# Frequently Asked Questions - New Estate Road Adoption

**How does a new road become adopted as public highway?**

The County Council's policy is to consider adoption of new roads for maintenance at public expense where they serve 6 or more dwellings. However, as the Highway Authority, the County Council has no power to insist that a road is made up to an adoptable standard or that a road is subsequently offered for adoption.

The construction of new highway on housing estates is the responsibility of the developer, who constructs the development at the pace he considers fit. If the road under construction is to be adopted (and not all are), the role of the County Council, as Highway Authority, is to ensure that it is built to the appropriate standard and adequately lit and drained.

There are two main ways in which a new road may be offered to the Highway Authority for adoption to become maintainable at the public expense:

1. The developer may complete the construction of the road and then offer it to the Highway Authority under Section 37 of the Highways Act 1980; or,

2. The developer may opt for the more desirable route and enter into a legal agreement under Section 38 of the Highways Act 1980.

**What is the difference?**

Adoption under Section 37 allows the developer to construct the road and complete the development without the need for a formal road agreement with the Highway Authority. Provided the road is considered to be of sufficient utility to the public to justify its being maintained at the public expense and has been constructed to an acceptable specification, the Highway Authority would accept the notice of proposed dedication by the developer and following a 12 month maintenance period the road would become maintainable at the public expense.

Adoption under Section 38 allows the developer to enter into a legal agreement with the Highway Authority to secure ultimate adoption of a new estate road. The agreement comprises a framework of clauses, conditions, terms and prescribed timescales within which the developer is expected to operate. Whilst the Highway Authority has no power to insist that a developer enter into a Section 38 agreement, many consider it the most desirable route to achieve ultimate adoption of their estate road(s). If an agreement is in place the developer will receive the full purchase price of a house from the buyer without any retention being made to cover possible future road charges.

A Section 38 agreement is always supported by a bond or cash deposit calculated by the Highway Authority and based on the cost of the works proposed. This bond or cash deposit can be called upon if the developer goes into liquidation or otherwise defaults on his responsibilities.

**When will the road be finished under S38?**

A Section 38 agreement requires the developer to complete the road(s) not later than the completion of all dwellings fronting, adjoining, abutting or otherwise accessed by the road(s) or within 2 years of the date of the agreement whichever is the sooner.

Upon satisfactory completion of the road(s) a Provisional Certificate of Completion is issued by the Highway Authority following which the developer must fully maintain the road(s) for a period of twelve months. Provided no remedial works are required at the end of the twelve month maintenance period, the Highway Authority will issue a Final Certificate of Completion whereupon the road(s) will become highway maintainable at public expense.

**What is done to ensure a developer completes the road adoption under S38?**

A Section 38 agreement will require the developer to complete certain works within prescribed timescales. For example, before any dwelling fronting a new road is occupied, the carriageway must be complete to base course of the surfacing material (the layer under the final finished road surface), the footways must be complete and the street lighting must be operational. Consequently, adherence to the agreement should secure a safe and usable highway for residents prior to formal adoption.

Large developments comprising an extensive network of roads and footpaths are often divided into phases, with a separate S38 agreement for each phase, sometimes with different developers. This scenario is the most challenging in terms of establishing appropriate road construction and completion rates as developers are often under pressure to build and sell houses out of normal sequence due to market demand. Different developers build at different rates and not all sections of road within a development may be completed in sequence. For a section of road to become adopted highway it needs to be connected to another section of adopted highway. This can sometimes result in sections of road being completed to a suitable standard but not being adopted until such time as the sections of road connecting it to the adopted highway are also completed to an adoptable standard.

Whilst a S38 agreement is normally sealed for a period of two years, it is possible for a developer to negotiate an extension of time, provided there is acceptable justification for doing so, for a further period not exceeding two years. The developer will incur further fee charges and possible additional bond charges if an extension of time is agreed. There is, therefore, a financial incentive for the developer to complete the roads on time.

Development Management Inspectors regularly visit sites to ensure that the highway works are being installed in accordance with the approved plans and to ensure that the works are progressing in accordance with the agreement. However, site inspections and technical vetting for Section 38 agreements will only commence on receipt of a full application and the associated fees.

**What happens if the developer defaults on his obligations or goes bankrupt?**

If the developer fails to satisfactorily progress the works in accordance with the agreement the Highway Authority will always attempt first to resolve the problem by negotiation. If this fails then the Highway Authority have the option of calling upon the bond to pay for the highway works to be completed.

If developers are deemed not to have made sufficient progress in completing road works to facilitate the adoption process, within the timescales set out in the agreement, a formal notice will be issued giving three months for the developer to demonstrate that the completion of the road works is being actively pursued. If, after three months, there is no evidence of the road works being actively pursued to completion, the Director of Highways and Access will seek to use the agreement surety to fund the completion of the road works by the County Council. Similarly, if the developer defaults due to bankruptcy, the bond would be used to pay for the completion of any outstanding highway works.

**What about industrial estate roads?**

Roads that only provide access to industrial estates or commercial or business parks will not be adopted as highway maintainable at public expense.

**What about parking in estate roads?**

Roads in urban and suburban locations will only be adopted subject to the payment by the developer of a deposit to meet the costs of introducing parking controls based on the assumption that all parking will be prohibited other than in specifically designed and designated parking places. If parking controls are not implemented within 5 years of the adoption of the road as highway maintainable at public expense, the deposited sum will be refunded.

**What can house buyers do to mitigate any future road charges in the event that there is no Section 38 Agreement in place?**

When purchasing a property the buyers' solicitor or legal representative should undertake a Local Authority Land Search to gain important information on the likely responsibilities that will be transferred when contracts are exchanged. One of the responses to the Search will reveal if the road fronting the property is maintained at the public expense, or if not, whether there is a Section 38 Road Agreement in place to secure future adoption. In the event that there is no Section 38 Agreement in place, it is strongly recommended that the buyer, through their solicitor, retains some of the purchase price of the property to pay for possible road works in the future. Whilst it cannot be guaranteed that collectively the retention sums will cover the cost of any necessary road works to bring the road up to adoption standard, it may go some considerable way to securing adoption or achieving an outcome that is acceptable to the residents.

**What is a reasonable retention sum?**

Retention sums are usually based on the length of property frontage to the road, or roads, and the current linear metre cost of estate road construction. For example, a buyer of a property with a 10 metre long frontage to the road should, using the current construction cost of £1100 per linear metre, look to retain a sum of £5,500 (10 x 1100 ÷ 2 (half the width of the road) = £5,500).

Advice relating to current linear metre estate road costs can be obtained from the Highway Development Management Team, the details of which are given below.

**Who do I contact for advice or further information?**

If you have any questions or would like further information on road adoption and/or the Section 38 agreement process, please contact Sue Reynolds, the Manager for Highways Development Management:

- By telephone on 01223 703594
- By e-mail: sue.reynolds@cambridgeshire.gov.uk