

Road Adoptions Under Section 38 of the Highways Act 1980

Background

A private road is one which is not maintained at public expense. This means that the council, as a Highway Authority, is under no obligation to carry out repairs or clean this road.

A road which is maintainable at public expense (often called public highway) is maintained and managed by the relevant Highway Authority; in this instance Enfield Council.

Road adoption is a process where a road in private ownership becomes a public road, which is then managed and maintained by the council, as part of the public highway.

It is most commonly undertaken where new development is being built and is governed by a legal contract known as a Section 38 agreement.

To find out if a road is already adopted an application can be made to the council:
<https://new.enfield.gov.uk/services/roads-and-transport/roads-and-pavements/road-adoption/>

Determining if roads are suitable for adoption

A new road will be considered by the Council for adoption provided that the freehold owner(s) of the land dedicate the road as a public highway when it is built, under a Section 38 Agreement of the Highways Act 1980 and the following criteria are met:

- there is a direct link with the existing public highway network
- the road will have a wider use than simply providing access to residential or commercial properties; it must be of sufficient utility to the public and offer wider community benefits.
- the road will remain open to the public to pass and re-pass at all times when formally adopted.
- the carriageway and footways offer safe passage for pedestrians, vehicles and cyclists.
- the carriageway and footways have an approved means of surface water drainage
- street lighting must conform with the current local requirements and national standards
- they are constructed to a satisfactory standard
- commuted sums may need to be paid to provide ongoing maintenance, particularly for landscaped areas and bespoke items such as planters and non-standard lighting.

For all roads offered for adoption, the developers must ensure that these accords with the above criteria prior to consulting the council. The council does not adopt all new roads built by housing developers. Housing developers can choose to keep their new roads private if roads do not meet above criteria.

Soft verges and landscaped areas will not automatically be adopted and consultation with the Council is advised as early as possible. Large areas of landscaping may require a commuted sum. Where verges are acceptable for adoption, trees (existing and new), shrubs and hedges within those verges will be adopted provided they are of a type that conforms to the Council's specification.

If the proposed road meets the criteria above, the Developer or their 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.

Section 38 Agreements

The Section 38 Agreement is a legal document, normally between the council, a housing developer and a surety, who financially guarantees the agreement. The terms of the agreement describe that if the developer builds the new road up to the council's standards and maintains it for a year after it has built the final phase, then the council will adopt it as a public road. The agreement normally includes other terms, such as:

- the road construction duration and the maintenance period
- responsibility for maintenance and repair of the road before adoption
- payment of the council's fees and charges including commuted payments by the developer
- any land transfer arrangement and way leaves.

Sometimes road adoption is delayed for the following reasons:

- the developer starts building the road before entering into the Section 38 Agreement
- the developer tries to vary the standard terms of the Council's Section 38 Agreement
- the developer builds the road slowly or does not finish it

- the developer does not build the road up to the council's standards
- delays by the sewerage authority in adopting the sewers serving the development
- delays in completing the outstanding remedial works on the adoptable highway

On larger developments, the completed road may be used as site access for other phases of the development, therefore adoption can only be undertaken on completion of the whole development. This may raise further complications if the site is divided by different developers and on completion some developers leave the site without the roads being adopted.

The adoption process can be lengthy and while the road remains un-adopted, the developer is responsible for maintaining the road until adoption is complete. Otherwise it is the owners of properties or land that have frontages onto such roads who are responsible for their upkeep.

Fees for Section 38 Agreements will involve:

- Legal costs for our solicitors to draw up the agreement
- 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 contractor's 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 along with the formal adoption process. £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 that 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 cheque payable to The London Borough of Enfield, forwarded with a covering letter and completed application form. For on-line or BACS payments please contact traffic@enfield.gov.uk for further details.

The information set out in Appendix 1 is required before the Section 38 can be processed. Once the plans have been approved a digital copy of the layout plan and other plans should be provided.

Site work should not commence until all plans have been approved. Any work that is undertaken without full approval is at the Developer's risk and may require alteration/uncovering at a later date.

Notice of Commencement & Inspections

The Council must be notified at least seven days (excluding weekends and public holidays) prior to the commencement of work.

Periodic inspections will be made but the Developer must give four days' notice, (excluding weekends and public holidays), of his intention to lay each layer of construction or to backfill trenches. Failure to comply with this requirement may result in the Developer being asked to prove thickness and type of material that has been covered. The Developer will be required to submit materials to be used for approval by the Council.

The Developer must allow for testing by an independent accredited laboratory and provide the Council with the results. These tests will be required to identify soil condition/properties and to confirm that materials laid in construction layers conform to the specification. Such tests may involve core cutting and trials pits in completed work. Where such tests are carried out the area affected should be made good by the Developer (at their own cost) to the satisfaction of the Council.

Completion Certificate & Maintenance Period

On completion of the works, the Developer must arrange for an inspection to be carried out by the Council. If the works are complete to the satisfaction of the Council (and the agreement has been signed) a completion certificate will be issued and the 12 months' maintenance period commence.

Statutory Undertakers

The Developer is responsible for consulting all Statutory Undertakers before commencement of the work and again before final surfacing is laid.

Sewers

All sewers within the highway must be adopted by Thames Water. The Developer should contact Thames Water in connection with the design and adoption of sewers pursuant to Section 104 of the Water Industry Act 1991. The relevant contact details are:

Thames Water Developer Services, Blake House (1st Floor), Manor Farm Road, Reading, Berkshire, RG2 0JN, tel: 0845 850 2777, e-mail: developer.services@thameswater.co.uk, website: www.thames-water.com/mainsanddrains

Consents, Permits, Traffic Management and Maintenance of Access

The Developer is responsible for obtaining all necessary permits, consents, permissions for any excavations, hoardings of works affecting existing public highways or sewers as a result of the development, or any other private permission required.

Record of the Works (As Built Drawings)

Before the expiry of the Maintenance Period the Developer shall provide the Council with a full record of all the works as completed including two sets of plans and sections coloured in accordance with Appendix 1 showing the precise position of lamp columns, street lighting cables, road signs and service cables, manholes with invert and cover levels, sewer runs, water, electricity, gas, cable TV, & telephone equipment. Details of carriageway and footway construction layers shall also be provided.

Final Certificate

At the end of the 12 month period a further inspection should be arranged. The final certificate will be issued subject to the following:

- Satisfactory completion of any necessary remedial works
- Submission of test certificates for all adoptable electrical installations
- Submission of the Thames Water vesting certificate(s) to confirm adoption of the sewers
- Jetting of all gullies
- Removal of all weeds and litter from the adoptable areas
- Replacement of bulb and lantern cleanse for all adoptable street lighting

On issue of the final certificate, the adoptable areas will become maintainable at public expense.

For enquiries regarding Section 38 adoption agreements please contact the council's Traffic and Transportation Section on transportation@enfield.gov.uk

S38 CHECKLIST

The following details are required before the Section 38 can be processed.

	Tick
Developer's full name, address and contact details	
Names and addresses of parties to the Agreement	
Details of Developer's Solicitors	
Proof of land title	
Details of the relevant planning permission	
Site location plan	
As stage 1 safety audit (depending on the scope of the highway alterations)	
Estimated cost of the highway works (including Utility Company costs)	
Details of the Bond or Cash deposit to guarantee the Agreement	
Letter to confirm the covering of the Council's reasonable (abortive) costs	

Plans (1:200 or 1:500 scale), drawn on a current survey base, together with calculations and supporting documents showing all relevant details in respect of the following:

Layout	Tick
<ul style="list-style-type: none"> Plans indicating the areas of proposed highway offered for adoption. The following colouring should be used: <ul style="list-style-type: none"> Site boundary Red Existing highway to be altered: Red Carriageway, footway, footpath, cycle track Brown Landscaped areas Green Road gullies and highway drains Blue Street lighting Red circle Road signs Red circle/blue cross Plans indicating the position of all carriageways, footways, footpaths, cycleways, verges, service strips, visibility splays, traffic calming features, surface water drainage including gully positions, position of dwellings, gradients of driveways, garaging and/or parking spaces with vehicular crossings, traffic signs, road markings and structures For layouts not conforming to normal Highway Authority standards, a drawing and schedule indicating different materials proposed together with appropriate areas for use in the calculation of commuted sums Stage 1 Safety Audit 	

Vertical Alignment <ul style="list-style-type: none"> • Longitudinal sections of the carriageway showing existing and proposed levels for the centre line, channel, gradients and vertical curves with the appropriate horizontal road layout drawn below this section. • Longitudinal sections must also indicate surface and foul water sewer profiles including the position of manholes, gradients, pipe sizes etc. 	
Standard Details <ul style="list-style-type: none"> • Typical cross sections showing carriageway, footway and verge construction including details of kerbs and edgings • Typical construction details of footways, footpaths, cycleways, vehicular accesses and pedestrian crossing points kerbs, manholes and pipe bedding 	
Ground Conditions <ul style="list-style-type: none"> • A geotechnical report, including CBR test results at formation 	
Drainage <ul style="list-style-type: none"> • Details of existing and proposed surface and foul water drainage, including a highway gully layout • Calculations of surface water run-off • A manhole schedule • Details of deeds of easements and discharge consents 	
Landscaping <ul style="list-style-type: none"> • Details of planting and additional maintenance proposals 	
Other Features <ul style="list-style-type: none"> • Any specialist information regarding bridges, culverts, headwalls and retaining walls supplied on separate drawings 	
Street Lighting <ul style="list-style-type: none"> • A street lighting layout and specification in accordance with the Council's lighting guidance. 	