

North East Lincolnshire Council - S38/ S278 Process

Section 38 Agreement.

For the Authority to adopt and maintain a new road or footway for public use, it must be formally approved and constructed strictly in accordance with our technical specifications. The developer is required to enter into a legal agreement with us (Section 38 road agreement).

Section 38 agreements relate to the proposed construction of new development roads, footways, lighting and associated infrastructure that are intended for adoption and to be maintained by the Highway Authority following completion and the satisfactory build to our specification.

Any proposed new roads, footways or associated infrastructure must have planning permission, be proposed to serve multiple dwellings, must connect directly to the existing public highway, or to an adjacent development with an active legal agreement in place.

S278 Agreement.

If the layout of a public road or footway is proposed to be changed or a new addition is required within the existing Highway, the Developer is required to enter into a legal agreement with the local highway authority (Section 278 agreement).

These works may include (but not limited to): New or modified junctions, Right turn lanes, Traffic signals, Pedestrian crossings, Carriageway widening/passing places, Amendments to footways and cycleways, Traffic regulation infrastructure or Safety improvements

S38/S278 Application.

Once planning permission is obtained and before any work starts on site, it is vital that detailed construction drawings are submitted, reviewed and granted technical approval by the Highway Authority and the relevant legal agreement is in place prior to any works commencing on site.

To enter into a legal agreement with North East Lincolnshire Council, you will need to submit the latest S38 or S278 application form with all supporting documentation listed. Incomplete submissions will not be reviewed until all information on the application form is received. We will review the application and supporting documentation, undertake the design assessment and provide technical feedback within 35 days of receiving a full submission. The Authority will formally issue Technical Approval only after all engineering drawings are deemed satisfactory and all requested supplementary information has been fully submitted.

Bond

A bond is required to secure the Authorities costs should the developer fail to complete the works. Once the engineering drawings are ready for technical approval, the Authority will issue a bond calculation form to the developer. The developer must complete and return this form to calculate the estimated construction costs and the associated inspection fees. The bond will be reduced at the agreed stages: Interim (50% reduction), Maintenance (10% residual reduction) and Final Adoption (reduced to zero).

Technical Approval

Designs must undergo a Technical Approval process before they will be considered for adoption by the Council. Once Technical Approval is granted the Highway Authority will issue a Technical Approval Certificate and letter to the developer including the calculated bond value. Technical Approvals are valid for 24 months from the date of technical approval. If the legal agreement has not been signed by all parties at the point at which the technical approval expires or, if no work has commenced on site before technical approval expires, the approval drawings and documents will need to be resubmitted to the council for re-review and the bond/ fees recalculated to the current rates.

Inspection fees

Following the receipt of Technical Approval, and before any construction begins on site, the developer must formally advise the Highway Authority of the intended site commencement date and submit payment for inspections. No works should commence on site until payment has been made and the start date is confirmed.

Pre-Start Meeting

The developer must contact The Highway Authority and advise the intention to begin construction work giving a minimum of 4 weeks' notice

The Highway Authority will organise a 'Pre-Start' meeting with the developer/designer and contractor to discuss the S38/S278 requirements to include Introductions, Scheme details, Legal Matters, Inspection process, traffic management, contractual matters and the S38/S278 process.

Commuted Sums and Future Liabilities

Where infrastructure creates additional future maintenance costs beyond standard highway provision, commuted sums may be required. The requirement for commuted sums will be determined during the technical approval process and this sum must be paid prior to adoption.

Construction Phase

It is the developers responsibility to contact The Highway Authority at the relevant key stages of the build to carry out inspections.

The Highway Authority shall be notified at least 5 working days in advance to undertake inspections at the relevant stages detailed below.

The Highway Authority will not adopt any infrastructure constructed during periods when:

- The Authority were not notified to undertake a required inspection.
- The Authority was unable to inspect due to the relevant legal agreement not being executed.
- The Authority was unable to inspect due to the inspections fees not being paid.

The table below outlines the mandatory inspection and certification requirements for each construction stage:

	Evidence Required To Proceed	Testing Required
1) Entry to site	• Inspection fees paid. • Technical Approval & S38/S278 legal agreement in place. • Pre-start meeting prior to works commencing. • Streetworks permits in place where required.	
2) Commencement of highway drainage	• Verification of materials, units, frames, pipes, bedding, backfill, protection. (Inspection by NELC S38/S278 Engineer, Photographic evidence & Materials Tickets).	• CCTV survey of all highway drain pipes including gully laterals.
3) Preparation of carriageway formation	• Inspection at formation by NELC S38/S278 Engineer. • CBR information to be submitted to NELC S38/S278 Engineer for construction depth approval. • Verification of geotextile & capping materials Tickets to be provided.	• Dynamic Plate test (DPT) or Plate Bearing test (PBT) One per 100m or minimum two per site.
4) Kerb construction	• Inspection of kerb lines, levels, faces, upstands by NELC S38/S278 Engineer. • Materials tickets to be provided.	
5) Carriageway capping / sub-base	• Inspection of sub-base and depth of material by NELC S38/S278 Engineer. • Verification of geotextile, capping & sub-base material tickets to be provided (Including non-frost susceptibility).	• Plate Bearing test (PBT) to assess compaction. One per 100m, minimum two per site.
6) Carriageway base & binder course	• Inspection of base and binder course ensuring sufficient depth to allow for surface course by NELC S38/S278 Engineer. • Verification of base & binder material tickets to be provided.	• Cores to assess thickness, compaction and bond. One per 100m, minimum three per site.
7) Preparation of footway formation / sub base	• Inspection of sub-base, depth of material (Including depth at vehicle crossovers), Weed Spray to formation, edgings bed & backing, depth allowance for binder & surface course, Lamp Columns in correct locations by NELC S38/S278 Engineer. • Verification of sub-base material (non-frost susceptible) tickets to be provided.	
8) Footway binder & surface course	• Inspection of binder & surface course, depth of material, kerb upstands & tactile crossings by NELC S38/S278 Engineer. • Verification of binder & surface material tickets to be provided.	• Cores to assess thickness, compaction and bond. One per 100m, minimum three per site.
9) Carriageway surface course	• Inspection of carriageway surface by NELC S38/S278 Engineer. • Verification of surface course material tickets to be provided (PSV requirements where required).	• Cores to assess thickness, compaction and bond. One per 100m, minimum three per site. • Electrical testing certificates required for street lighting.

Any part of the build not inspected by the highway authority will not be adopted unless proven acceptable by means of additional testing and interpretive reports entirely at the developers expense. Any part of the build that does not comply with the approved drawings or specifications will be replaced entirely at the developers expense before it will be considered for adoption.

Maintenance Period

Upon completion of the works the Developer must formally request a pre-maintenance inspection from the Highway Authority to initiate the 12-month maintenance period. If inspectors identify any major defects, the maintenance period will not begin until the identified remedial works are completed and meet the approved standards and specification. Minor defects may be highlighted that must be completed prior to adoption. Once the Highway Authority verifies that all major remedial actions have been satisfactorily undertaken, The Authority will issue a Maintenance Certificate. The 12-month maintenance/defects liability period will then commence, and the bond will be reduced to 10% of the original value.

During the maintenance period:

- The Developer must arrange for as built drawings to be submitted.
- The Developer must supply all relevant Street lighting test certificates.
- The developer retains responsibility for all maintenance and defect rectification throughout this period.
- Any structural failures, ground settlement, cracking, drainage issues, or asset defects must be fully resolved to the Authority's satisfaction before final adoption will take place.

Final Certificate

Upon completion of the 12 month maintenance period the Developer must formally request a pre-adoption inspection from the Highway. The developer will receive formal notification of any outstanding or additional remedial works required before S38 adoption or S278 Final Certificate can proceed. Once all remedial works are completed to our satisfaction and specification, the Highway Authority will issue the final certificate and the bond will be reduced to zero.

Final adoption will occur once the following conditions are met in full:

- All defects identified during the pre-maintenance and final inspections are resolved to the satisfaction of the Highway Authority.
- Roads and footways are swept and cleaned.
- Gullies and drainage systems cleansed & CCTV survey received.
- Pre-Adoption Street Lighting inspection has been carried out and any defects addressed.
- As-Built drawings received for the entire adoptable area, clearly displaying individual road names.
- S104 Vesting Certificate received.