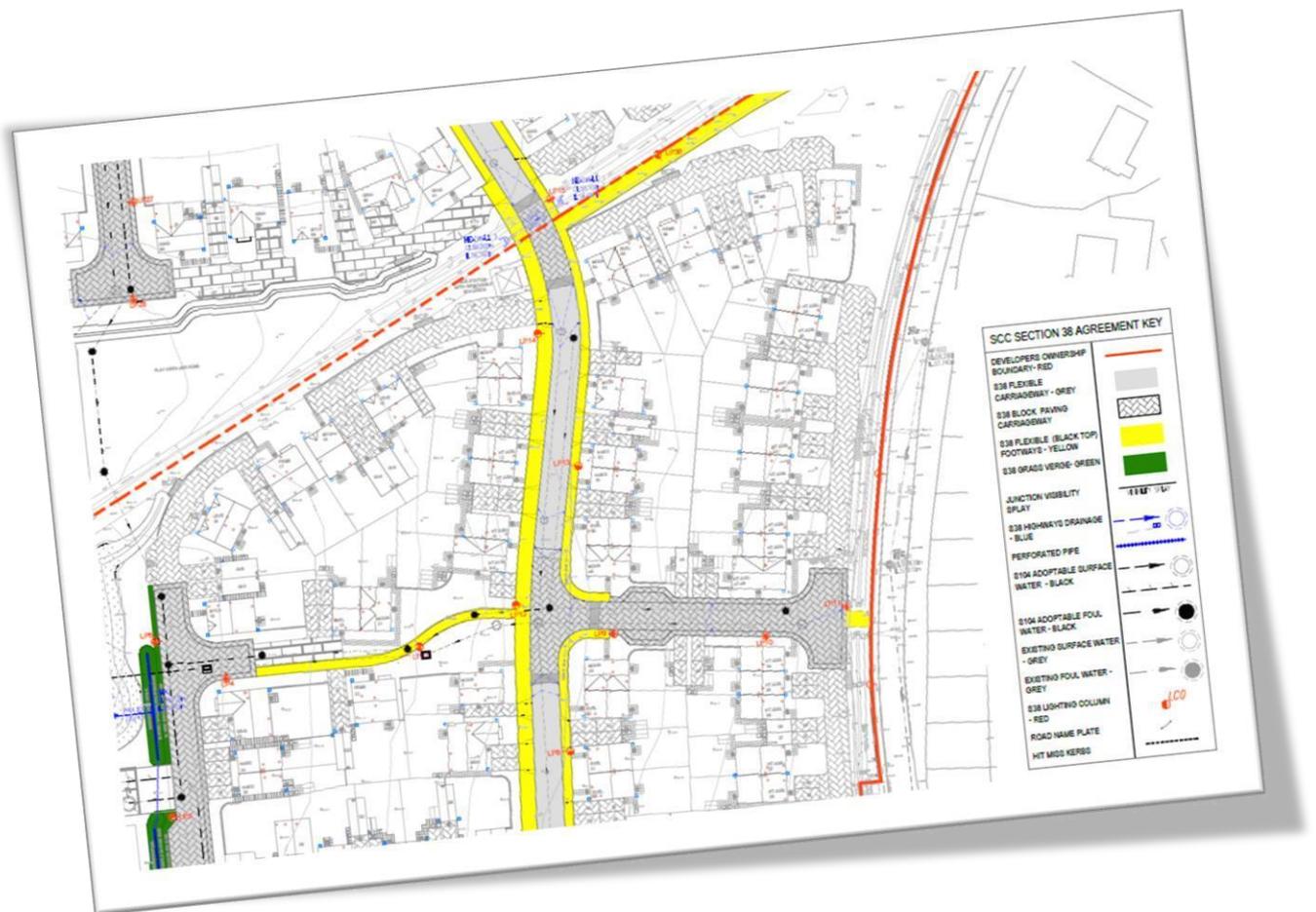


Guidance for S38 Agreement

The Application



A. Introduction

Please read this guidance in conjunction with the relevant with the S38 Application Form. Please note, this guidance should be adhered to because any missing or incorrect information may result in delays to the agreement.

B. General

Suffolk County Council (SCC) as highway authority, is responsible for ensuring the safe delivery of roads required by developers to facilitate new developments. Agreements under Section 38 is the preferred method of securing adoption of new highways. An Agreement under this section of the 1980 Act provides a structured robust procedure for the technical approval of the works, regular inspections, and mechanisms through which the works are completed to an appropriate standard and other Council requirements.

Suffolk County Council will consider adoption and maintenance at the public expense all new residential estate roads and associated essential infrastructure, which are considered to provide sufficient public benefit, via the provision of access to developments of six or more dwellings subject to specific criteria being met.

C. Legal

SCC encourage entering into the Section 38 Agreement as early as possible in the process, before construction starts on site as this will then enable an Advanced Payment Code (Highways Act 1980 Section 219 to 225) Exemption to be issued. Where the agreement includes works on the Highway, the S38 Agreement and Bond must be in place before works start. NOTE – a S278 agreement is necessary when there are works on the existing highway.

SCC has a strict sealing procedure for all agreements. If construction works commence prior to the agreement being signed and sealed, any works completed without inspection are done so at developer's risk. SCC will expect the Developer to provide all necessary information to demonstrate that any highway proposed for adoption has been constructed in accordance with SCC's specifications. Retrospective testing, including opening up of the pavements may be required. All such works will be at the cost of the Developer. If SCC is not satisfied that the highway has been constructed to its satisfaction it may terminate the agreement and refuse to adopt it as public highway.

Once the drafting of the legal agreement for the S38 has been agreed between all parties, a final electronic draft with any plans is required so the officer instructing Suffolk Legal can check the contents. Once Suffolk Legal is satisfied that all is in order, the Director of Strategic Development will give Suffolk Legal authority to have the agreement sealed. At this stage, the applicant will be required to send the engrossed copy to SCC for sealing.

As a matter of procedure, the engrossed paper copy will always be checked against the final electronic draft received. If there are any discrepancies it is our policy to return the paper copy to its origins for amendment as SCC cannot seal any agreement if it is not in accordance with that authorised. This procedure is in place to save time for all parties. All fees in accordance with the agreement are due before SCC will seal. The applicant's co-operation is appreciated, and these procedures are strict in order to protect both parties' interests.

SCC expects applicants to:

- Construct works to the agreed drawings and specifications
- pay commuted sums where appropriate to provide for ongoing maintenance
- comply with SCC's S38 Guidance and
- pay all checking and inspection fees

D. Planning or Other Consent

All works on the public highway require permission from the Highway Authority (Suffolk County Council). For the purpose of the agreement, the Highway Authority role will be fulfilled by the County Council's Development Management Team.

Conditions for the Permission may need to be discharged prior to commencement; we recommend the Developer investigates prior to starting on site.

To work on the public highway without permission is unlawful and dangerous. Do not carry out any work within the highway yourself or with an unlicensed or nonaccredited contractor.

E. Bonds, Fees and Sums

Bond - The works are secured by an appropriate Surety/Bond which ensures that the road works can be completed in the event of the developer defaulting. The technical details and specifications for the works must be in accordance with the requirements of the technical guidance. The Highway Authority requires payment of a bond to cover any future risks that Suffolk County Council may be exposed to, e.g. to ensure works are completed and to highway specification.

Fees – SCC fee for checking and inspection for the site is 7.5% of the Bond. An initial fee of **£5000** is to be paid to Suffolk County Council **before** any application will be processed. The full fee will be payable upon completion of the agreement or prior to any works commencing on site (to enable inspections to be undertaken). The fee is to cover SCCs reasonable costs for technical approval, site inspection and other associated activities and it does not make a profit on this activity.

Commutated sums – are financial contributions made by third parties to Highway Authorities as compensation for taking on the future maintenance responsibility for newly created highways or highway improvements. Commuted sums for S38 agreements are where the costs of maintaining 'non-standard' items or construction which utilises specialist materials or exceptional items, features or specifications (traffic signals, bollards, trees, swales, special drainage features etc). Also, where additional street lighting is required on cycleways/footways that are not adjacent to the carriageway.

F. Design Considerations

The Developer must appoint a competent designer, either an internal team or consultant, for the duration of the design, submission and review period, to respond to any queries that may arise. It is strongly recommended that the same designer is retained during construction to assist with any changes to the design during construction and prepare the as build drawings and health and safety file.

The Construction (Design and Management) Regulations 2015 (CDM) are to be adhered to on all S38 schemes. For avoidance of doubt, the Developer is the “Client” in terms of the CDM Regulations and cannot delegate this responsibility. In all Submissions, the CDM Client shall -

- appoint a Principal Designer who has the appropriate skills, knowledge and experience to fulfil their duties under CDM.

The Design Consultant should be retained for the construction and the maintenance period to address any issues that arise during the construction or the Stage 3 Road Safety Audit. It is the Developers responsibility to ensure that the proposed design is in accordance with the relevant planning permission and that all necessary planning conditions have been discharged.

Construction Standards - any works within the proposed highway must meet requirements for materials and workmanship by Suffolk County Council. For detailed information, go to Suffolk Streets Design, Standard Drawings and SCC Specification for Estate Roads.

Street Lighting and Traffic Signals - all street lighting and traffic signal designs are checked by SCC engineers (at the Developer’s expense) to ensure that they meet the council’s specification and requirements. Developers can employ SCC to design street lighting and traffic signals; this often eases the process for S38 agreements as it avoid delays associated with the designs completed by others not meeting the council’s requirements.

Dealing with Surface Water - details of surface water drainage must be supplied as part of the application. If you intend to connect to the public sewer system, you will require permission from the responsible utility company (in Suffolk, usually Anglian Water). Where additional surface water is drained into a highway drainage system the Developer will need to prove that the existing system is fit for this purpose and does not need additional capacity.

It is the Highways Authorities preference that surface water drainage beyond the highway boundary shall be adopted and maintained by (in order of preference)

- i. District or Borough Council (in Public Open Space)
- ii. Water Authority (Anglian Water)
- iii. Internal Drainage Board
- iv. Highways Authority (drainage of public highway only)
- v. Management Company (In this case details should be included as planning condition or by land charge)

Adoption and future maintenance agreements shall be developed using the Model agreements for sustainable water management systems CIRIA C625.

Applicants should note that any existing ditch or watercourse affected by the Highway Works requires consent from Suffolk County Council’s Flood and Water Management Team.

If applicable, a copy of their approval to your proposals should accompany the application form.

<https://www.suffolk.gov.uk/roads-and-transport/flooding-and-drainage/working-on-a-watercourse> Email: floods@suffolk.gov.uk

G. Required Drawings

Drawings must be supplied electronically through the application portal where possible, but can also be supplied by email or transfer site.

Drawing files must be submitted in PDF format

Drawing files must be submitted with the filename format:

Drawing number – Revision Number – Drawing Title

The applicant is required to provide the following drawings:

- S38 Plan (General Arrangement) – this plan needs to include
 - the site's Red Line (as planning permission)
 - new adopted carriageway – coloured grey,
 - new adopted footway – coloured yellow,
 - new adopted verge – coloured green
 - New adopted drainage – coloured blue
 - New adopted street lighting (including lit signs) – coloured red
 - All signage, road marking and bollards – coloured black
 - Tactile paving and traffic calming measures – outlined in black
 - Trees to be adopted by the Highway Authority – outlined in green
 - Easements for highway authority drainage (coloured purple)
- Engineering drawings including kerbing details
- Setting out drawings showing carriageway and footway widths including chainages
- Drainage design showing gullies and include contours
- S104 design to be adopted by Water Authority
- Plans showing location of existing and proposed Statutory Undertakers apparatus (“integrated services design drawing”)
- Construction details and sections
- Long sections indicating existing and proposed levels, vertical elements etc.
- Visibility splays for all junctions
- Approved street lighting (including lit signs)
- Approved traffic signals
- Surface finish details
- Road markings, signs, street furniture including bollards
- Tracking analysis

H. Required Documents

The applicant is required to provide the following documents:

- Site or Pavement Investigation report relating to the areas within the S278 agreement
- Test Results such as CBR and LWD results to support any design assumptions (see Appendix 1/5 of the SCC Estate Roads Specification for full list of testing)
- Drainage calculations
- If a ditch/watercourse affected, Land drainage consent certificate from Floods Team

I. Checking & Review of Application

SCC aims for respond within the following timescales:

- Initial review: within 10 working days of the latter of payment or submission of full design package. If at this stage, the design is considered to have significant omissions work will be paused.
- Preliminary Comments: within 20 working days of the latter of payment or submission of full design package subject to acceptance in the initial review
- Resolution of technical queries: This is an iterative process involving dialog between the applicant, their designer and the SCC DM team and other specialists and depends on the complexity and size of the project and the quality of the application.
- Technical Approval: This typically takes 6 weeks from initial review for most straightforward projects.

J. Technical Acceptance

Once the Technical Approval Engineer is satisfied the drawings and documents are acceptable, they will issue the Technical Acceptance Form to the Developer. The Technical Approval Engineer will instruct Suffolk Legal at this time to start the legal process.

The Technical Acceptance relates to the supplied documents and drawings only. Alterations to any drawings will render acceptance null and void unless agreed in writing with SCC. Should the works authorised by the S38 Agreement not be completed within 24 months of the date of issue, a new Technical Acceptance must be sought as specification may have changed. This will be treated as a new agreement and another initial checking fee may be payable.

The Technical Acceptance is **NOT** the S38 agreement. If construction works commence prior to the agreement being signed and sealed, inspections are to be completed by SCC as the initial fee has been paid. However, further fees may be sought prior to the agreement being signed. Any works completed without inspection are done so at developer's risk. Retrospective testing at the developer's cost may be required by SCC to confirm adoptable construction standards.

When the contractor is appointed, The Technical Approval Engineer and Inspecting Engineer are to be invited to the pre-start meeting. (See Guidance for S38 Agreements Construction for further information).

It is the Developers responsibility to ensure that all contractors have the correct drawings, specifications and other information required to complete the project in accordance with the approved details.