and permissions	Where works may affect protected species or areas, water courses or may present an environmental risk during their construction.

Table 2 Drawing Submission	
Location Plan	At 1:2500 showing the location of the development on an OS base.
General Arrangement / Site Layout / Primary “Agreement Plan”	This drawing will become a key plan bound into the Agreement and should indicate the scope and type of work to be carried out. Such a plan should be coloured / shaded in accordance with Table 3 below, (see also Figure 2 below for illustrative examples of such a plan). It may include a number of elements shown on other detailed plans.
Site Clearance	Landscaping, signs, lines, street lighting, kerbing, surfacing to be removed etc.
Typical Construction Details	This should refer to the local authority’s constructional standards for the road classifications or typologies proposed.
Kerbing and Footways	Changes in kerb type / height must be clearly defined on plans
Surfacing	Any changes in surfacing material shall be clearly defined on submitted plans. Where ramps are proposed to reduce kerb heights, the ramps should be in a contrasting material or clearly road marked. (Surface material changes should also be shown on the General Arrangement / Agreement Plan)
Drainage	Including pipe size and clarity on proposed adoption, any sustainable drainage proposals and adoption. Details including contours, catchment and flow path for various return periods as may be specified by the local authority. Chambers and pipe sizes should be drawn to scale. (Drainage should also be shown on the General Arrangement / Agreement Plan)
Drainage Long Section	Drainage long sections should include pipe cover and invert levels. (may be combined with road long section).
Chamber Schedules	Including type, diameter, invert, cover, connections etc.
Existing Public Utility Plant	Including proposed diversions; where a Section 38 Agreement with Accommodation Works is being considered incorporating works within an existing highway, all existing plant should be located and proven by trial hole to confirm location, route and depth etc.

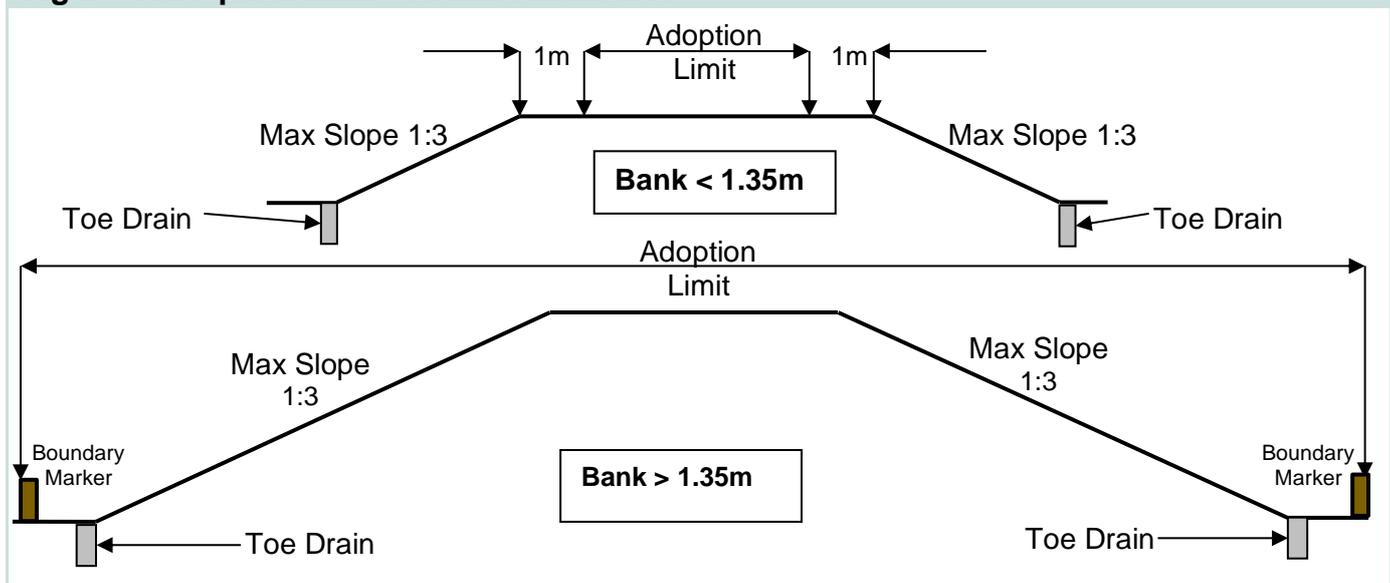
Table 2 Drawing Submission (Continued)	
Proposed Combined Services Plan	To confirm where all proposed utilities and services will be located with appropriate clearances.
Traffic Signs and Road Markings	Including diagram numbers, sign and post design details.
Traffic Signals; (where applicable)	Including signal modelling and controller specification.
Street Lighting	Where applicable. Not all local authorities require street lighting and not all road adopting authorities are lighting authorities for all areas.
Landscaping	Most local authorities have a list of species they are prepared to adopt, subject to commuted sums. In some cases, licences to cultivate under Section 142 of the 1980 Act may be considered by the local authority to enable an abutting owner, (if the developer retains abutting land) to maintain landscaping within the prospective highway.
Cross Sections	Including typical cross sections with full constructional details and utility plant locations and depths (see also Annex E) as well as cross sections at reasonable intervals.
Road Long Section	Should include vertical and horizontal alignment information as well as existing ground profile. May include drainage long section details.
Structural drawings	Including calculations and "Approval in Principle" (AIP) documentation.
Departures from Standards	A drawing identifying any departures from local or national standards. A separate or overlaid compliant design will also be required.
Land Dedication Plan	Usually only required just prior to adoption confirming the area of private land to be dedicated as highway. Most local authorities require the land to be shaded pink with tie in works within existing highways shaded brown. See Figure 1 and 3 below for illustrative examples.

- D.34 **Table 3** (on page 64) sets out a typical local authority General Arrangement / Agreement Plan colouration Key. **Figure 2** (on page 65) shows illustrative examples. Each local authority may have their own house style which they should publish along with a worked example to enable designers to submit compliant drawings. It is incumbent upon the designer to check with the local authority to ensure they have their latest colouration key to avoid abortive work.
- D.35 Please note the differentiation regarding street lighting adoption. It should not be assumed that the authority adopting a road is also the lighting authority for an area or for all the roads that may be promoted for adoption. In many cases the lighting authority, especially in more rural areas are Parish, Town or District/Borough Councils rather than County or Unitary Councils.
- D.36 In some cases, a road adopting authority may also be the lighting authority for a corridor through another lighting authority's area. This typically occurs for major roads and in some cases bypassed routes where they retain responsibility for lighting the historic route.
- D.37 Designers should check with the local authority regarding which body or bodies are responsible for street lighting in the area concerned. It should also be noted that

only a public body such as a Parish, Town, District, Borough, County, Municipal, and Unitary Council etc. can be a lighting authority. As such private management companies cannot be lighting authorities and adopt lighting where it is located within a prospectively adoptable highway.

- D.38 It is for the lighting authority to determine its policies, requirements and standards for lighting. Some do not require any lighting. Most lighting authorities charge commuted sums for the on-going management and maintenance of street lighting.
- D.39 **Figure 2** (on page 65) shows an illustrative example of a coloured General Arrangement / Agreement Plan. Local authorities should publish a typical coloured plan, (with the consent of the designer responsible) to assist quality submissions.
- D.40 The extent of prospective adoption must be clearly defined on the adoption plans and on site to avoid dispute and ensure the limits of public and private liability is clear. Most local authorities require this to be via a solid blue line, (and a solid line of edgings on site which in many cases would also be the back edgings of a footway).
- D.41 In the case of embankments however, the extents of adoption may depend on the height of an embankment and its gradient. Geotechnical considerations will also need to be considered. **Figure 1** below sets out general principles, but the extents and means of highway boundary demarcation must be agreed with the local authority. The maximum slop grade shown is indicative only for illustrative purposes
- D.42 Where embankments are to be adopted appropriate maintenance margins at the toe of the embankment slopes will also be required, see **Figure 1** below. Access to such areas should also be agreed with the local authority either by additional land to be adopted or in some cases by easement.

Figure 1 Adoption Limits of Embankments



- D.43 Most local authorities limit the validity of a Technical Approval, typically for twelve months after which time details will require a review to accommodate any changes in standards, specifications or legislation.
- D.44 It remains the developer's responsibility to ensure that their own site team and contractor are issued with copies of the plans and documentation which have received Technical Approval (including any subsequent updates agreed with the local authority).
- D.45 The developer should also provide the local authority's inspector with a copy of such plans and documents on request, be that hard or electronic copy.
- D.46 Some authorities may require Building Information Model, (BIM) generated models alongside drawing and documentation submissions, to assist in future management and maintenance of what would become their asset.
- D.47 It would, therefore, be for the local authority to agree with the developer the BIM level a scheme is to be submitted to, agree the protocols for all stakeholders to demonstrate competence in delivering the scheme in a BIM environment, and be BIM accredited through BSI or similar.
- D.48 It should be noted that during the preparation of the legal agreement, it may be necessary to modify some drawings and details that may have received a Technical Approval for legal purposes. As such, any Technical Approval is always issued subject to such modifications and amendments.

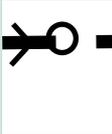
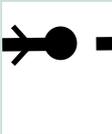
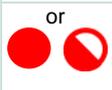
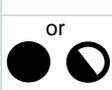
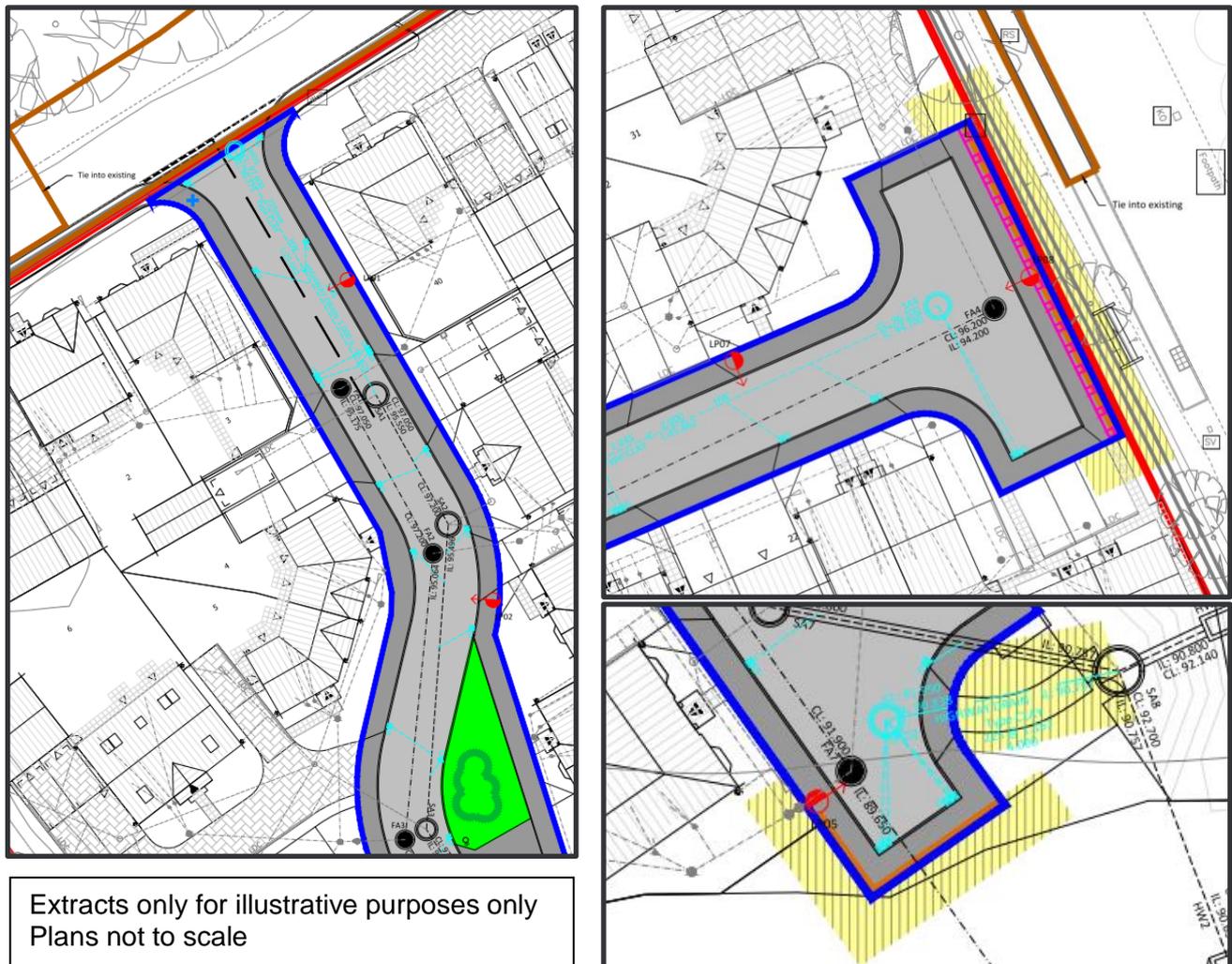
Table 3 - General Arrangement Plan / Agreement Plan Colouring		
Feature / Surface	Colour / Shade	
Carriageways. Where differing surfacing is to be used, (such as block paving this should be clearly shown)		Shaded Light Grey
Footways, Vehicle Crossovers (which must be splayed) & Cycleways.		Shaded Dark Grey
Grass Verges & Soft Margins.		Shaded Green.
Way-Leave / Easement (3m Minimum from or around feature to be maintained by Highway Authority).		Shaded Yellow Vertical Hatch
Prospective Highway Drainage (Gullies, gully connections, highway drains and chambers etc.).		Light Blue
Surface Water Drainage adopted by others, (Water Company) by Agreement under the 1991 Water Industry Act etc.		Dashed Black line Open Black dot for chambers (including numbers)
Foul Drainage adopted by others, (Water Company) by Agreement under the 1991 Water Industry Act etc.		Dashed Dot Black line Solid Black dot for chambers (including numbers)
Street Lighting Columns (if proposed within prospective highway) where highway adopting authority is also the Lighting Authority for the area.		Red Dot
Street Lighting Columns (if proposed within prospective highway) where the highway adopting authority is not the Lighting Authority for the area.		Black Dot
Landscaping to be maintained by highway adopting authority, including (but not exclusively) trees, shrubs, verge planting etc.		Light Green shading
Bollard (B). Lockable Bollard (LB).		Small Black Dot with "B" or "LB"
Pedestrian Guardrail.		Solid Pink with squares
Road Sign.		Blue Cross
Retaining Wall		Solid Orange
Boundary of the works to be adopted <u>within</u> the site boundary accurately edged in a blue line.		Solid Dark Blue Line
Boundary of the site in the ownership of the developer/Land Owner accurately edged in a red line. Please note, example below shows ownership and dedication concurrent.		Solid Red Line
Boundary of works within the existing highway (i.e. Accommodation Works) to be edged in a brown line.		Solid Brown Line

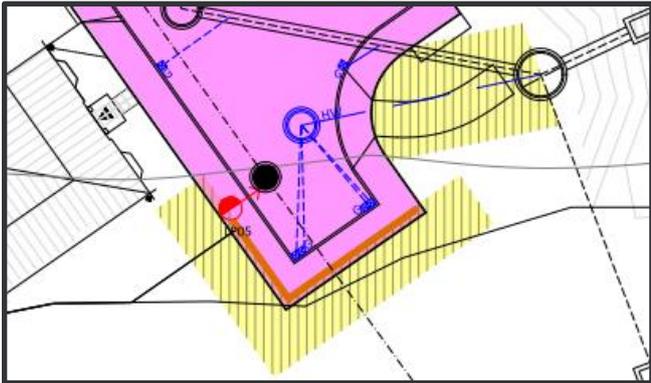
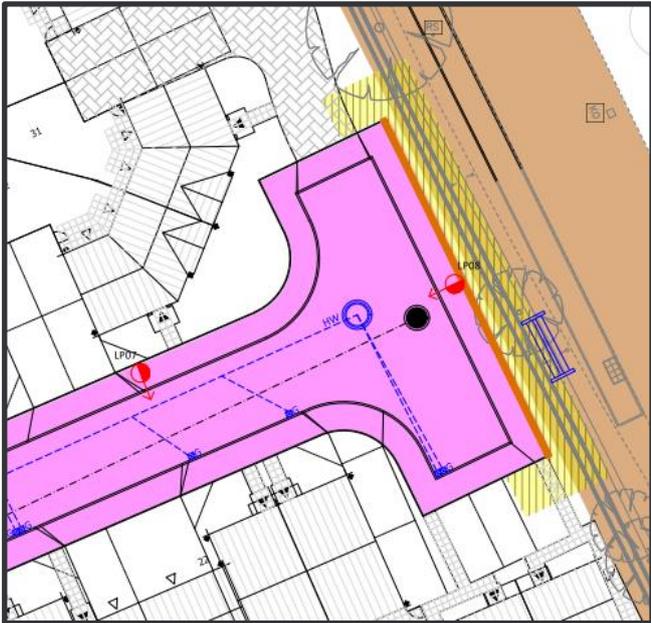
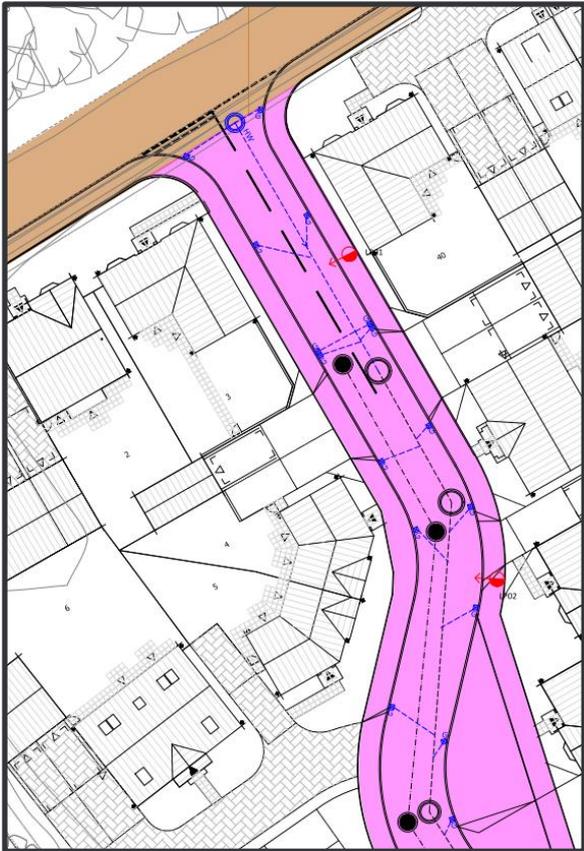
Figure 2 – General Arrangement Plan examples



Land Dedication, Adoption Plans and Extents

- D.49 In most cases a Land Dedication Plan is not required to facilitate the agreement itself but will be required prior to the adoption of the road /street concerned. Most local authorities require areas to be dedicated to being shaded pink with areas of existing highway (or areas within adjoining roads covered by agreement that will be adopted first but require modification) shaded brown. **Figure 3** below shows an illustrative example of such a plan.
- D.50 In most cases the plans should be 1:500 scale Ordnance Survey based, (with associated copyright licence displayed). In some cases, larger scale plans or enlargements of areas may be required to show details. Requirements should be agreed with the local authority prior to drawing preparation.

Figure 3 – Dedication / Adoption Plan examples



Extracts only for illustrative purposes only
Plans not to scale

Annex E: Working with Utilities

- E.1 A utility company (which may also be referred to as a ‘statutory undertaker’) is an organisation that maintains particular infrastructure for a public service (often also providing a service using that infrastructure). There are four main utilities; gas, water, electricity and telecommunications, however Network Rail are also considered a utility company with associated powers and rights. Each utility industry is covered by specific legislation (including regulations). In addition, services provided by utility companies are also subject to controls and scrutiny from national regulators such as Ofwat, (www.ofwat.gov.uk), Ofgem (www.ofgem.gov.uk) and Ofcom, (www.ofcom.org.uk).
- E.2 The information provided in this annex is general advice only and does not override anything contained within any legislation, regulation or codes of practice that govern utility companies and their activities.

Engagement and Dialogue

- E.3 Early consultation with utility companies is recommended to ensure that new services and service connections can be accommodated into a utility company’s work programme and the timescales for the development. There may be special issues that developers will need to consider, such as the requirement to:
- order special items of plant (or equipment);
 - disconnect existing supplies;
 - arrange for the protecting and / or diverting of existing utility apparatus;
 - acquire access to land at an early stage to enable plant; substations and large items of apparatus to be constructed / installed; and
 - reinforce the existing network to allow for service development
- All of these requirements may affect costs and / or timescales, so early discussions will ensure that all parties can work together to successfully deliver the project.

Space for Apparatus

- E.4 Consideration of how and where utility apparatus will be installed, and how it will be maintained in as straight forward a manner as possible in the future, should be made at the design stage. This will include the provision of adequate space in the prospective highway (if possible, the footway or verge rather than the carriageway) for the mains and services to be laid in accordance with industry standards and Health and Safety requirements.



Utilities may conflict with each other if not properly planned and installed. Along with any installed apparatus, service connections should always be recorded to avoid inadvertent damage during maintenance or improvement works. Service strikes can kill or injure operatives and disrupt service provision.

- E.5 Additional information can be found in the Street Works UK Publication Volume 2: *Guidelines on the Positioning of Underground Utilities Apparatus for New Development Sites* (see www.Streetworks.org.uk).
- E.6 These requirements along with considerations of future service provision may directly affect planning layouts. As such, the importance of service connections, the practical space required to install and maintain such services safely and with the minimum of disruption to residents and the free flow of traffic underlines the need for early engagement.
- E.7 Changes to layouts after planning consent to accommodate service provisions compliant with utility-based legislation, regulation and codes of practice are, therefore, avoidable if all parties to the development process, including planning authorities are aware of these requirements.

Planning – Access and future requirements

- E.8 There is likely to be the need for additional utility infrastructure installations after the initial placement of utility apparatus to service the development. and individual properties,. This could cover a range of requirements but may include broadband connections from an alternative provider; electric vehicle charging; and / or connections from home electricity generation back onto the network (e.g. solar panels). Therefore, it may be prudent to include additional ducting within designs and ensure that verges and footways are wide enough to accommodate planned utility provision and have capacity to accommodate additional apparatus.
- E.9 Additional connections or services can result in significant additional excavations and reinstatements that can affect the integrity of road or footway construction. All plant installed by a utility company or their contractor must be recorded and shared with any party planning works in the vicinity of such plant or equipment.
- E.10 Works by a utility in a newly completed highway can be undertaken within the requirements of the 1991 New Roads and Street Works Act and the 2004 Traffic Management Act, as appropriate.

- E.11 Every effort should be taken to ensure that all utilities including additional ducting etc. for future provision is laid prior to final surfacing of footways and carriageways.
- E.12 It will be important to ensure that use of specialist surfacing materials is agreed with the local authority adopting the streets, the cost, and availability of replacement materials resolved before use. This information should also be made available to utilities.

Apparatus in Private Developments (roads not to be adopted highway)

- E.13 Developers should ensure that adequate and robust arrangements are in place to provide for the maintenance of apparatus in perpetuity (see glossary). Such arrangements could include a properly constituted management company.
- E.14 Where works are undertaken within the highway by utility companies or their contractors, works will be subject to the issue of a notice or permit in accordance with the 1991 New Roads and Street Works Act (as amended). Should any non-utility (ie. privately owned and maintained) apparatus be installed in highway, the use of licences under Section 50 of the 1991 New Roads and Street Works Act may be necessary.