

Section 278 Agreements

The Section 278 Agreement is a legally binding document between the Council and the developer to ensure that the work to be carried out on the highway is completed to the standards and satisfaction of the Council.

The Developer or his appointed Agent is advised to contact the Council (transportation@enfield.gov.uk) at the earliest opportunity and fill in *The s278 s38 application form* available from this website, to ensure that the requirement to obtain technical approvals and agreements does not cause any unnecessary delays.

The document is prepared by the Council's solicitor and issued to the developer's solicitor in draft format. The details of the agreement are then agreed before the final document is completed and signed by both parties before the commencement of any work on site.

The agreement details what the requirements of both the Council and developer are to ensure that the proposed works are carried out in accordance with the approved drawings. It also details how the Council may act should the developer fail to complete the works.

Key elements which are likely to be included in a typical Section 278 Agreement may also include the following:

- The relevant planning permission and authorisation under which the works are to be carried out
- A schedule detailing the works to be done and shown on appropriate plans
- The extent of the improvements and any land to be conveyed to the Local Highway Authority (dedicated land)
- Details of a bond or surety
- An agreement of who will design and/or project manage the new works. This can either be the Council or a consultant Highway Engineer working on behalf of the developer
- Details of the full costs of the works to be paid by the developer and also the Council's administrative, legal, design checks and inspection costs
- Details of commuted sums for the future maintenance of the improvement works

The developer will be required to pay the Council for all fees and other associated payments for the preparation of the Section 278 Agreement.

The developer will be required to provide information to the Council to assist in the preparation of the Section 278 Agreement, such as:

- Name and Address of the developer's solicitor
- Confirmation of the developer's intention to use a Bond or Surety to cover the construction cost of the proposed works

- Name and Address of the proposed contractor including references, insurances and certificates to work on the public highway. (However, if the Council is procuring the construction of the works they will use their approved contractors).
- Traffic Regulation Orders. Where Section 278 works involve modifications to an existing Traffic Regulation Order (TRO) or a new order is required you will be required to pay all costs associated with this including legal fees.

The developer's Highway Engineer prepares the detailed design in accordance with the relevant design standards and submits them to the Council for technical approval, after which they are submitted to the Planning Department in the first stage of discharging the planning condition.

The level of detail required for technical approval will depend on the scope and complexity of the scheme but detailed design drawings at 1:500/1:200 scale will generally be required and will normally include the following:

- General Arrangement showing the extent of site works
- Site Clearance detailing items to be removed
- Fencing
- Drainage layout showing existing and proposed, pipe runs, manhole and gully positions, pipe size, pipe gradients, pipe diameter, outfall details, backfill details, unique numbering of pipes/gullies and chambers and a full drainage schedule. Pipes intended to be adopted should be annotated
- Earthworks showing details of embankment/cutting construction, verge treatments etc.
- Carriageway and footway construction details indicating areas of different types of construction, areas of planing/inlay/overlay and reconstruction. Evidence of adequacy of construction (cores of existing construction / pavement calculations), construction detail at interface of existing and new works, trench reinstatements etc.
- Kerbing, edging and channel details; different types to be shown, including areas of over-break and reinstatement of surrounding carriageway and footway construction etc.
- Traffic signs positions and road markings; including schedules of new traffic signs and road markings
- Cycle routes position and cycle route markings, including any improvements proposed;
- Landscaping proposals including types of plants and trees
- Road lighting, illuminated signs and illuminated street furniture positions
- Electrical works; ducts, service chambers, underground cables, position of feeder pillars and schematic cable diagrams etc.
- Structures position and orientation

- Services/statutory undertakers' details showing existing and any proposed alterations/protection measures/diversions etc. with estimated costs
- Appropriate cross sections and longitudinal sections showing existing and proposed levels
- Setting out drawing showing critical dimensions of the design that require technical approval
- Standard construction details
- Plans showing swept turning paths/vehicular movements of various sizes of vehicle around the vehicular routes of the proposed highway scheme
- Accommodation works; details of alterations to fencing, accesses, driveways etc. including details of consultations and agreement with landowner
- Coloured plan showing full limits of Section 278 Agreement Works, inclusive of suitable working space and land to be dedicated for highway purposes
- Layouts showing any easements or way-leaves required for future maintenance purposes
- Temporary traffic management measures, road closures and diversion routes
- Land transfer drawings and schedules

The Council use a standard model Agreement and a draft can be issued upon request. Please note that it may be necessary to make amendments to the wording of the Agreement in some instances to allow for specific highway structures.

It is a requirement of the Council that a safety audit is carried out for all the highway works covered by Section 278 Agreements by an accredited safety auditor independent from the design consultant.

The developer is responsible for complying with all aspects of the Construction Design and Management Regulations 2015 and indemnifying the Council against all claims, liabilities and actions if you fail to do so.

Supervision Fee and Bond

- **Bond.** This is the surety that is required to cover the works and can either be arranged with a financial institution or as a deposit made to the council. This will probably depend on the size of the development. The bond is calculated on the construction costs based on the Council's contractors' rates and is usually reduced by 90% when the site starts the twelve-month maintenance period.
- **Supervision Fee.** This covers the checking of all drawing to ensure that all proposals will meet adoptable standards and the supervision of construction. £2,145 will need to be deposited with the submission of drawings for checking. This is half of the minimum Supervision Fee. The remainder of the Supervision fee will be calculated on the size and complexity of the development using the Council's contractor's rates at the time. The formula for working out the Supervision Fee is: A flat rate of £4,290 for works up to £10,000 in value +12% of the value of works over £10,000 + the actual cost of accrue street lighting etc. into the PFI contract. The initial £2,145 will be taken into account

within the calculation of the overall Supervision Fee. Note: - No supervision to commence on-site until fee payment has been received.

- Payment of the £2,145 deposit should be made by credit/debit card to The London Borough of Enfield, via the following URL web link: <https://www.enfield.gov.uk/make-a-payment>. Select 'Other Payments'. Continue as a 'Guest' and from the drop-down menu select Section 278 to continue with the payment options.

Once payment has been made please forward any confirmation of payment details together with the completed application form.

- For BACS payments please contact traffic@enfield.gov.uk for further details.

A Stage 2 Safety Audit must be submitted with the detailed design package. Please note that the Council will only issue technical approval after:

- A satisfactory design package has been submitted.
- Stage 2 Safety Audit has been satisfactorily completed.
- Any amended details have been submitted and approved.

Preliminary Design Stage

Once planning permission for the development has been obtained it may be necessary to submit a preliminary design where major works on the highway are taking place. This will avoid any major design changes having to be requested at the detailed design stage.

At this stage, you should also contact other interested parties who may have an influence on the scheme design such as Statutory Undertakers, Access Groups or the Environment Agency etc.

Detailed Design Stage

Once the preliminary design has been approved the detailed design will be required.

Structures

Where a highway structure is included or affected by the proposed Section 278 works the design of it must comply with agreed standards set out by our Structures and Watercourses team.

Traffic Regulation Orders

Where Section 278 works involve modifications to an existing Traffic Regulation Order (TRO) or a new order is required you will be required to pay all costs associated with this including legal fees.

Traffic Signal Equipment

Where traffic signal equipment is proposed for the scheme there will be a requirement for you to forward detailed design information to Transport for London who will be responsible for the approval of the design.

When the detailed design has been agreed and incorporated into the road layout drawings the Council will procure its installation by approaching Transport for London direct. All costs associated with the implementation of the traffic signals will be the responsibility of the developer. Transport for London normally requires advance payment for their work.

Contractor Approval

All road works carried out on the existing highway must be done by a contractor that has relevant experience and competency. All contractors must be approved by the Council prior to the commencement of highway works.

Public Liability Insurance

The Council must be indemnified against any claims by third parties arising from any work included in the Section 278 Agreement. Details of Public Liability Insurance must be provided up to the value of £10 million.

Health and Safety

You must comply with all aspects of the Health and Safety at Work Act 1974 and the Construction Design and Management Regulations 2015 and must indemnify the Council against all claims liabilities and actions from third parties arising from any of these matters.

Commencement of Works

If there is a necessity to commence work before the Section 278 Agreement is entered into, you may deposit a sum of money with the Council equal to the total cost of the Council's estimate. The deposited sum will be kept in an interest-bearing account but any interest accrued will be retained by the Council.

You are responsible for arranging a pre-start co-ordination meeting with all interested parties and ensure that the following has been provided:

- Approved drawings have been issued.
- Traffic control measures and permits have been arranged.
- Emergency contact numbers have been provided.
- Programme of works has been agreed and provided.

The Developers representative should take photographs of the site prior to commencement so that damage to the existing highway can be assessed and recorded for future reference.

Site Inspections

The developer is responsible for the day to day supervision of the road works. The Council's site supervising engineer will only inspect the works to check that they are constructed in accordance with approved drawings.

Issue of Certificates

Under the terms of the Section 278 Agreement two certificates will be issued.

The Substantial Completion Certificate will be issued after the highway works have been substantially completed.

- Street lighting has been installed and is operational.
- Landscaping works have been completed.
- Works have been inspected and no significant defects been identified.
- Stage 3 Safety Audit has been completed and any changes attended to.

Once The Substantial Completion Certificate has been issued the Bond supporting the Section 278 Agreement will be reduced in accordance with the Agreement.

You will remain responsible for maintaining the highway works for twelve months after The Substantial Completion Certificate has been issued.

The Final Certificate will be issued after:

- Works have been inspected and no significant defects been identified.
- As built drawings and the Health and Safety File have been supplied
- Stage 4 Safety Audit has been completed and any changes attended to.

Release of Bond/Performance Security

Once all the Section 278 works have been completed to the Council's satisfaction the outstanding Bond or Deposit will be released.