



# Chapter 8: Planning for an Adoptable Highway

Streetscape Design Guide 2025

Worcestershire County Council

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# Chapter 8: Planning for an Adoptable Highway

## 1. Introduction

This section covers works on the public highway instigated by developers and the creation of new highway maintainable at public expense, commonly referred to as Section 278 and Section 38 (Highways Act 1980) Highway Agreements.

## 2. Technical Assessment

### 2.1 Statutory Consultee responsibilities

Worcestershire County Council, as a statutory consultee for Highways Development Management, participates in the approval process of any planning application received.

When considering any development proposals, Worcestershire County Council aims to ensure that all new developments in the county are assessed in terms of their safety and impact on the roads and highway network in accordance with the [National Planning Policy Framework \(NPPF\)](#) published in 2024 and local planning policies.

Worcestershire County Council as the Local Highway Authority and acting as a consultee on a planning application, typically has 21 days to respond to the Local Planning Authority (LPA). This 21-day period is a standard consultation period, and it is usually included within the overall determination period for the planning application, which is 8 weeks for most applications and 13 weeks for major developments. The LHA may respond in three ways to a consultation:

1. To request a deferral for further information to clarify the proposals or resolve highway concerns.
2. To respond with no objection to the proposal subject to planning conditions.
3. Recommend the application is refused on the grounds of highway safety.

The Local Planning Authorities are responsible for deciding whether to grant permission for the proposed development.

### 2.2 The Adoption Compliance Audit (ACA) for Section 38 Legal Agreements

Following the granting of planning permission, any new roads to be offered for adoption will require an Adoption Compliance Audit (ACA). This is a precursor to the Section 38 process and is not subject to repeated reviews.

The ACA is offered primarily to highlight issues which may arise during the detailed design process of the new roads to be offered for adoption. These issues would not necessarily become known during the assessment of the preliminary designs submitted as part of the planning application submission.

The ACA process will enable a more rigorous assessment of the new roads offered for adoption submitted as part of the planning application. It should also give developers greater confidence that their proposals comply with Worcestershire County Council's specification for adoption.

### **2.3 Early Technical Assessment (ETA) for Section 278 Legal Agreements**

The ETA of off-site highway works is normally undertaken while the planning application is being determined as a precursor to the Section 278 process. This is not subject to repeated reviews.

The ETA is offered primarily to highlight issues which may arise during the detailed design process of the proposed off-site highway works. These issues would not necessarily become known during the assessment of the preliminary designs submitted as part of the planning application submission.

The ETA process will enable a more rigorous assessment of the off-site highway improvements submitted as part of the planning application. This should give developers greater confidence that their proposals are deliverable in compliance with both National and Worcestershire County Council's design specifications.

Although not a statutory requirement, Worcestershire County Council strongly encourages developers to make use of the ETA where they propose significant alterations to the publicly maintained highway, as part of their development proposals.

### **2.4 Technical submissions**

All drawings and plans must be drafted by a suitably qualified and competent highway consultant appointed by the developer who must have knowledge and experience in comparable highway design and construction. The following points apply:

1. All technical submissions will be subject to an online registration process. The Technical Audit of the submission will not commence without all the information required, as specified in the application process.
2. Incomplete submissions will not progress beyond the registration stage (Validation) if there is missing information.
3. The initial technical submission will need to be supported by a Design Report which discusses all the design elements of the scheme. This includes horizontal and vertical alignment, drainage, and junction control etc. their relevant merits and justifies their use within the submitted design. The Design Report will need to be refreshed with each subsequent technical submission, to take account of any amendments made to address issues highlighted in the technical assessment.

- A Stage 2 Road Safety Audit (RSA) will also be required as part of the initial technical submission. Worcestershire County Council reserve discretion to require updated Stage 2 Road Safety Audits where the scheme evolves significantly through the design process, or where additional information is submitted that was not considered within the initial Stage 2 Road Safety Audit.
- The developer will be required to obtain Land Drainage consent from the relevant body and enter into a formal agreement with the relevant Local Water Authority or equivalent statutory body. This will be in respect of sewers and pumping stations in accordance with the [Water Industry Act 1991](#). Before the highway agreement can be signed, adoption certificates for the drainage and sewers within the works need to be provided.
- Private services or utility infrastructure within the publicly maintained highway is not accepted by Worcestershire County Council. The inclusion of private infrastructure within a highway will result in the highway not being adopted.
- Where works are proposed on the publicly maintained highway, details of existing utility equipment will need to be provided with the initial submission. As the scheme progresses, further investigations may be required, including radar surveys and trial holes. If utility equipment needs to be diverted to facilitate the delivery of the works, the developer will need to provide written confirmation from the respective utility company that the diversions and associated costs have been agreed. The costs of diversions will be included within the Bond calculation unless the developer can provide written confirmation that the costs have been paid in advance of issuing legal instruction.

Each Technical Assessment conducted by the Local Highway Authority or its consultants acting on its behalf and returned to the developer will be accompanied by a Comment Summary. This will establish the headline issues which need to be resolved prior to Technical Approval being issued. The developer will need to complete the Designer Response section for each of the comments, as well as the revised departure from the Standard Report and resubmit this form with their subsequent submission. Failure to address each of the comments will result in the submission being returned without registration.

It is strongly recommended that the developer or their agents undertake detailed discussions with Worcestershire County Council prior to each submission being made, to ensure that their submission addresses the outstanding issues and new departures from standard if required to address those comments.

Meetings between the developer, their agents and Worcestershire County Council are the best way to resolve the issues affecting the award of Technical Approval. It is recommended that a meeting is held to discuss the content of each technical assessment. However, after the issue of a second

technical assessment, a progress meeting will have to take place and failure to attend will prevent the registration of any further submissions.

Technical Approval is only valid for a period of 12 months from issue. Where a developer commences the legal process 12 months or more after technical approval. The approval will require a review to accommodate any changes in standards, specifications or legislation, and the Bond value will be recalculated, and additional fees may be charged.

### 3. Booking Road Space

Where proposals require works or traffic management on the public highway after obtaining the works license (e.g.s278 agreement), the developer or their contractor will need to prepare and submit a Risk Assessment and Method Statement (RAMS), alongside a Works Programme and Traffic Management proposals certified by an accredited TM Practitioner (National Highway Sector Scheme - Section 12D or NRSWA ), for the delivery of the works for approval by Worcestershire County Council.

These proposals will be processed in the same iterative process as for other technical submissions. They will need to form part of the application for road space for the appropriate Permits. The application process for Section 278/ Section 184 road space is available online via Worcestershire County Council's website [Application for development agreements, consent or work licenses](#), where further details regarding timelines, fees and pre-requisite information can be obtained. Developers, alongside their contractors, are encouraged to commence this process as soon as they are able. There are lead-in periods that will need to be planned before booking road space. For example:

- There is a 3-month lead-in time for legal orders (road closures/ temporary speed limits)
- Section 58 final surfacing protection and for Major Works (more than 10 days in duration).
- Applications for Section 278 / Section 184 road space cannot be authorised unless there is a signed Section 278/ Section 184 agreement.

Works must not take place on the public highway without a relevant road space license.

Subject to agreement with Worcestershire County Council, some minor works affecting the public highway can be undertaken via a Section 171 License rather than a full Section 278 Agreement.

### 4. Street Lighting

Whilst there are no statutory requirements for street lighting in the public highway, Worcestershire County Council invites planning applications that provide street lighting in line with the processes and requirements set out in Chapter 9 Streetlighting.

The guidance aims to help designers provide sustainable highway lighting schemes which promote highway safety, minimise energy consumption (helping to achieve net zero), and limit the impact on the environment and adjacent property.

The street lighting guidance is in two stages:

1. An assessment of the feasibility of street lighting during pre-application consultations and the planning application process.
2. The detailed design stage following the award of planning consent.

Worcestershire County Council has a net zero emissions target to reach net zero by 2050 from its own operations and activities, including Worcestershire County Council owned and operated street lighting.

### 5. Fees

Information about making a Section 278 application and our fees are published separately on [Worcestershire County Council's website](#). For a Section 38 application, information is also available on our [website](#).

The developer will also be responsible for payment of all additional fees incurred by Worcestershire County Council for consultancy design checks and audits, procured by Worcestershire County Council, as considered appropriate for each Section 38 or Section 278 proposal which may include, but are not limited to:

1. Street lighting design.
2. More extensive or complex highway designs (e.g., larger new Section 38 highway layout, major highway junctions including traffic signal installations and roundabouts).
3. Street tree schemes and associated works design (e.g., species selection, placement, establishment, root containment, protection).

### 6. Site Inspections Highway Drainage

The developer is responsible for the day-to-day supervision of the Works and setting out Section 38/Section 278 Works, until the issue of the Final Certificate of Completion (FCC). A Worcestershire County Council Inspector will be responsible for ensuring the works comply with our Specification and agreed Traffic Management (Section 278 only).

The developer/contractor must facilitate unrestricted access to the works for Worcestershire County Council's representative for the purpose of inspecting the Section 38/ Section 278 works, and all materials used or intended to be used therein.

It is the responsibility of the developer to ensure the works are constructed in accordance with the approved drawings/specification submitted to, approved by Worcestershire County Council, and delivered in accordance with the agreed Traffic Management scheme (Section 278 only). The developer is responsible for the testing of materials using an approved laboratory as specified and/or requested by Worcestershire County Council.

Non-compliance with the approved drawings/specification is likely to result in the developer being required to reconstruct defective area(s) of the Section 38/Section 278 works (a Defective Works

Requirement). Every additional inspection to check compliance with a Defective Works Requirement will be subject to a fee.

### 6.1 Maintenance Status

If a new road is constructed and the public are invited to use without restriction (unregulated, i.e., not gated, or subject to permission granted by the landowner which can be withdrawn at any time) then it becomes highway, maintainable by a person or company (details Worcestershire County Council do not hold), but not necessarily one maintainable at the public expense (publicly maintained highway). If it is a private, unadopted road, Worcestershire County Council has no obligation to repair or clean it even if it includes a public right of way to which highway and traffic law can be applied.

For sites which are the subject of a Section 38 agreement the developer of the site is expected to fulfil the role of Street Manager in accordance with Section 49 of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the road or roads become publicly maintained. 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.'

### 7. Surety

The developer will be required to provide a financial surety to ensure that there is adequate provision to allow the Section 38/Section 278 works to be completed in default of the developer's obligations under the Section 38/Section 278 Agreement. This may include unfinished or defective works.

The amount to be secured must be equal to the total cost of Section 38/Section 278 Works as determined by Worcestershire County Council. The surety may be in the form of:

- A Bond in Worcestershire County Council's agreed format with a reputable financial institution (Bank/Insurance company) approved by Worcestershire County Council. The financial institution will need to demonstrate a Credit Safe Rating of 'A' or higher for a UK registered company or establishment or UK registered subsidiary, for a period of no less than 12 months prior to application and that the Bond sum must not equate to more than 10% of the surety's turnover.
- A deposit of the equivalent sum deposited with Worcestershire County Council until issue of the final certificate of completion of Section 38/Section 278 works. In the case of a Section 278 Agreement where a Bond is provided, the surety may be a party to the Agreement.

### 8. Constructing the Works

Where works are being conducted under a Section 38/Section 278 Agreement, the developer must not commence any works on the site until:

1. The Section 38/Section 278 Agreement has been approved.
2. An acceptable form of the financial surety has been provided.

3. All fees have been paid.
4. Written notification has been provided with the developer's intention to commence construction by giving at least three months' notice (to comply with the requirements of the Traffic Management Act 2004).
5. Details of the appointed contractor for Worcestershire County Council to validate its suitability to conduct Section 38/Section 278 Works. Accreditation via Construction Line, CHAS or similar organisation will be required.

Any anomalies/amendments encountered whilst construction is ongoing and before the issue of the Provisional Certificate/Final Certificate of Completion will require a formal amendment to the plans appended to the Section 38/Section 278 Agreement. This may require the completion of a supplemental agreement; the developer will be responsible for any costs associated with the drafting and completion of the supplemental agreement and any additional supervision fees that may be required.

### 9. Highway Enforcement

Worcestershire County Council is the Local Highway Authority for the purposes of the Highway Act 1980. Section 130 of the Act that states:

*'Local highway authorities are under a duty to assert and protect the rights of the public to use and enjoy those public rights of way for which they are responsible. They also have a duty to prevent, as far as possible, the stopping up or obstruction of those highways. Local highway authorities are also able to safeguard public enjoyment of highways for which they are not responsible and to prevent the stopping up or obstruction of such highways where this is prejudicial to the interests of their area.'*

Works on the public highway cannot take place until a Legal Agreement under Section 278 of the Highways Act 1980 has been approved. The application needs to comply with the requirements of the New Roads and Streetworks Act 1991 (NRSWA) and the Traffic Management Act 2004. The person or organisation making an application will need to apply directly to the Street Works team at Worcestershire County Council as the Local Highway Authority to apply for road space for a period to be agreed.

The Act contains provisions enabling a Local Highway Authority to deal with various encroachments, obstructions, and unlawful interferences. Each provision prescribes action that a Local Highway Authority may take where the provision applies. Common Law exists to enable the Local Highway Authority to remove or reduce obstructions and nuisances under Section 333 of the Act. For more general information on some of the powers available to Local Authorities regarding Highway Enforcement (not an exhaustive list) go to Appendix K.

### 10. Timescale for completing the works

All Section 278 schemes must be completed in compliance with the agreed Works Programme. Once works have commenced on site they must be completed to Worcestershire County Council's satisfaction within a reasonable time.

### 11. Issuing a Provisional Certificate

The developer must supply the following prior to issue of the Provisional Certificate of Completion (PCC) to the satisfaction of Worcestershire County Council:

- a) All As-Built Drawings
- b) Health and Safety File
- c) Stage 3 Road Safety Audit (RSA3) and Designer's Response
- d) Electrical Test Certificates
- e) Details of underground apparatus
- f) Completed Construction Proformas
- g) Factory Acceptance Test/Site Acceptance Test Certificates
- h) Calibration Report
- i) Microprocessor Optimised Vehicle Actuation (MOVA) Validation
- j) CCTV surveys of all highway drainage (gullies, laterals, and numbers gully log) infrastructure, including elements covered by Section 104

Once the above information has been received and Section 38/Section 278 Works have been completed in accordance with the approved drawings (including compliance with any Defective Works Requirements) to the satisfaction of Worcestershire County Council's Engineer, a Provisional Certificate of Completion (PCC) will be issued, and the designated maintenance period can commence.

The PCC must be formally requested in writing by the developer from Worcestershire County Council's Engineer.

### 12. Inspection Process following request for Provisional Certificate

As soon as it is reasonably practicable, the Local Highway Authority will undertake an inspection of the Section 38/Section 278 Works and produce and supply a Defects List to the developer.

The developer will have three months from the date of receipt (or such other period as notified in writing by the LHA) to complete the works as identified on the Defects List (The Defect Works).

When the LHA is satisfied that all works identified have been conducted in accordance with the Section 38/Section 278 Agreement and Worcestershire County Council's specification or as otherwise directed as above, then the Provisional Certificate of Completion (PCC) will be issued. This period denotes the start of the maintenance period. At this stage, the Bond supporting the Agreement

would then typically be reduced to 50% of its original value. The developer will remain fully responsible for maintaining the works until a Final Certificate of Completion (FCC) is issued.

The issue of the Provisional Certificate of Completion will constitute the road being 'first open' to the public traffic for the purposes of Sec. 1(9) of the Land Compensation Act 1973. The Section 38/Section 278 Agreement will make provision for the developer to indemnify Worcestershire County Council from any claims relating to the works including those made under the Land Compensation Act 1973.

Where a developer has pre-commenced work on highways to be included within the Section 38 agreement, we will consider the imposition of a 36-month maintenance period. Even though a road is 'open to public traffic' it will not, in respect of Section 38 Works, constitute the road(s) becoming highway maintainable at the public expense until the Final Certificate of Completion is issued.

Similarly, in respect of any Section 278 Works conducted, the works will not be deemed to form part of the publicly maintainable highway until the issue of the Final Certificate of Completion.

### 13. Defects, Default Works and Notice to Surety

If the requirements (the Default Works) have not been completed as set out above (or due to circumstances such as non-cooperation or the developer company not operating), the Local Highway Authority with advice from the authority's Legal Services, will pursue legal options for ensuring the works are completed satisfactorily.

Worcestershire County Council may without prejudice to any other right claim or remedy under the Section 38 Section/278 Agreement:

*In respect of In the case of an Agreement supported by a Bond or Surety, send to the Surety a Notice in writing ("the Default Notice") specifying the works required to be carried out, containing an estimate by our Engineer or Agent of the cost of carrying out the outstanding works and of the cost of administration, supervision, execution, completion and maintenance of the works for a period of 12 months prior to the street(s) and way(s) becoming (or in the case of existing highway maintainable at the public expense forming part of) a highway maintainable at the public expense ("the Default Costs"); [the Surety or [The Default Notice will require the Surety] or Bondsman to pay the Default Costs and upon receipt the County Council will apply the sum(s) set out in the Default Notice to carry out the works specified in the Default Notice as appropriate];*

*or In the case of the financial surety being in the form of a cash deposit lodged with Worcestershire County Council, send to the developer a Notice in writing ("the Default Notice") specifying the work to be carried out, containing an estimate by our Engineer or Agent of the cost of carrying out the outstanding works and of the cost of administration, supervision, execution, completion and*

*maintenance of the works for a period of 12 months prior to the street(s) and way(s) becoming (or in the case of existing highway maintainable at the public expense forming part of) a highway maintainable at the public expense, (the Default Costs) and without further notice to the developer apply the sum held upon deposit in the execution of carrying out the Default Works.*

### **14. Commuted Sums**

Committed sums are financial contributions made by third parties such as developers, to the Local Highway Authority as compensation for taking on the future maintenance responsibility and costs for newly created highway infrastructure assets either through new highways or highway improvements arising from development adopted by the Local Highways Authority. Committed sums are usually secured through Section 38 and/or Section 278 legal agreements made with developers and landowners.

Information about Committed Sums is published on Worcestershire County Council's website and will be reviewed and updated annually.

### **15. Issuing a Final Certificate of Completion**

At the end of the maintenance period the developer must request the Final Certificate of Completion (the Final Certificate) from the Local Highway Authority in writing. Copies of as-built drawings will also need to be supplied at the time the request is made.

### **16. Inspection Process following a request for a Final Certificate**

The inspection process for the issuing of the Final Certificate will follow that of Paragraphs A and B of the Provisional Certificate inspection process above.

The Final Certificate of Completion will be issued when the Local Highway Authority's Inspector is satisfied that all works identified have been conducted in accordance with the Section 38 / Section 278 Agreement, and Worcestershire County Council's specification or as otherwise directed.

The issuing of the Final Certificate signifies Worcestershire County Council's adoption of Section 38 / Section 278 Works. Any roads open to public traffic, forming part of Section 38 Works will at this point become highway(s) maintainable at the public expense. The Bond or deposit provided in support of the Agreement may now be cancelled/refunded. Should the developer not have conducted the Default Works, nor requested the Final Certificate of Completion within 18 months of the date of issue of the Provisional Certificate, Worcestershire County Council will apply the remedies set out in section 13 entitled 'Defects, Default Works and Notice to Surety' above.

### **17. Health and Safety**

Prior to formal adoption, the developer will be required to submit a copy of the completed Health and Safety File in accordance with the Construction, Design and Management 2015 Regulations.

### **18. How to apply for Section 278 and/or a Section 38 Legal Agreement**

All developer applications for a Section 278 and/or a Section 38 Legal Agreement should be made online through the [Worcestershire County Council online developer portal](#).

If you are unable to make a submission online, you will need to request an electronic form and return it to Worcestershire County Council. Developers or agents may email the County Council with the site name and address in the subject line. Once completed, the form will need to be saved as a PDF and returned by email to: [s278ands38@worcestershire.gov.uk](mailto:s278ands38@worcestershire.gov.uk)

However, if requested and applicable, should a developer or agent require a printed form, then this should be made in writing to:

Section 38/Section 278 Development Control,  
Directorate of Economy & Infrastructure,  
Worcestershire County Council,  
Wildwood, Wildwood Drive,  
Worcester, WR5 2QT

For further information regarding Section 38/Section 278 Agreements, please contact the team directly as follows:

Email [s278ands38@worcestershire.gov.uk](mailto:s278ands38@worcestershire.gov.uk)

Telephone number 01905 844053