



Roads in Hertfordshire: A Design Guide

3rd Edition

Section 3: Legal and Procedural Matters





Synopsis

Section 3 contains more detailed information on all aspects of Highway Layout and strategies for implementation. There are chapters on legal agreements, commuted sums, financial contributions and other legal/regulative/procedural aspect. Other chapters are focused on issues such as Health and Safety, Construction and Construction monitoring, Traffic Regulation Orders, and Adoption. There is also information on design considerations for Landscapes, Green Infrastructure and Drainage.

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Section 3: Legal and Procedural Matters

Chapter 1: Legal Aspects



1. Legal Aspects

1.1. General

For the purposes of making agreements with a scheme promoter for alterations to the highway, the powers of the Highway and Local Planning Authorities are Section 278 of the Highways Act 1980 and Section 106 of the Town and Country Planning Act 1990 and subordinate legislation under those Acts.

Additionally Section 38 of the Highways Act enables HCC to achieve agreement with a scheme promoter for the construction, layout and adoption of a new street. Agreements with householders for the construction of vehicle crossovers are enabled through Section 184 of the Act.

HCC as the Highway Authority requires each Section 38 agreement to be supported by either a cash deposit from the scheme promoter or a bond given by an approved surety to the full amount of the Authority's estimate of the cost of the works to be adopted with an additional 10% to cover costs.

Fees to cover the reasonable costs incurred by HCC in its execution of all aspects of the adoption process will also be payable in full by the scheme promoter. These are likely to include costs relating to preparation of the agreement; approving and checking the detailed contract drawings; supervision of the works and collecting and processing the information required to enter new roads onto the Authority's record systems.

In addition, HCC may require the scheme promoter to pay agreed commuted sums to cover future maintenance liability in respect of elements of the work. Commuted sums are discussed later in this section of the guide.

It is recommended that all scheme promoters seek appropriate legal advice or assistance in all cases when entering into agreements with the Planning and Highway Authorities. General information on the main legal agreements is given below.

1.2. Section 278 Agreements

Under this provision HCC and scheme promoter may enter into an agreement for the execution of highway works that are necessary to achieve access to a development site and / or to mitigate the impact of the development. This is the form of agreement for highway alteration works associated with a development. The preferred procedures for undertaking off-site highways works are outlined in Chapter 11 of this Section.

Design and construction of the works on the highway may be undertaken by HCC, however, a Section 278 agreement also allows for the scheme promoter (acting as HCC's agent) to design and carry out the required works. Safeguards will be incorporated into the Agreement to ensure the works are to the satisfaction HCC and their duties and obligations regarding the Public Highway are protected. Such works are usually wholly at the scheme promoter's expense whoever undertakes them. The works must be undertaken by a contractor approved by HCC.

Section 278 agreements can provide for the making of payments to HCC by the scheme promoter in respect of the maintenance of the works to which the Agreement relates. Such payments are usually in the form of a commuted sum and may include specific elements of the scheme, for example structures, maintenance of traffic signal installations or maintenance and replacement value for drainage discharge structures such as soakaways.

Detailed guidance on current Section 278 procedures is available on the HCC website at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/infdev/devcopi/guidevs>

1.3. Section 106 Agreements

Section 106 of the Town and Country Planning Act allows a *LPA* to enter into a legally binding agreement (planning obligation) with a landowner and scheme promoter to secure the construction of highways works and/ or financial contributions to mitigate the impact of a development proposal.

The obligation is sometimes referred to as a Section 106 (or 'S106') agreement. Such agreements can cover almost any relevant issue and can include sums of money. Section 106 agreements can act as a main instrument for placing restrictions on a scheme promoter, often requiring them to minimise the impact of development on the local area or community and to undertake measures which will bring benefit. The scheme promoter will need to prove title to the land which will be subject to the Section 106 agreement.

Section 106 agreements are often linked to or combined with Section 278 agreements. In other words provision may be made within a Section 106 agreement requiring the scheme promoter to enter into a separate Section 278 agreement to enable the execution of the negotiated highway works.

For some development proposals, it may be appropriate to negotiate financial contributions from the scheme promoter towards future infrastructure improvement schemes or other transport related measures, such as bus service enhancements. A Section 106 agreement is the means by which such financial contributions are secured.

Guidance is given in Circular 05/05 on what is appropriate to be sought under a Section 106 agreement. This was largely superseded in April 2010 by the introduction of the Community Infrastructure Levy whose Regulation 122 requires that a planning obligation may only constitute a reason for granting planning permission if it is:

- a. necessary to make the development acceptable in planning terms;
- b. directly related to the development; and
- c. fairly and reasonably related in scale and kind to the development.

Further information on financial contributions is given in Chapter 3: Financial Contributions.

Detailed guidance on HCC's planning obligations procedures is available on the HCC website at <http://www.hertsdirect.org/yrccouncil/hcc/resandperf/hertsprop/planningobs/>

1.4. Section 38 Agreements

In a new development, roads will be constructed to provide access from buildings within the development to the highway network. These roads are deemed to be private streets unless the owner of the land (usually the scheme promoter) has entered into an agreement under Section 38 of the Highways Act for adoption by HCC (or where there is an agency agreement, the District or Borough Council as HCC's agent) of the roads on their completion.

The scheme promoter will need to prove title to the land which will be subject to the Section 38 agreement, and demonstrate a right to discharge surface water from the highway to either a watercourse or a proposed or existing public sewer.

Where the proposed development includes the construction of foul sewers, surface water sewers and other associated works and these are the subject of a Section 104 Agreement

under the Water Industry Act 1991 (see Chapter 12) then this agreement should be completed prior to the completion of any Section 38 agreement.

All works carried out under the terms of a Section 38 agreement shall be to the satisfaction of the Director (i.e. the Director of Environment & Commercial Services of the HCC, deemed to include the servants, agents and Licensees of the Director).

Following completion of the works and the expiry of a maintenance period (normally 12 months), HCC will thereafter maintain the road and the scheme promoter will be absolved from any further liability for maintenance.

At the scheme promoter's request and where HCC thinks it reasonable, a site may be divided into a number of stages. A Section 38 Agreement can then be completed for each stage of the site before work commences on the buildings in that stage.

Detailed guidance on current Section 38 procedures is available on the HCC website at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/infdev/devcopi/guidevs>

1.5. The Advanced Payment Code (APC)

The Road Adoption Advance Payment Code (APC) (Highways Act Sections 219 – 225) is a statutory tool dating from 1959 which was designed to provide for the future making up of private streets in the event of the builder defaulting.

HCC takes the view that the Code is an inefficient way of ensuring that roads for adoption are identified early in the process and that all parties are working towards a positive outcome for residents and highway users. In Hertfordshire this is achieved through identification at planning application stage of the extent of adoption and active engagement of HCC, LPA and scheme promoter from then on.

1.6. Highway Stopping Up Orders

If land that is currently Public Highway will be built over or will no longer be needed as highway once the work has been carried out, the highway rights will need to be formally rescinded or Stopped Up. Orders can be obtained either under the Town and Country Planning Act or the Highways Act.

1.6.1. Town and Country Planning Act

If the Stopping Up is part of a development then the Order should be obtained under Section 247 of the Town and Country Planning Act 1990. This can only be done before or whilst the development is ongoing as long as the highway land is unaffected.

1.6.2. Highways Act

If Stopping Up is not done whilst the development is ongoing the Order will have to be obtained using Sections 116 and 117 of the Highways Act 1980. This method will involve HCC presenting all evidence to a Magistrates' Court who will decide whether to make the order.

If a Stopping Up Order is not obtained and the development is built on land that is highway, HCC can either request the removal of the part which is on the highway, or remove the development and recover the costs from the scheme promoter.

1.6.3. Costs

All costs relating to any processes and procedures necessary, to prepare and put in place any appropriate measures involving statutory procedures, will be met by the scheme promoter.

1.6.4. Process / Timescales for Implementing Stopping Up Orders

The need for any Stopping Up Orders will have been identified at an earlier stage in the planning process, ideally in pre-application discussions or when HCC was formally consulted by the *LPA*. All parties should thus be aware that an order procedure needs to be pursued and hence should be aware of the timescales involved.

1.7. Miscellaneous Licences

HCC is under a statutory duty imposed under section 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of and to prevent so far as possible, the unauthorised Stopping Up of or encroachment on or obstruction of all or any part of the Public Highway within the area of the Authority. The aim is to ensure that the Public Highway remains in a condition that is safe and easy for use by the public. Likewise HCC has powers of enforcement under NRSWA 1991.

Both Acts allow HCC to issue licences to the public to allow certain activities this includes:-

- Skips (Highways Act Section 139 & 140);
- Scaffolds (including mobile cranes cherry pickers scissor lifts etc) (Highways Act 1980, Section 169.);
- Hoardings (Highways Act 1980 Section 169 & 172);
- Licence to Place Structures within the Highway (Street Cafes, Pubs etc.) (Highways Act 1980 Section 115E);
- Licence to Plant (Highways Act 1980 Section 141 and 142);
- Cranes (oversail licence) Highways Act 1980 (S178);
- Materials on the Highway (Highways Act 1980: Section 171);
- A Boards (Highways Act 1980 Section 115E);
- Street Works Licence (Section 50 NRSWA 1991).
- Vehicle Crossover Access Across Footways and Verges (Highways Act 1980 Section 184)

The Hertfordshire Highways Network Team carries out practical works to maintain the Public Highway. When problems occur it will use advice and persuasion to deal with matters informally and where necessary, direct enforcement action or prosecution proceedings.

Application forms and guidance for all of the above can be obtained from the Area Network Management teams or on line at www.hertsdirect.org. Information on skip and scaffold licences is also available on the HCC website at

<http://www.hertsdirect.org/envroads/roadstrans/highways/honlineservices/skipandscaffold/>



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Chapter 2: Commuted Sums



2. Commuted Sums

2.1. Authority to Require Commuted Sums

HCC as the Highway Authority has wide authority to require financial support for future maintenance and renewal costs for roads that are adopted to become highway maintainable at the public expense under provisions within the Highways Act.

Section 38 of the Highways Act, which enables HCC to achieve agreement with a scheme promoter for the construction, laying out and adoption of a new street, states that agreements for adoption S38(6):

“...may contain such provision as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and any other relevant matters that the authority making the agreement thinks fit.”

Section 278 of the Highways Act provides for the making of payments to HCC by the scheme promoter in respect of the maintenance of the works to which the agreement relates.

Section 278(3) states:

“The agreement may also provide for the making to HCC of payments in respect of the maintenance of the works to which the agreement relates and may contain such incidental and consequential provisions as appear to HCC to be necessary or expedient for the purposes of the agreement.”

The financial support for future maintenance and renewal costs is usually in the form of payment of a single commuted sum or sums, currently associated with particular elements of the works and /or types of construction which are likely to incur long term extraordinary maintenance commitments.

2.2. Elements Attracting Commuted Sums

A commuted sum could be required due to the non-standard nature of those works which will require maintenance in excess of that normally required in order to keep the highway in such a state to be safe and fit for the ordinary traffic expected to use it.. HCC currently requests commuted sums for the following elements:

- Structures
- Soakaways
- Traffic signal installations
- Areas of special surfacing
- Areas of special landscape/ green infrastructure including trees
- Areas of special surfacing
- Special street lighting installations
- Special street furniture
- Noise fencing
- Sustainable drainage systems (SUDS)

This is not an exhaustive list. It is only intended to illustrate broad principles. Scheme promoters are encouraged to discuss where commuted sums might be required with HCC at the earliest possible opportunity.

For further information scheme promoters should contact HCC at the appropriate HCC Environment & Commercial Services Department Area Office.

2.3. Calculation of Commuted Sums

The value of the commuted sums requested is currently as follows:

- Structures - 20% of structural cost
- Soakaways - sum calculated using standard formula
- Traffic signal installations - 20% of cost
- Areas of special surfacing - negotiated sum
- Areas of special landscape - negotiated sum
- Special street lighting installations - negotiated sum
- SUDS, Pervious pavements, Geocellular/ Modular Systems - negotiated sum

Scheme promoter should seek advice from HCC regarding this element. Full details of the negotiated sums will be included within the relevant legal agreement (Section 38 / Section 278).

2.4. Payment of Commuted Sums

In the case of new development which is to be adopted by HCC under a Section 38 agreement as highway maintainable at public expense, all commuted sums as specified in the agreement must be paid to HCC upon issue of the Certificate of Maintenance. This is generally 12 months after the issue of a Certificate of Completion by the Director of Environment & Commercial Services.

In the case of off-site works (i.e. works on an existing highway) subject to a Section 278 agreement, commuted sums included as covenants in the agreement must be paid to HCC upon the issue of the Certificate of Completion by the Director of Environment & Commercial Services.



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Chapter 3: Financial Contributions



3. Financial Contributions

3.1. Community Infrastructure Levy (CIL)

The Community Infrastructure Levy (CIL) is a voluntary mechanism that allows Local Authorities in England and Wales to levy a standard charge on most types of new development in order to fund the infrastructure needed to support development in their area. The regime for this new charge came into force in April 2010. However none of the *LPA*s in Hertfordshire have the necessary scale of charges in place at the time of writing and therefore planning obligations under Section 106 will continue to be sought.

3.2. Section 106 Contributions

Scheme promoters should be aware that in Section 106 negotiations HCC will seek to obtain the maximum private sector contribution compatible with Government guidance and HCC's Transportation Objectives.

Pressure for improvement to performance of highway and transport infrastructure has increased in recent years due to continuing growth in car usage coupled with levels of development in Hertfordshire. As a result of this pressure and in order to fulfil its obligations as Highway Authority, HCC has sought contributions from scheme promoters whenever possible to assist in necessary infrastructure or service improvements.

Such contributions are only sought from developments which will add to an existing highway problem or create a new one. The approach is that each development should add, in transport terms, enough provision to at least overcome the net overall effect it has on the transport system as a whole. Each development will be considered in relation to the Transport Assessment prepared alongside the planning application.

The incremental effects of development and the spread of their effects over a wide area mean that it may be appropriate for an improvement to be provided in a single location to fully resolve a problem, rather than a large number of more minor improvements being implemented over a wider area to mitigate the effects of an individual development. Equally, partial contributions toward a wider improvement scheme may also be appropriate.

In line with current HCC transport policies, it may also be appropriate to negotiate contributions for improvement to passenger transport or walking and cycling facilities in lieu of capacity improvements for general traffic.

Contributions may also be sought for other transport facilities as may be appropriate, including traffic calming, pedestrian crossings, footways, cycle tracks and cycle crossings, street lighting, bus passenger infrastructure, passenger information systems, interchange facilities and Park and Ride facilities.

It is now accepted that we can all be encouraged to make more sustainable transport choices if assisted with measures like travel plans at the place of work or residence as well as initiatives like the TravelSmart's Individualised Travel Marketing (ITM).

HCC Cabinet approved 'Planning Obligations Guidance - Toolkit for Hertfordshire' in January 2008. The guidance provides information on HCC's approach and justification for planning obligations, model template documents and contact details. This document can be found on HCC's website at www.hertsdirect.org.



In addition to transport the guidance also covers education, libraries, youth & childcare, fire & rescue, adult care services and other matters.

The Toolkit should be used in conjunction with any guidance or templates produced by individual District or Borough planning authorities in Hertfordshire and it should be noted that where adopted guidance is produced by them the local documents will take precedence. Further details may be obtained from the local district or borough planning authorities and are usually available on their websites.



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Chapter 4: Health & Safety



4. Health and Safety

4.1. HCC Schemes

Health and Safety procedures for HCC schemes are contained in the Hertfordshire Highways IMS available to HCC staff and their contract partners on the intranet Compass.

4.2. Development

The scheme promoter is alerted to the fact that the construction of buildings and associated highway and services infrastructure is deemed to be 'Construction Work' and therefore falls within the scope of CDM 2007 - Construction (Design and Management) Regulations 2007.

The scheme promoter will hold duties under these Regulations and failure to comply with these duties is a criminal offence and can lead to unlimited fines or imprisonment. The scheme promoter is advised to obtain the services of professional advisors to ensure that the various requirements of CDM 2007 Regulations are met.

4.2.1. Design

Even though HCC may make suggestions in relation to highway proposals to mitigate the impact of development at the pre-planning and planning application stage, the scheme promoter will be responsible for appointing a competent Designer to ensure duties under the Regulations are complied with.

4.2.2. Construction

In relation to any development works that are to be carried out on existing highways or are carried out on those parts of the development that are to be adopted by HCC, (where the works are subject to the CDM 2007 Regulations), then the scheme promoter shall be the only Client for the purposes of the CDM 2007 Regulations and HCC will require the scheme promoter to enter into an agreement that:

- The scheme promoter is elected as 'client' under regulation 8;
- The scheme promoter formalises the above declaration and agrees to fulfil client duties through a signed declaration;
- Where a project is notifiable (as defined in regulation 2(3)) the scheme promoter must provide HCC with a copy of the Project Notifications given to the HSE, as detailed in schedule 1;
- Where a project is notifiable (as defined in regulation 2(3)) the scheme promoter must confirm to HCC, before the start of the construction phase, that an appropriate Pre construction Information pack (in accordance with Appendix 2) has been developed by the CDMC and a Construction Phase Plan (in accordance with Appendix 3) has been 'sufficiently developed' by the Principal Contractor and reviewed by the CDMC;
- Requires the scheme promoter to deliver to HCC an appropriately developed Health and Safety File within 1 month of the works completion following the requirements outlined in paragraph 263 of the ACoP and as per regulations 20(1)(c).and 20(2)(e).



See also [Section 3, Chapter 9: Completion and Transfer](#) on the subject of the hand-over of the Health & Safety File on completion of the project.

The complete Health & Safety file must be handed over to HCC one month after completion of the work it describes.



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Chapter 5: Submission Documents



5. Submission Documents

When a scheme promoter makes an application to HCC or District or Borough Council appropriate for estate roads (including highway drainage) to be adopted, a two-stage process will be followed.

The scheme promoter will be required to complete an application form and submit documentation at these two stages as detailed below:

5.1. Stage 1 Documentation

A copy of the detailed planning consent and of the application drawing together with three sets of the proposed scheme shall be submitted to HCC (at the appropriate HCC Area Office-see Chapter 1-2-1 Areas of Responsibility).

The plans of the proposed scheme shall be fully dimensioned in metric units with scale bars to allow them to be read if not reproduced at 100% magnification. They should clearly indicate the following details:

- the extent of the scheme promoter's total site ownership, edged in red;
- site location and all accesses;
- road, footway and footpath layouts, including service access strips, verges, proposed accesses, visibility splays and sight lines, plot boundaries, traffic calming and speed control features, building positions, garages and vehicle crossings, parking spaces, trees, planting and landscaping, cross-section locations and contours if appropriate. Falls or gradients in turning spaces and on private drives should also be indicated;
- the category of road (major access, minor access, shared space etc) for each section of the road layout;
- where appropriate, turning circles or vehicle tracking simulation printouts indicating the capability of roads to accommodate the turning movements of the main types of vehicles expected to use each road section shall be submitted;
- long sections, showing existing and proposed levels, gradients, vertical curves, transitions, manholes etc. Pipe and pipe bedding classifications should also be included;
- highway drainage layout and calculations and any drawings as necessary to detail features such as soakaways, etc;
- cross sections as may be necessary to indicate how areas of cut and fill are balanced or dealt with;
- typical cross sections showing carriageway and footway specifications, gradients, kerb details, etc;
- any special requirements laid down by the *LPA*, for example in relation to the use of particular materials or construction elements in conservation areas; and
- approval for connections and drainage from Water Authority /Environment Agency.

Four additional copies of the road layout plan(s) showing proposed street lighting, signing, road markings and other street furniture must also be submitted.

In addition, the following shall be submitted:

- Two copies of specification, drawings and calculations for all structures;
- Two copies of the Design and Access Statement (See Section 1, Chapter 4) where applicable;
- Approval In Principle submission; and
- Two copies of the site investigation report, setting out details of the ground conditions, soil types and properties together with details of road pavement design calculations.

A Stage 1 Safety Audit will be required where considered necessary. In addition, a Safety Audit of the detailed design (defined as a 'Stage 2' safety audit in HD19/03) will also be required for development which includes highway improvements and / or formation of junctions with existing highway. Safety audits are discussed further in Chapter 6: Design Checks and Safety Audits.

The District or Borough Council shall be consulted with regard to areas of open space, landscape and general amenity.

After checking by HCC, drawings will be returned to the scheme promoter indicating the area HCC is prepared to adopt, together with any amendments relating to street lighting columns, road signs, markings and other street furniture. Recommendations of the safety audit will also be referred to the scheme promoter for alteration to the design drawings to be made and re-submitted.

Consultations with other interested parties (such as the police (Architectural Liaison Officer and Traffic Management Officer), HCC's Passenger Transport Unit etc) which form part of the checking process will be co-ordinated by the relevant HCC officer dealing with the application.

5.1.1. Payment for checking of Stage 1 submissions

The actual cost of checking and approving the drawings required at Stage 1 submissions will be charged to the scheme promoter. This will include the costs of the Stage 1 / Stage 2 safety audit (as required). An agreed deposit must be paid before any checks will be undertaken. If this deposit proves to be insufficient further payment will be required on completion of checking and prior to the authority issuing approval. Similarly, if the deposited sum exceeds the final cost of checking, a refund will be made.

5.2. Stage 2 Documentation

The scheme promoter must then (unless otherwise advised by HCC) submit twelve copies of the amended plan, coloured as follows:

Boundary of scheme promoter's ownership	Red edging
Carriageway	Grey
Footways / footpaths	Brown
Footway crossing	Grey
Highway grassed areas (verges etc.)	Green
Street lighting columns	Yellow circle
Road signs	Red circle / blue cross
Highway drainage	Light blue
Public foul sewer	Red dashed
Public surface water sewer	Purple
Public open space & amenity areas	Green hatched
Highway easement for future maintenance	Orange hatched
Extent of highway works	Edged green
Land to be dedicated	Edged dark blue
Land to be stopped up	Hatched black
Visibility Splays	Pink

Highway drainage should carry surface water from the highway only; if other water enters the system, it cannot be adopted as a highway drain and must be submitted to the Sewerage Undertaker. See also Section 5 Chapter 4: Road Drainage and Section 5 Chapter 6: Design and Service Ducts.



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Chapter 6: Design Checks and Safety Audits



6. Design Checks and Safety Audits

6.1. General

HCC has a longstanding commitment to promote road safety as well as a statutory duty to carry out a programme of measures designed to promote road safety. This has been translated into a policy objective within HCC's LTP:

"To improve safety for all by giving the highest priority to minimising the number of collisions and injuries occurring as a result of the transport system".

HCC aims to achieve road collision and casualty reductions through a number of programmes including road safety audit. HCC undertakes that all significant proposals for the provision, improvement and maintenance of roads in Hertfordshire will be subjected to independent road safety audit throughout the design process.

Road safety audit comprises a series of formal safety checks applied to the proposals by independent safety audit engineers at appropriate stages in planning, design, construction and initial use. The audits take into account the physical features of the proposals, all expected users of the road and the interactions between these elements. HD19/03 sets out the requirements for the different stages of road safety audit. Further advice on road safety audit can be obtained in Road Safety Audit Guidelines produced by the Chartered Institution of Highways and Transportation (CIHT).

Road safety audits will be required at various key stages during the progress of a development proposal from application to adoption.

HCC must be satisfied as to the independence and competence of those persons undertaking safety audits. It is central to the auditing process that the audit team have had no connection with the scheme design. Audit teams should have experience and training in road safety engineering or accident investigation and prevention work.

6.2. Planning Application Stage

At planning application stage, the *LPA* will formally consult HCC where the application includes for the formation, laying out or alteration of any means of access to a highway. Where a development includes a new access to the public highway, HCC will need to be satisfied that this is safe in terms of location and geometric design features before acceptance of the highway features of the application can be recommended to the *LPA*.

To be so satisfied, an 'interim' or 'Stage 1' safety audit (as defined in HD19/03) may be required by HCC, dependant on the nature of the junction(s) proposed and the nature of the planning application. A simple access which does not require a Section 106 or Section 278 agreement is unlikely to require safety audit. Scheme promoters or designers should contact the Transport Planning & Policy section of the Environment & Commercial Services at HCC department for further guidance as to the need for safety audit. The scheme promoter may be required to pay for the audit to be undertaken.

6.3. Detailed Design Stage

Once a planning permission has been granted for a development which includes either or both new roads or highway improvements / formations of junctions with existing highway requiring Section 38 / Section 278 agreements, the scheme promoter or designer must submit detailed design drawings for approval (see Chapter 5: Submission Documents).

A detailed design (Stage 2) safety audit as defined in HD19/03 must also be undertaken at this time.

Any alterations resulting from the design checking process and /or recommendations from the Stage 2 safety audit will be referred to the scheme promoter or designer for alteration to the design drawings to be made and re-submitted. The cost of both the design checking and the Stage 2 safety audit will be borne by the scheme promoter (see Chapter 5 Submission Documents - Payment for checking of Stage 1 submissions).

When works under any Section 106, Section 278 and /or Section 38 agreements are completed, a 'Stage 3' safety audit (as defined in HD19/03) must be undertaken. This audit must be undertaken prior to the issue of the maintenance certificate but within three months of the date of any highway works being opened to traffic.

For development involving staged construction or openings, a Stage 3 safety audit may be required for each individual section or phase of development.

The cost of this audit, together with any alterations to the works required as a result to ensure the safety of users of the highway will be borne by the scheme promoter. It is normal practice at present for an upper limit of additional expense to cover such works to be specified in the agreement between the scheme promoter, HCC and LPA.

6.4. Technical Approval for Structures

In addition to checks on the highway design, if any structures carry, support or are adjacent to the Public Highway shall be checked. This should be undertaken by a Chartered Civil or Structural Engineer who shall submit the design drawings and Approval In Principle form in accordance with Departmental Standard BD2/05 to the Hertfordshire HCC Highways Structures section. For further information see [Section 2, Chapter: 11 Structures](#).



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Section 3: Legal and Procedural Matters

Chapter 7: Contractor Competence





7. Contractor Competence

For works to be undertaken on the existing public highway or for road works in a new development which are to be adopted as publicly maintainable highway, the scheme promoter must obtain HCC's approval for the contractor he wishes to appoint to construct the works.

HCC maintains an Approved List of Contractors who are pre-approved to undertake works on the highway network. Inclusion on this list is based on a number of factors including contractors satisfying HCC's requirements in relation to Health and Safety matters, demonstrable competence in their particular construction or work area or areas and previous record. Contractors' details will be reviewed after 2 years.

If the contractor a scheme promoter wishes to appoint is not currently on HCC's Approved List, they should contact HCC for further information regarding the necessary information required to enable HCC to grant approval. Any costs to HCC in approving the scheme promoter's nominated contractor may be passed back to the scheme promoter.



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Section 3: Legal and Procedural Matters

Chapter 8: Construction and Construction Monitoring



8. Construction and Construction Monitoring

8.1. Pre-Construction Requirements

Notice shall be given to HCC's Director of Environment & Commercial Services (the Director) in accordance with the Traffic Management Act 2004 (maximum 90 days) prior to the commencement of any works, excluding weekends and public holidays. Notice periods for work on structures may be subject to different periods and the scheme promoter should contact HCC's Highways Structures section for further information.

However, no work shall commence on site until all of the following have occurred:

- Detailed contract drawings, a programme of works and all traffic management measures have been prepared by the scheme promoter and approved by the Director in writing;
- Scheme promoter and contractor to have £10 million public liability insurance cover;
- If the works are subject to the CDM Regulations the scheme promoter as the sole client has provided to the Director;
 - a. written details of the CDM- Coordinator and the Principal Contractor;
 - b. a copy of the Health & Safety Executive's (HSE confirmation of receipt of a declaration by the scheme promoter pursuant to regulation 4(4) of the CDM Regulations;
 - c. a copy of any Notification of Project (HSE 'Form 10') made to the HSE pursuant to regulation 7 of the CDM Regulations; and
 - d. Confirmation that a Health and Safety Plan complying with regulation 15(4) has been prepared pursuant to regulation 10 of the CDM Regulations.
- The scheme promoter has obtained all necessary permits, consents and permissions for any excavations, hoardings or works affecting existing public highways or sewers as a result of the development, including all necessary licenses obtained and notices given pursuant to the New Roads and Street Works Act 1991;
- Where required by HCC or LPA, a noise survey and assessment has been undertaken by a noise survey expert approved by the Director and a copy of the report passed to the Director. Any requirements relating to noise reduction or attenuation measures relating to the development site specified within the report must also have been undertaken by the scheme promoter at his cost;
- A bond has been provided by a surety acceptable to the HCC, the value of which will be the total cost the works, including any necessary statutory undertakers works, together with a contingency / administration figure sufficient to fully reimburse HCC in respect of any costs and expenses that may be incurred should the scheme promoter for any reason be unable to fulfil its obligations under the agreement signed with the LPA and Highway Authority. These costs would include, for example, the cost to HCC of preparing and supervising an alternative contract to complete the works and remedy any defects prior to the works becoming maintainable at the public expense;
- The scheme promoter has made a payment to HCC to cover HCC's reasonable costs incurred in inspecting the works. The value of this payment shall be agreed with the

HCC Area Office. The scheme promoter shall be required to pay any additional reasonable supervision costs if they exceed the initial agreed value.

Additionally, details of any proposed signal controlled plant crossings of the existing highways should be submitted to HCC 21 days before they are installed. Prior consultation on such proposals is recommended. The designer should refer to Section 5, Chapter 3: Preliminaries (Series 100) for further details on this and other issues relating to commencement of the works.

The scheme promoter is also responsible for consulting all Statutory Undertakers before commencement of the work (See also Section 2, Chapter 12: Provisions for Mains Services).

8.2. Construction Monitoring

The scheme promoter shall give notice in writing to the Director (in accordance with the Traffic Management Act 2004 (maximum 90 days) of any works connected with Statutory Undertakers equipment located in or under any existing highway.

HCC will undertake periodic inspections and shall be given free access to all parts of the works but the scheme promoter must give at least three working days notice to the Director of his intention to lay each layer of construction or to backfill drainage trenches. Failure to comply with this requirement may result in the scheme promoter being asked to prove the thickness and type of material which has been covered.

The scheme promoter shall carry out tests in accordance with schedule table 3-1-3-1 as required by the Director using a UKAS approved laboratory.

It should be clearly understood that the Director acts solely for HCC and must not be regarded as 'Clerk of the Works' acting for the scheme promoter.

The scheme promoter must have a named representative on site whilst work is in progress, to which the Director can make representation during working hours.

On completion of the works, the scheme promoter will arrange for an inspection to be carried out by the Director who will, when fully satisfied with the works, agree the commencing date for the 12 month maintenance period and issue the Completion Certificate.

8.3. Extension of the Period of Agreement

If the works are not to be completed within the Period of the agreement, the scheme promoter must give notice in writing to HCC or Borough or District Council as appropriate, giving reasons why the period should be extended.

8.4. Reduction of the Bond

Following the issue of the Completion Certificate, HCC will, on application and at their discretion, reduce the amount of bond required. The value of the bond retained by HCC will be sufficient to cover the following elements:

- Cost of undertaking a Stage 3 Audit and the costs of any works arising from the audit (if these have not already been undertaken);
- Costs of rectifying any general maintenance liabilities that may arise during the maintenance period, including the cost of any remedial works identified during the pre-transfer inspection;

- Agreed commuted sum values as specified in the agreement;
- HCC's reasonable costs in administering the above elements as well as the administrative costs to be incurred in the adoption of the highway at the end of the maintenance period.

If any part of a development site has become highway maintainable at the public expense, the scheme promoter must consult the Director if he wishes to allow construction traffic to use those highways to access other parts of the development site.

The Director may then require the scheme promoter to give an undertaking to pay any additional costs of repair or maintenance that the Director attributes to this construction traffic which will be deemed 'extraordinary traffic' for the purposes of Section 59 of the Highways Act. An allowance for the ordinary cost of maintenance of the section of highway due to normal traffic loadings will be made.

Under Section 59 of the Highways Act HCC can recover the cost of excess expenses for maintenance of the highway resulting from excessive weight or extraordinary traffic passing along the highway.



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Chapter 9: Completion and Transfer



9. Completion and Transfer

9.1. Timetable for Transfer

In the case of roads that are to be adopted (i.e. to be taken over as maintainable at the public expense), the agreement (Section 278 or Section 38) will include an undertaking that agreed areas will be dedicated as highway when the completion certificate is issued by the Director to the scheme promoter.

In the case of works under a Section 278 agreement, the highway becomes maintainable at public expense upon issue of the completion certificate. However, during the 12 month maintenance period, the scheme promoter will remain responsible for the maintenance of the works, effectively acting as HCC's agent.

Under a Section 38 agreement, whilst the land specified in the agreement is dedicated as Public Highway from the date of the completion certificate, it does not become maintainable at the public expense until the issue of the maintenance certificate. The scheme promoter shall be responsible for maintaining the works, during the maintenance period, including routine maintenance elements (for example, cutting of any grass verges, gully cleansing or emptying).

9.2. Pre-Transfer Inspections

At the end of the maintenance period the scheme promoter shall give notice of the completion of the works to the Director, who will arrange and undertake an inspection of the works in conjunction with the scheme promoter prior to the issue of a maintenance certificate. This is to ensure that any defects that may have arisen or damage that may have occurred during the maintenance period have been made good to the satisfaction of the Director and to identify any outstanding items that may still require remedial work by the scheme promoter.

The Director will issue a maintenance certificate provided he is satisfied with the works at that time, provided all other requirements relating to transfer of documents and information as set out below have been satisfied.

9.3. "As Built" Drawings / Health And Safety File

After completion of the stage 3 safety audit works and prior to the issue of the maintenance certificate, the scheme promoter shall provide the Director of Environment & Commercial Services with accurate 1:500 scale "as built" drawings in a format to be agreed with the Director.

The drawings shall indicate the precise positions of lamp columns, road signs and service cables, inspection chambers (with invert and cover levels), sewer runs, soakaways and carriageway services. In addition, the scheme promoter shall also provide the following:

- Earthwork records, showing sources of material used in fill, description of fill materials, description of sub-grade materials in areas of cut, copies of results of material tests carried out during the earthworks construction;
- Construction records indicating the sources of supply of all deliveries of road construction materials, detailing the location within the works where each delivery was placed. Details of carriageway and footway construction layers should also be provided;



- Construction records indicating the sources of supply of all other manufactured materials (including, for example, drainage pipes , fencing materials, traffic signs, electrical components and cabling);
- With respect to highway structures, suitable scale 'as built' drawings with electronic copies, soil reports, records of all materials tested, revised forms TA1 and design certificates , together with a Maintenance Manual (prepared in accordance with BD62/07).

Where the development works are deemed to be subject to the CDM Regulations, the above items will be included within the Health and Safety File, which the scheme promoter must pass to Director as specified in Chapter 4: Health and Safety.



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Chapter 10: Traffic Regulation Orders



10. Traffic Regulation Orders

Highway Authorities in England are empowered under the Road Traffic Regulation Act and all subordinate legislation to make Traffic Regulation Orders (TROs) to regulate the movement and parking of vehicles and to regulate pedestrian movement. Additionally powers are provided to make Speed Limit Orders (SLOs). The procedures for how TROs are implemented are further controlled by The Local Authorities' Traffic Orders (England and Wales) Regulations and the Road Traffic (Temporary Restrictions) Procedure Regulations 1992.

It should be understood that The Road Traffic Regulation Act also imposes specific constraints on Highway Authorities and other local authorities with regards to the reasons that a TRO may be implemented. A proposal that does not meet the criteria set out within the Road Traffic Regulation Act will not be promoted.

Information on TRO's is also provided in [Section 4, Chapter 19: Traffic Regulation Orders - Detail](#)

The different types of TRO/ SLO

TROs/ SLOs are divided into 4 main categories:

- Permanent TROs (PTROs)
- Temporary TROs (TTROs)
- Experimental TROs (ETROs)
- Speed Limit Orders (SLOs)

Each category is subject to differing procedures and regulatory requirements.

A PTRO is used to implement permanent restrictions such as waiting restrictions, prohibitions of turning movements, weight, width and height restrictions, pedestrian zones, controlled parking zones etc but not speed limits.

A TTRO is used to implement restrictions under specific circumstances but in the main are associated with the safeguarding of works. A TTRO may implement any restriction or provision that may be introduced by way of a PTRO or SLO for up to a maximum of 18 months (or 6 months if affecting a footpath).

Experimental TROs are used under specific circumstances where HCC seeks to introduce and evaluate an experimental traffic scheme. Any restriction (other than speed limits) as may be made by a PTRO may be introduced experimentally.

SLOs are used to introduce speed limits and make or remove restricted road status (30mph) to lit roads.

10.1. TRO AND SLO Processes

In Hertfordshire the process is described in the HCC TRO Guidelines Manual. In general the procedures are as follows:

PTROs / SLOs –

- Informal Consultation
- Submission of Application

- Drafting of legal documents
- Publication of Press Notice 1
- Objection period (min 21 days)
- Consideration of objections
- Implementation of Works
- Sealing Of TRO/ SLO
- Publication of Press Notice 2
- Order comes into effect

The overall process takes approximately 16 weeks as a minimum but in any case must be completed within 2 years of Publication of Press Notice 1.

ETROs-

- Informal Consultation
- Submission of Application
- Drafting of legal documents
- Sealing of ETRO
- Publication of Press Notice
- Order comes into effect
- Objection period 1st 6 months

At 18 months the Order is either made permanent and the latter stages of the PTRO process above instigated or the experiment ceases and the ETRO is dropped.

TTROs –

- Consultation with the police
- Consultation with relevant Hertfordshire Highways Area Network Manager and Area Office
- Consultation with directly affected residents/businesses/organisations
- Submission of application
- Drafting of legal documents
- Publication of Press Notice 1
- Sealing of TTRO
- Publication of Press Notice 2
- Order comes into effect

The process to obtain TTRO takes a minimum of 6 weeks from the date of receipt by HCC of a correctly completed application.

10.2. How PTROs, ETROs, TTROs and SLOs are obtained

The procedures for obtaining PTROs, ETROs TTROs and SLOs are contained within the HCC's TRO Guidelines Manual. All requests for TROs should be applied for through the relevant Hertfordshire Highways Area Office.

Enquiries concerning the obtaining any type of TRO should in the first instance be made with the relevant Hertfordshire Highways Area Office or the Hertfordshire Highways TRO Team.

All applications for PTROs, ETROs, TTROs and SLOs must follow the process outlined above to ensure compliance with relevant legislation. A minimum of 18 weeks must be allowed from the date that the HCC's TRO team has received a correctly completed application.

All applications must be supported by documentation as required by the HCC's TRO Guidelines Manual this will also include plans, confirmation and evidence that where required informal consultation has been carried out.

10.3. Road Humps and Pedestrian Crossings

Although road humps and pedestrian crossings do not require TROs the implementation of these features is regulated and requires public notices and consultation. The process followed is similar to that of TROs. As far as pedestrian crossings are concerned where it is intended to construct alter or remove such a crossing then such action will render the matter so as to fall within required procedures.

The procedure for implementation of road humps, speed cushions, junction tables and all types of pedestrian or shared use crossings is contained within the HCC's TRO Guidelines manual.

Enquiries concerning the implementation of these features should in the first instance be sent to the relevant Hertfordshire Highways Area Office or the Hertfordshire Highways TRO Team.

All applications must be supported by documentation as required by the HCC's TRO Guidelines Manual this will also include plans, confirmation and evidence that where required informal consultation has been carried out.

Guidance on the consultation of the Hertfordshire Fire & Rescue Service on traffic calming measures is available to download at www.hertsdirect.org/infobase/docs/pdfstore/cfs_r12v1.pdf.

10.4. When PTROS Are Required

A PTRO or if relevant an ETRO is required in all cases where restrictions are to be imposed on the movement or parking of vehicles or movement of cycles, equestrians and/or pedestrians. This includes but is not limited to the following:

- Prohibition of any specified class or type of vehicle / road;
- Prohibition of all vehicles except non-mechanically propelled vehicles being pushed by pedestrians, including Play Streets;
- Pedestrian zones (excluding all vehicles except pedestrians);
- Motor vehicles prohibited;
- Motor vehicles except solo motor cycles prohibited;

- Solo motorcycles prohibited;
- Prohibition on weight of goods vehicles (either for environmental reasons or to protect a structure);
- Articulated or track-laying vehicles prohibited;
- Horse drawn vehicles prohibited;
- Ridden or accompanied horses prohibited;
- Towed caravans prohibited;
- Vehicles carrying explosives prohibited;
- Pedestrians prohibited;
- Prohibition on weight of vehicles crossing a bridge or other structure;
- Prohibition on width of vehicles (either for environmental reasons or if a width restriction feature has been created);
- Prohibition on length of vehicles;
- Prohibition on height of vehicles (either for environmental reasons or if a height restriction exists);
- Prohibition of riding pedal cycles;
- Prohibition of buses.

Permitting only certain vehicle movements or types (thereby prohibiting others):

- Routes for use by buses only or buses and pedal cycles only (taxis can be included);
- Routes for use by tramcars only;
- Routes for use by pedal cycles only (recommended routes on a main carriageway do not need a TRO);
- Routes for use by pedal cycles and pedestrians only;
- Routes for use by pedal cycles and pedestrians only using two separately marked ways (eg footway with a line along its route to provide for pedestrians and cyclists on separate sides);
- With-flow or contra-flow bus lane which may also be used by cyclists and taxis;
- With-flow or contra flow cycle lane;
- Permitted right or left turn only.

Prohibition or restriction on vehicle movements:

- Restriction on turning right or left;
- Restriction on U-turns;
- Width or height and weight limits;
- No entry;
- One way roads;
- No overtaking.

Controls of waiting, loading and/ or stopping in specified locations and/ or at specific times of day or days of week:

- Prohibition on waiting on verge and/ or footway;
- Prohibition on waiting and / or loading and unloading in a pedestrian zone;
- Prohibition on waiting;
- Prohibition on loading and unloading;
- Restrictions on length of waiting and return period;
- Prohibition on waiting by goods vehicles and/ or buses over a certain weight;
- Providing for an off-highway loading area where waiting restrictions apply;
- No stopping on a main carriageway (includes on-slip and off-slip roads and acceleration and deceleration splays of the main roads included, but not adjoining verges) – 24-hour rural clearway;
- No stopping on entrance markings (outside schools, fire stations, etc.);
- No stopping in lay-by except in emergency;
- No stopping except picking up or setting down passengers, during certain periods – urban clearway;
- Prohibition on stopping other than exempted vehicles e.g. taxis;
- Prohibition on waiting other than exempted vehicles e.g. taxis;
- Prohibition on specified traffic using verge in mown or ornamental condition;
- Parking places reserved for permit holders, residents' permits, business permits, voucher parking, etc;
- Reserving part of the carriageway for loading and unloading (e.g. loading bay);
- Parking places reserved for disabled (blue) badge holders;
- Pay and Display ticket-regulated parking place;
- Limited waiting with the display or a disc or ticket in a parking zone;
- Controlled parking zones (parking permits, etc. or lorry ban);
- Permitting parking partially or wholly on the verge or footway;

- Parking places for specified types of vehicle e.g. goods vehicles, motor cars, etc.

Restrictions on vehicle speed – SLOs only:

- Maximum speed limits – including 20mph zones;
- Minimum speed limits.

Many of the above PTROs can apply at all times or during certain time periods. Furthermore, certain exemptions may be applied for example to allow for access or to exempt specific vehicle types e.g. buses. Promoters of TROs should refer to the current Traffic Signs Regulations and General Directions (TSRGD) to confirm how TROs can be varied.

Details of PTROs in force on Rights of Way in Hertfordshire are given at <http://www.hertsdirect.org/envroads/environment/countryside/walkingandriding/row/default/PTROs/>.

10.5. When TTROS Are Required

Temporary Restrictions may be imposed under specific criteria as set out in the Road Traffic (Temporary Restrictions) Procedure Regulations 1992. The effect generally is to limit such restrictions to being imposed in support of works on the Highway, Street Cleaning activities under the Environmental Act or when there is an existing danger on the Highway from which the public must be protected.

The procedure for obtaining a TTRO is regulated and the general process is as given above. The governing regulations impose specific constraints on the Highway Authority's use of its powers and it will not always follow that a TTRO will be automatically granted on request.

A TTRO can remain in effect for up to a maximum of 18 months unless specifically extended by Secretary of State in specific extraordinary circumstances for up to a further 6 months.

A TTRO may impose temporarily any restriction as may be made by a PTRO or SLO and additionally may impose temporary road closures. The effect on the public in respect of such impositions may be severe and therefore serious consideration must be given to alternative ways of achieving the objective if possible.

10.6. Gating Orders

Section 2 of the Clean Neighbourhoods and Environment Act 2005 introduced a new power that allows councils to make, vary or revoke gating orders in respect of highways within their area. This is achieved by inserting new sections 129A to 129G in the Highways Act 1980 which will enable councils to restrict public access to any public highway by gating it (at certain times of the day if applicable), without removing its underlying highway status. Local authorities can make "gating" orders on grounds of anti-social behaviour as well as crime.

10.7. Orders for Closing Roads for Special Events

Occasionally restrictions are required to be implemented in circumstances that do not fall within the remit of The Road Traffic Regulation Act, for example Road Closure to permit an event to take place on the highway. In these instances advice must be sought at least 6 months prior to the event from the relevant Hertfordshire Highways Area Office,



Hertfordshire Highways TRO Team or the appropriate Borough or District Council within the area in which the event falls.

Orders for such events can be considered where appropriate under The Special Events Act or Town Police Clauses Act. However it should be understood that there are stringent restrictions imposed on Highway and Local Authorities as to when these powers may be used.



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Section 3: Legal and Procedural Matters

Chapter 11: Off-Site Highway Works



11. Off Site Highway Works

11.1. Introduction

For certain development proposals, it may be necessary to make alterations to the existing Public Highway. Where such works are required, these are referred to as 'off-site highway works', in that they are outside the development site but within the highway.

Where scheme promoters are aware that off-site highway works may be required, they should, in the first instance, contact the *LPA* (District or Borough Council within which the proposed development would take place) to establish the relevant points of contact for all issues.

This Chapter sets out HCC's preferred approach to the procedures for off-site highway works. It is summarised in diagram 3.11.1.1 at the end of this chapter.

11.2. The Need for Works on Existing Highways

Off-site highway works will often be required to achieve an acceptable access to a development site. They could be, for example, alterations to an existing junction to improve visibility; installation of a roundabout to facilitate access; installation of pedestrian crossing facilities or many other physical measures.

The requirement for off-site works and their in-principle design will be determined as part of the Transport Assessment for a development proposal.

11.3. Procedures and Requirements

11.3.1. Pre-Application Consultation

HCC welcomes early discussion of transportation aspects of proposals with prospective scheme promoters or their agents prior to submission of an application for planning permission. Such approaches should be made with the knowledge of the *LPA* and it is also desirable for any pre planning application meetings to involve them.

Such consultations will inevitably receive a lower priority from HCC than responses to consultations by the *LPA* relating to planning applications, as no statutory requirement to respond to such approaches within a specified timescale is in place. However, early discussion can be of assistance to applicants at a later stage.

For example, off-site highway works may be dependent on Traffic Regulation Orders (TROs) and the process for consultation, publishing, advertising and determining such Orders is likely to take a minimum of 12 weeks. Pre-application discussions could help in identifying such elements and assist all parties in taking such procedures into account. More information on TRO processes is given elsewhere in this design guide.

11.3.2. Planning Applications and formal consultation with HCC

The scheme promoter will submit an application for permission to develop land to the relevant *LPA*, as required by Section 62 of the Town and Country Planning Act. In accordance with Article 10 of the Town and Country Planning (General Development Procedure) Order 1995, if the application includes the

“...formation, laying out or alteration of any means of access to a highway” the LPA is required to consult HCC. Other categories of development as defined in this article also require consultation with HCC, as well as other bodies.”

The LPA formal consultation period with HCC is generally 21 or 28 days (subject to adequacy of information). The time period may vary with different LPA requirements.

11.4. Legal Agreement for Off-Site Works

When it has been established that off-site highway works are a pre-requisite to the acceptability of the development to HCC and the LPA has resolved to grant planning permission for the development, HCC will require the scheme promoter to enter into a legally binding agreement to ensure the required works on the Public Highway are carried out. Such an agreement is normally made under powers contained in Section 106 ('S106') of the Town and Country Planning Act and/or Section 278 ('S278') of the Highways Act.

The LPA may have non-highways related items which necessitate a Section 106 agreement with the scheme promoter. Such an agreement could also include the highway provisions. Where there are no non-highway related items, the highway provisions are normally the subject of a separate Section 106 or Section 278 agreement with HCC to which the LPA is usually still a signatory.

The LPA may grant consent with a condition (known as a 'Grampian' condition) requiring the offsite highway works to be completed before a defined event (e.g. before commencement of the development or prior to first occupation of the completed development). If this approach is taken the scheme promoter will then be required to enter into a Section 278 agreement with HCC before any work on site can commence to satisfy such a condition.

More information on Section 106 and Section 278 agreements is given in [Section 3, Chapter 1: Legal Aspects](#).

11.4.1. Agreement In Principle (AIP) to scheme of off-site highway works & ability to carry out off-site works

The next stage is for HCC to agree in principle with the scheme promoter a scheme of off-site highway works at a sufficient level of detail for inclusion within the legal agreement.

It will be necessary for the scheme promoter to demonstrate to the satisfaction of HCC that the proposed works can be carried out on land which is within the highway or within the control of the scheme promoter and to the design and safety standards currently in use by HCC.

To allow HCC to agree with the scheme promoter a scheme of off-site highway works at a sufficient level of detail for inclusion within a legal agreement, the scheme promoter shall provide a plan at a scale of at least 1:500, but preferably 1:200, together with sufficient levels to enable the need for cuttings, embankments, retaining walls etc to be established. In addition, sufficient additional data to enable a Stage 1 Safety Audit to be carried out in accordance with HD19/03 will be required. The scheme promoter will be asked to pay for this audit to be undertaken.

It will also be necessary for the scheme promoter or their agents to establish the need for any alterations to Statutory Undertakers' equipment above and below ground and their likely cost.

11.4.2. Timescale for Agreement In Principle (AIP)

HCC will require sufficient time to enable appropriate checking to be carried out. That time period will depend on the scale of the proposals and the quality of detail provided as well as the extent to which re-submissions, following requested amendments, are necessary. It will normally fall within the range of 4-8 weeks and is likely to be a minimum period of 20 working days.

11.4.3. Recommendation to *LPA*

Once HCC is satisfied the works can be constructed and the design has been agreed and Approved In Principle, it will notify the *LPA* accordingly.

The *LPA*, if minded to grant permission for the development, will then indicate that it is so minded, subject to the inclusion of the agreed off site works in a Section 106 agreement. Alternatively, it will grant permission subject to a 'Grampian' condition as described above.

11.4.4. Completion of agreement

Once the terms of the agreement have been agreed and the design has been Approved In Principle the agreement can be sealed (finalised in law). The detailed design checking procedure may commence, subject to the payment of appropriate costs set out below.

11.4.5. Detailed Design Check

The scheme promoter must then submit sufficient information to HCC to enable a full check of the detailed design and specification to be undertaken. This will include a detailed design check of structures, street lighting and traffic signal installations, including the specification for the signal controller, factory testing and any other checking required. Only when the checking process is complete, including a Stage 2 safety audit and approvals and all other elements of the Agreement satisfied can the works proceed.

This process is likely to take a minimum of 30 working days and may well be significantly in excess of this, dependent on the scale of works, quality of the design and requirement for re-submissions.

Typically, a checklist of requirements to enable detailed approval will include:

- Location plan (1:1250 or 1:2500);
- Layout plan (1:500 minimum, larger scale as necessary);
- Road construction details (1:50);
- Longitudinal and cross sections of all roads (1:500 horizontal, 1:50 vertical). Gradient levels at 10m intervals – 5m intervals on vertical curves;
- All levels to Ordnance Datum with Ordnance bench mark position and level shown on location plan;
- Where a site has substantial level changes, contour plans and cross sections should be supplied. Existing ground levels should be shown in sufficient detail to enable cut and fill volumes to be assessed;
- Finished floor levels and site levels of frontages adjacent to highways boundaries should be shown;

- At estate road junctions with existing roads, sufficient levels should be supplied to enable the junction design to be checked;
- Details of highway drainage;
- Details of any traffic calming measures;
- Details of lighting, signs, road markings, road studs, traffic signals and other street furniture;
- Statutory Undertakers plant – proposed alterations on a plan to the same scale as the location plan. To include information on how the mains services will be connected to the site;
- Landscape treatment including trees and other green infrastructure;
- Staging of works and traffic management during construction;
- Requirements for Traffic Regulation Orders, Public Path Diversions, Highway Stopping Up Orders;
- Specification; and
- Details of Highway Structures.

Consideration should be given to the characteristics of the site, such as ecology, archaeology, impact on existing drainage, reinstatement of disturbed ground and maintenance. Information in addition to these examples may also be required, dependent on the characteristics of the site.

A Stage 2 Safety Audit will also be undertaken at this stage. See Chapter 6: Design Checks and Safety Audits of this Section for further information about safety audits.

The cost of checking the detailed design and specification together with the Stage 2 Safety Audit will be met by the scheme promoter. HCC will provide an estimate of the costs involved based on the initial information provided.

Payment of these costs will be required in advance. Under or over provision will be paid to the appropriate party upon determination of the final cost.

The scheme promoter will also need to provide a bond or surety for the full value of the works plus a minimum of 10%. This value must be agreed with HCC.

11.4.6. Commencement of Work

Once the Section 106 Agreement is concluded, the *LPA* will issue the decision. Following the issue of the decision notice by the *LPA* and, subject to all other relevant planning conditions having been discharged and once all details have been approved in writing and inspection fees paid (as required by the Section 106 and/or Section 278 Agreement) works may commence on site, subject to the appropriate notice being given to HCC, as stipulated in the Agreement. This notice period is variable (3 or 10 or 90 days) in accordance with the Traffic Management Act 2004 (TMA). Notice periods for works on highway structures may be different. For further information contact the Bridges and Contracts unit at Hertfordshire HCC.

Work can only commence on the highway with the agreement of HCC. HCC has powers to stop works where agreement has not been given and scheme promoters should be aware

that failure to meet any of the above requirements before commencing works on the highway will lead to action being taken to stop the works.

11.4.7. Final Safety Audit

Upon completion of the works, a Stage 3 Safety Audit in accordance with HD19/03 will be carried out. Any alteration to the works as a result of a Stage 3 audit shall be carried out by the scheme promoter at their own expense. A separate, agreed sum shall be set aside by way of a bond to cover the likely costs of such work. This sum will be stipulated in the Agreement.

11.4.8. Timing of Provision of Site Services

Within works on the highway, it will be a requirement to provide the main service connections, including sewers, up to the final site boundary with the highway prior to the laying of new highway construction layers.

11.4.9. Costs falling to the Scheme Promoter

The costs which will fall to the scheme promoter (some of which have been referred to in the preceding paragraphs) as provided for within the terms of the relevant Section 106 / Section 278 agreement will be:

- HCC's costs involved in preparation of the agreement;
- HCC's costs in checking detailed design, Stage 2 and Stage 3 Safety Audits. This will include factory checking and on site commissioning of traffic signal installations;
- Costs relating to any processes and procedures necessary to put in place any appropriate measures involving statutory procedures;
- Cost of any works arising from recommendations of the Stage 3 Safety Audit;
- Costs of any noise surveys;
- HCC's costs of inspecting works in progress and end of maintenance period inspection;
- Commuted sums for:- maintenance of structures; maintenance and replacement of soakaways and SUDS systems; maintenance of traffic signal installations and special street lighting; soft landscaping, trees and other green infrastructure; and
- Costs relating to any other issues that may arise during the course of the project.

HCC should be consulted for further information on the level of commuted sums.

A flow chart illustrating the main steps involved in the processing of a scheme promoter's proposal from initial receipt to satisfactory conclusion of off-site works controlled by HCC is given in Diagram 3.11.1.1 overleaf.

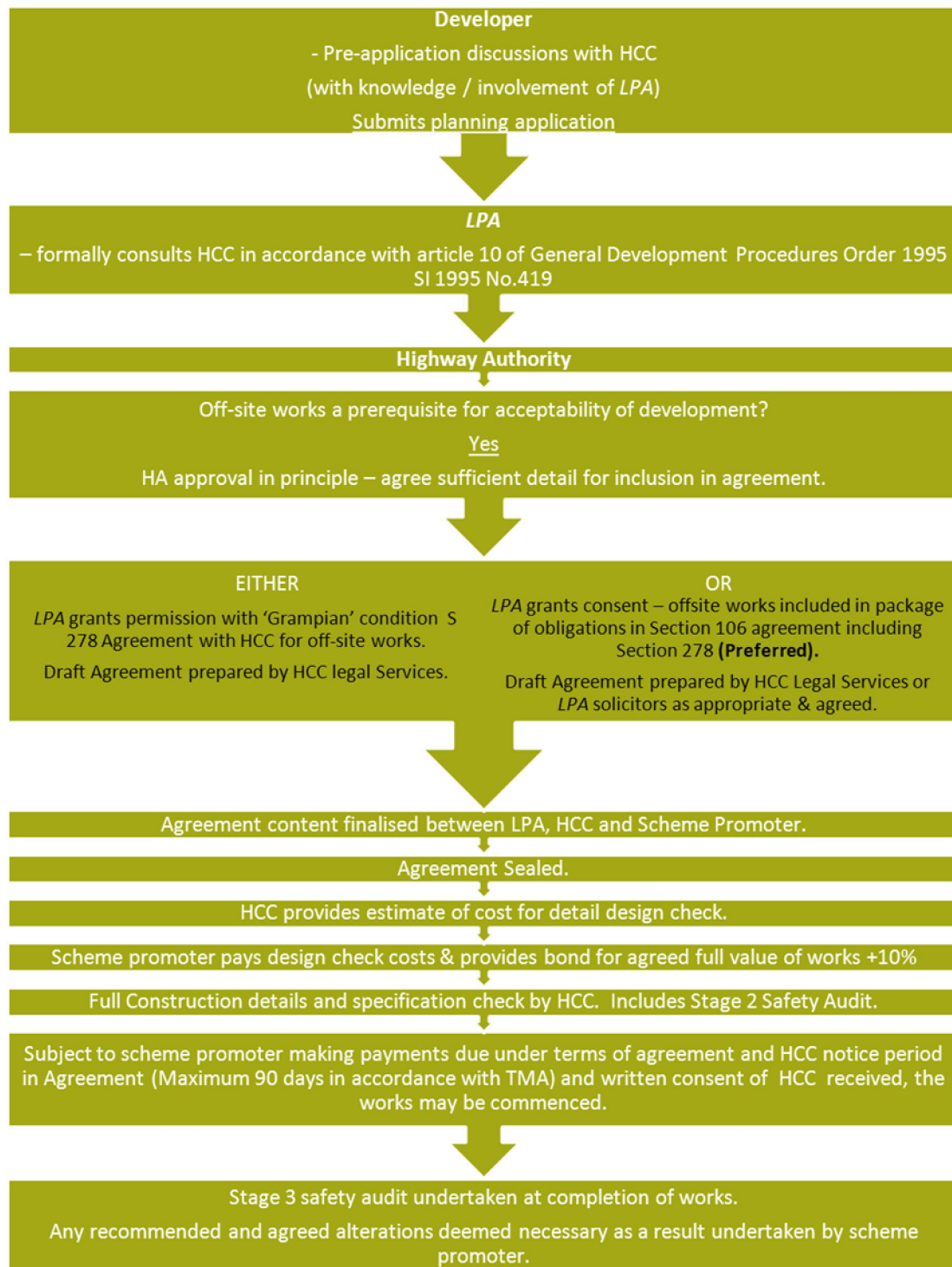


Diagram 3.11.1.1: Off Site Highway Works: Flow Chart indicating HCC Preferred Procedure



Roads in Hertfordshire: A Design Guide

3rd Edition

Section 3: Legal and Procedural Matters

Chapter 12: Adoption of On-Site Roads



12. Adoption of On-Site Roads

12.1. Introduction

HCC, as Highway Authority for all non-trunk roads within Hertfordshire, is responsible for the adoption and subsequent maintenance of new roads.

12.2. Maintenance at the Public Expense

Once a road is adopted by HCC it becomes a 'highway maintainable at public expense'. In order to achieve this, HCC will need to be satisfied that any roads or areas that are to be adopted are of significant public utility and have been constructed in accordance with the approved details and in compliance with the specification of works and materials.

Where public adoption of a road or area is not practicable, alternative arrangements such as the establishment of a management company are highly recommended to ensure the proper maintenance of such areas.

Scheme Promoters should also be aware that it is anticipated that *LPA*s will determine standards on roads which are not to be adopted. The scheme promoter should recognise that Private Streets may also form part of the pattern of the development. They will also be required to incorporate similar features (mains servicing, emergency access, environmental services etc) as adopted highways. It is therefore strongly recommended that roads which are to remain Private Streets are designed and constructed to the same standards that are set out for roads that are to be dedicated as Highway. Such an approach is likely to make any adoption at a later stage easier, should this be sought.

12.3. What will HCC Adopt?

12.3.1. Utility to the Public

In this context utility has the meaning of usefulness. On developments with no through route, only the main access road will be considered for adoption. Residential access roads serving underground car parks, supported by structures or taking the form of short cul-de-sac with no wider highway benefit will not be considered for adoption.

Commercial and industrial roads will only be considered for adoption if the premises served are in at least two freehold ownerships and where there is a clear benefit to the general public or in the interests of creating an improved highway network or better management of traffic.

In order to give earlier certainty, the extent of adoption should be Agreed In Principle by the scheme promoter and HCC (planning and implementation teams) at the planning stage. This should be recorded in the planning consultation response to the *LPA*.

12.4. Roads and Road Features

Adopted carriageways, footways, footpaths and cycle tracks must be connected to another part of the highway maintained at the public expense.

Areas which will normally be adopted are:

- Carriageway and associated footways or cycle tracks;
- Parking areas, lay-bys, passing bays and bus lay-bys contiguous with carriageway;

- Footways, footpaths and cycle tracks where they are the primary front access to houses or are an essential part of the highway system relating to the movement of pedestrians and cyclists. Thus, individual paths to houses will be excluded but footpaths linking sites of significant public use (e.g. public car park, leisure facility or hall) to a public highway will normally be included;
- Footpaths which are on the line of previously existing public footpaths (as shown on the definitive map) or which are a legal diversion thereof;
- Areas within visibility zones at bends and junctions;
- Street lighting and road signs (excluding street name plates which are the responsibility of the Borough or District Councils as street naming authority); and
- Structures carrying the highway or forming an essential part of the highway drainage system and, in certain instances, structures supporting the highway (subject to agreement with HCC's - Bridges and Contracts section). Exceptions to this may be any structures constructed to enable the maximisation of land use (for example, underground car parks or basements). Designs and design calculations for structures will be required for checking by HCC's Bridge Engineer whether or not structures are to be adopted. For structures affecting railways, waterways and trunk roads, technical approval may be required from a third party. HCC – Environment and Commercial Services, "Bridges and Contracts", should be contacted in the first instance to determine the relevant Technical Approval Authority.

12.5. Landscape and Green Infrastructure

Landscape areas will normally be adopted if they are required for highway purposes. Typically, such areas may include:

- Verges or areas between:
- carriageway and footway or cycle track
- carriageway, footway, cycle track and highway boundary
- Landscaped areas within visibility splays
- Landscape areas within service strips

Where verges or landscaped areas are acceptable for adoption, soft landscaping (trees - both new and existing, shrubs, hedges etc.) within those areas will be adopted provided it conforms with the requirements set out in [Section 2, Chapter 3 Environment and Landscape](#) and [Section 4, Chapter 20: Landscape](#).

Areas of amenity landscape having no highway function may be considered for adoption by HCC if offered up with a commuted sum payment based on maintaining the area for the life of the development.

The scheme promoter must provide or arrange for the long-term maintenance of all unadopted landscape amenity areas, verges and open space through a management company or similar arrangement.

Section 9 of the Open Spaces Act 1906 enables amenity areas to be maintained by the District or Borough Council and thus the scheme promoter should contact the District or Borough Council in connection with possible transfer (subject to payment of a commuted sum for future maintenance) of open space not included within the adoptable highway.

12.6. Contamination of Sub-Soil

Where a development has been undertaken on land that was previously occupied (so-called 'brown field' sites) there may be a potential issue of contamination of the land, dependent upon its previous use. The *LPA* may have specific conditions for development that takes place on previously occupied sites and may require certain investigations and remedial treatments to be undertaken prior to development. Indeed, Section 57 of the Environment Act requires construction professionals, including scheme promoters, landowners and local authorities, to investigate and assess the risks of potentially contaminated sites.

HCC would wish to be involved in discussions regarding remediation, such that they can be assured that the sub-soil of publicly maintainable highway will not pose a significant hazard to health, safety or welfare when maintenance or any other works are undertaken on the highway in the future. Where remediation work is carried out on development sites, scheme promoters may be requested to demonstrate to HCC that the measures agreed have been taken and that they have been successful before adoption is completed. Further guidance on investigation and treatment of contaminated land is given in [Section 3, Chapter 8: Construction and Construction Monitoring](#).

12.7. Drainage Discharge Structures & Features

Discharge structures and features, including Sustainable Drainage System (SUDS) features such as soakaways, swales and filter drains which are provided solely for the purposes of receiving water falling onto the adoptable highway will be adopted by HCC subject to the receipt of all agreed commuted sums that are necessary to cover future maintenance. The sums involved are likely to vary and will be dependent on the type, location and environmental circumstances of the feature.

If the feature to be adopted lies outside of an adoptable area, but within an area subject to an easement in perpetuity for maintenance of the relevant feature or structure, the benefit of the easement is to be transferred to HCC upon adoption.

12.8. Drainage Networks

HCC will adopt highway drains, manholes, gullies and other pipework, ditches and headwalls which are provided solely for the purpose of draining the adoptable highway.

The scheme promoter or designer must contact the Sewerage Undertaker or the District or Borough Council acting as agent to the Sewerage Undertaker, in connection with the adoption of sewers other than highway drains. This will include combined sewers (draining both foul and surface water) and surface water sewers draining rainwater from buildings, driveways, private parking areas etc. Adoption agreements for such sewers are made under Section 104 of the Water Industry Act.

12.9. Overhanging Features

In particular circumstances, in shared surface developments, the highway surface may abut structures. In such cases a dedicatory of land as highway may be permitted to retain a right to overhang the highway with certain structures. These may include window sills, window boxes, down pipes, eaves of buildings and gutters (provided the vertical clearance is a minimum of 5.3m within 1m horizontally of where any vehicle may be expected, and 2.1m vertically when more than 1m from such a point).



Projections with less vertical clearances may be acceptable provided they are adequately protected from any impact through the use of planters, bollards or raised edges placed at ground level.

The maintenance and projection of any private structure or projection existing at the time of adoption will remain the responsibility of the owner at that time.

The addition of any projections or structures to a building abutting a highway will constitute an unlawful obstruction of that highway unless specifically licensed by HCC.