

# SMART

## PART C

# LEGISLATION

This document is part of the “**Shropshire Manual for Adoptable Roads & Transport**” (**SMART**) and should be read in conjunction with all other appropriate documents.

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## C.1. HIGHWAY & STREET WORKS AUTHORITY

1. The following paragraphs are intended to explain the role of Shropshire Council, as Highway and Street Works Authority, in respect to the creation of new highways, and the making up of “private” streets. It also covers how the responsibility for the maintenance of a street can be transferred onto the Council, as appropriate.
2. It gives a general background to the Council’s role in respect to its statutory duties (what must be carried out) in relation to the adoption of streets, within the Highways Act 1980, as well as any additional powers the Council has, which can be used when appropriate.

### SHROPSHIRE COUNCIL IS THE HIGHWAY AUTHORITY

3. Having entire responsibility for all **highways**, which have been adopted, or are otherwise considered “maintainable at public expense”, except for *trunk roads* for which the Minister is the Highway Authority (i.e. Highways England).
4. **Highways** can only become adopted (i.e. maintainable at public expense) through statutory procedures.
5. There are several different procedures and agreements available under the Highways Act 1980, to adopt highways, which accommodate different circumstances. However, **a highway cannot become maintainable at the public expense (adopted) unless the appropriate statutory procedure has been followed** and completed.

### SHROPSHIRE COUNCIL IS THE STREET WORKS AUTHORITY

6. Having responsibility for asserting and protecting the rights of the public to use *highways* which are not adopted (private streets). However, the Council has no statutory duty to maintain these private streets.
7. The Council has specific responsibilities in respect of **private streets**. These are set out in Part XI of the Highways Act 1980 (sections 203-237), which provides the mechanisms for ensuring that:
  - Any old private streets which have sufficient utility to the general public and can be brought up to a satisfactory standard, at the expense of the property owners in the street (‘frontagers’), may be adopted (Private Street Works Code).
  - Nearly all new streets are constructed to an adoptable standard even before the houses are built, so that the new owners will not have to live on and use an inadequate road. (Advance Payments Code).

## C.2. THE DEVELOPER’S OBLIGATIONS

8. When a developer enters into an agreement to undertake the creation of a new ‘highway’ (adopted) or works within an existing highway, the Developer effectively becomes the ‘interim’ Street Manager and is responsible for that Highway including all matters pertaining to health and safety until the Council formally adopts the Highway (or works).
9. The Developer, contractor and all sub-contractors shall:
  - Take full responsibility for the stability and safety of all site operations and methods of construction from commencement through to final adoption.
  - Adhere to the provisions of all general or local Act of Parliament and the regulations and bylaws of any local or statutory authority during the construction of the development.

- Employ a competent and experienced supervisor on site. The supervisor and all operatives shall be New Road & Street Works Act 1994 (NRSWA) accredited.
  - Undertakes all works in accordance with Health & Safety at Work Act (HSWA) 1974
  - Undertakes all works in accordance with Construction, Design & Management (CDM) Regulations 2015.
10. In addition, the Developer, by entering into a highway agreement, will become liable under The Land Compensation Act 1973 for any compensation, should an adjacent property suffer any loss or otherwise be adversely affected by the works undertaken by the Developer in the discharge of the planning obligations and/or agreed mitigation necessary to facilitate the development.

### C.3. HIGHWAYS ACT 1980 - LEGAL AGREEMENTS

11. The following paragraphs provide the context and the legal detail of the three (3) main legal agreements under the Highways Act 1980, which are usually used when undertaking most forms of development in Shropshire. These are:
- Section 38 - Highway Created by Adoption Agreement
  - Section 184 – Vehicle Crossings over Footways & Verges
  - Section 278 - Agreement to Execute Works on the Highway

**SMART – Procedures & Technical Notes** include specific and detailed procedural guidance on these Agreements. These will guide the Developer towards fulfilling the requirements of Shropshire Council and delivering a successful highway agreement.

### C.4. SECTION 38 - HIGHWAY CREATED BY ADOPTION AGREEMENT

<http://www.legislation.gov.uk/ukpga/1980/66/section/38>

**(Also see SMART: Part E -Technical Note 1 - How to Secure a S.38 Agreement)**

12. The most common way for Developers to ensure that the roads and footways within their development will become maintainable at public expense is to enter into a legal agreement under Section 38 of the Highways Act 1980 with the Council. This agreement guarantees that the highway authority will adopt the street on the satisfactory completion of the agreed highway works, subject to the full compliance of all terms and conditions contained within the S38 agreement
13. An adoption agreement (or Section 38) must be supported by a financial bond which requires that sufficient money (**funds**) will be available to the Council (or nominated body) to bring the road up to an adoptable standard if the Developer fails to do this within the agreed time or if the Developer is unable to complete the works.
14. A Developer is not legally obliged to enter into any adoption agreement with the Council. The Developer may wish the road to remain a private street, in perpetuity, ensuring the appropriate management arrangements are secured.
15. The option to keep a financial retention from the purchase price, against the risk of the road not being completed or adopted, is available to individual property purchasers. The Council will encourage this action where a Section 38 (adoption) agreement has not been completed on a development site, and the street has not been agreed to remain private.
16. When a Developer enters into an agreement for the Highway Authority to adopt any new streets, the following items are required:
- The standard forms of Agreement must be used.

- The Developer must prove that they own all the land that they propose to dedicate as public highway.
  - They must support the agreement with a Bond to provide sufficient money (**funds**) for the Highway Authority to complete the works should the Developer not do so.
  - They must provide detailed drawings of the proposed highways to be checked by the Authority to ensure that all the details comply with the Council's standards.
17. The works will be inspected during construction to confirm construction and layout are in accordance with the agreed drawings, and that materials and workmanship are satisfactory.
18. There are three stages for formal certification: -
- **Part 1:** When the works are completed to the first level stated in the agreement, a *Part 1 Certificate* will be issued. This is an acknowledgement that the works have been satisfactorily completed to that stage.
  - **Part 2:** The Developer will then complete the works to the streets and be given a *Part 2 Certificate*, if all is satisfactory. The land on which the street has been built will normally become 'dedicated' to the Council and the street shall be maintained fully by the Developer for a minimum period of 12 months, (or otherwise agreed).
  - **Final:** When everything is satisfactory at the end of the maintenance period, and any additional remedial works have been completed, the *Final certificate* will be issued and the street will become adopted and thereafter be maintainable at public expense. The Developer will then be released from any remaining financial Bond with the Council and any cash retentions returned.

It should be noted that although a Section 38 Agreement gives the Highway Authority power to agree to adopt a road and does not impose a duty on the Council to adopt it.

**It is strictly the Council's policy to adopt a Highway only if it is considered of sufficient utility to the public to justify it being maintained at the public expense.**

## 19. PROVISIONS OF THE HIGHWAYS ACT 1980

A local Highway Authority may agree with any person to undertake the maintenance of a highway: -

- which that person is willing and has the necessary power to dedicate as a Highway; or,
- which is to be constructed by that person, or by a Highway Authority on their behalf, and which they proposed to dedicate as a Highway; and
- where an agreement is made under this sub-section the highway to which the agreement relates shall become a Highway maintainable at the public expense.

## 20. EXEMPTIONS

- The Developer can only enter into a Section 38 Agreement if they can prove ownership of the land (Registered Title).
- The Council will enter into a Section 38 Agreement in respect to only those new streets which it would expect to adopt.
- If the proposed connection of the new development to the existing adopted highway is complex and/or otherwise affects a strategic or important route, then the Council will deal with all matters relating to that part of the works under a Section 278 Agreement.

## 21. PROCEDURE

### 22. Application & Checking:

- A process map illustrating this procedure can be found in **SMART Part E -Technical Note 1 - How to Make a S38 Agreement**. For additional information and more detailed content refer to the appropriate paragraphs in **SMART Part D – Procedures**
- Two sets of plans and details appropriate to determine the design and specification of the proposed highway shall be submitted to the Council (Developing Highways Team).
- The detailed submission must be accompanied by a completed Application Form and Land Registry Title.
- The necessary templates for the Application Form and Draft S38 Agreement, together with a list of appropriate plans and details, are included at the end of this document.
- If the submission is made without the completed application form, or missing details/plans, etc. the submission will be immediately rejected, and the Developer informed.
- When an appropriate submission package is received the Council will proceed with the technical checking process. Within 30 days, of receipt, the Council (or nominated agent) will inform the Developer as to whether the submitted proposals are acceptable or not.
  - a. If the details are acceptable, the Council shall inform the Developer of technical approval, the bond value, any commuted sum, fees and request two hard copies of the complete set of drawings.
  - b. If the details are not acceptable, the Council shall inform the Developer accordingly, and the S38 Agreement process will cease. The Developer will then have to resubmit the whole package with any appropriate amendments.

#### 23. **Agreement:**

- **Upon receipt of the two paper sets of approved drawings & details, and an electronic copy also.** The Council's Legal Team will process the S38 Agreement, liaising directly with the Developer and their legal representative, as required, until the Agreement is engrossed, signed and completed (made legal).
- If there is a need to start on site, the Section 38 Agreement can be drafted, but not signed while the technical approval process is completed.

#### 24. **Construction:**

- The Developer shall carry out the construction of the works solely in accordance with the approved details and the Agreement. These requirements are covered in detail within the Technical Note 1 - How to make a S38 Agreement document. **(See SMART Part E Technical Note 1 - How to Make a S38 Agreement)**

**If construction has started before the S38 Agreement is completed and/or without technical approval or site supervision, the works undertaken shall be wholly at the developer's own risk. Such that if these works cannot be proven to be constructed to the Council's specification or satisfaction, then the Council will not adopt the highway.**

#### 25. **Site Inspection:**

- The Council's representative/inspector will undertake periodic inspections and shall be given access to all parts of the works. **(Also refer to Part D - Procedures)**

#### 26. **Adoption:**

- On issue of the Part 2 certificate, the Works will be on 'maintenance' with the Developer being responsible for the upkeep of the whole Works (inc. street lighting electricity costs) for the period agreed by the Council, usually twelve months.

- The Developer may then request the adoption of the Works, on completion of the maintenance period and payment of any outstanding Fees and Commuted Sums.
- Should the Part 2 (maintenance) Certificate not have been issued previously, by the Council, then the Developer will be required to evidence the freehold ownership of the land to be adopted, as highway maintainable at public expense. Prior to the issue of the Final Certificate, as dedication of the land would not have been effected in the absence of the Part 2 Certificate.
- The Council shall inspect the Works and within 28 days of the request:
  - Inform the Developer that the works are unsatisfactory and supply a list of remedial works required, or:
  - Issue the Final Certificate to the Developer, informing the appropriate Council departments, and arranging for the retained surety/bond to be discharged/returned
- The Works have now been adopted, as public highway, and shall be thereafter maintained at public expense.

#### C.5. SECTION 184 – VEHICLE CROSSINGS OVER FOOTWAYS & VERGES

##### **(See SMART Part E Technical Note 2 - How to Make a S184 Licence)**

27. If the Developer intends to carry out works to form an access across an existing highway verge or footway he may do this under licence from the Highway Authority. The HA must approve the plans and be satisfied that the Developer is qualified to undertake the works in the Public Highway and has sufficient public indemnity insurance.
28. Access to a new development must be carefully considered and the impact on the existing highway must be assessed. There are several ways of controlling the formation of a new access depending upon the scale of the work to be undertaken.
29. Minor junction works can be controlled by the addition of suitable clauses in the Section 38 Agreement. Where there is no proposed adopted highway the development may only need consent to create an access using Section 184 of the Highways Act.
30. Large scale work which involve realignment of the existing carriageway would require a Section 278 Agreement under the Highways Act 1980 (see below)

#### C.6. SECTION 278 - AGREEMENT TO EXECUTE WORKS ON THE HIGHWAY

<http://www.legislation.gov.uk/ukpga/1980/66/section/278>

##### **(See SMART Part E Technical Note 3 - How to Make a S278 Agreement)**

31. If there are to be substantial works in the existing public highway, associated with the new development, or the proposed works are divorced from the immediate site frontage, (i.e. local junction improvement, passing places along a route, etc.,) the Developer will enter into an Agreement under Section 278 of the Highways Act 1980 to carry out these works and cover all costs.
32. These agreements provide a financial mechanism for ensuring the delivery of highway mitigation works, which have been identified and determined to be necessary, in order for planning consent to be granted. However, this does not mean that the highway authority will support a Developer in any planning application or subsequent proceedings.
33. Wherever possible the Council will seek to implement measures that manage the demand and impact of both vehicles and pedestrians, likely to be created by any proposed developments, on the adopted highway network, before improvement works are considered. In the first instance, any improvement works will be geared to managing the impact of

additional road users and maximising the use of available road capacity (i.e. traffic control measures).

34. **SMART Part E Technical Note 3 – How to make a S.278 Agreement** provides advice on the application of the S.278 process and the steps which will need to be taken by the Developer and others, when such an agreement is contemplated.
35. This guidance applies to any part of the adopted highway network within Shropshire, with the exception of the Trunk Road Network which is the responsibility of Highways England. (A Developer may also enter into a Section 278 agreement with Highways England for mitigation measures which may include improvement works to the Trunk Road Network.)
36. This interim guidance is confined to S.278 agreements with Shropshire Council for works on its adopted highway network and sets out the basic framework and the principles involved in the process, including:
  - satisfying the prerequisites of a S.278 agreement;
  - providing suitable mechanisms for cost recovery;
  - dealing with any land conveyance necessary for dedication to public highway;
  - how the works would be carried out;
  - providing basic formats of S.278 agreements with draft core documents.
37. For convenience and ease of comprehension reference is often made to “the Council”, in this Guidance, although it must be appreciated that any duties, obligations or rights are those of the Highway Authority.
38. The definition of works incorporates measures that can be carried out on the adopted road network. These works and measures include, but are not limited to, traffic control measures, the covering of administrative costs to realise the works and planning obligations imposed on a Developer.

### CONTRACTUAL ARRANGEMENTS

39. The Developer will be the employer for the S.278 works undertaking them under powers of entry onto Shropshire’s adopted highway network afforded by the S.278 agreement.
40. The following prerequisites must therefore be met:
  - The Council must be satisfied that the proposed works covered by the S.278 agreement will be of benefit to the public/users of the adopted highway network.
  - The Developer must be able to dedicate to the Council, any and all land that would be required to enable implementation of the required highway works, free of any charge or other encumbrance. Therefore, the Developer will be required to provide proof of title prior to the letting of the contract for the works to proceed.

### COSTS TO BE PAID BY THE DEVELOPER

41. It is a fundamental principle of all S.278 agreements that the Developer must bear the full cost of administering the process, designing and implementing the works. These will normally include:
  - An administration fee. This covers the design check, supervision of the works, the administrative expenses of the Council and its agents. The initial fee calculation will generally be expressed as a percentage of the estimated works costs (excluding VAT), though actual costs will be used where these can be identified. Developers should be aware that low value schemes may require a higher percentage fee to cover Council costs. As a guide:

- A 'legal' fee. This covers the legal expenses of the Council and will be determined and invoiced separately by the Council's Legal Department and are charged at an hourly rate.
- Costs incurred in meeting any claims arising from implementation of the works, including but not limited to claims under Part I of the Land Compensation Act 1973 (as amended by the Local Government Planning and Land Act (1980)); legal costs involved in the transfer of any land; and the costs of any Highway or Traffic Regulation Orders.
- The cost of the contractual work for scheme implementation.
- The cost of post-contract work identified through the Road Safety Audit process.
- In all cases, regardless of the nature of the works, a sum equal to the non-recoverable VAT incurred on the costs listed above.
- A commuted sum to cover all elements of future maintenance of new road infrastructure.
- Provision may be made for staged payments of the estimated costs, with adjustments in the light of final outturn cost. Payment in advance will be required in order to ensure that the Council has funds available to administer the S.278 Agreement.

The Council will seek a Bond to secure performance of the Developer's obligations under the agreement, such bond to be with a surety as approved by the Council. Alternatively, the Developer may deposit such monies with the Council simultaneously with the signing of the Section 278 Agreement.

#### FORM OF AGREEMENT

42. The terms of the agreement will indicate the conditions to which the parties will be subject, the main requirements are:
- that the Developer shall have secured all necessary planning permissions, and authorisations from the Council to carry out the works.
  - regulate the value and timing of the payments by the Developer to the Council and any relevant adjustments in the light of outturn costs;
  - provide for termination of the agreement on either side, subject to payment of the Council's abortive costs; and;
  - specify the works in question while permitting the Council to vary the works as necessary.

#### AGREEMENT TIMING

43. S.278 Agreements may be made at any of several stages depending on the circumstances. In most cases they will follow the grant of planning permission, although occasionally, it may be appropriate to prepare an agreed document before the planning consent is issued. In that event the agreement or the signing of it would have to be conditional on planning permission being granted. This is likely to be the case, for example, where planning applications are to be determined following call-in by the Secretary of State or on appeal.
44. As Section 278 (HA1980) does not in itself authorise the Highway Authority to carry out all works on its highway network, other authority in the form of the making of Orders may be necessary. For example, this would be required where improvements change the routing options for motorists at junctions or where the provision of additional pedestrian crossings is deemed necessary. In such cases, the Council may require the Developer to undertake additional public consultation/public exhibitions etc., prior to entering into the S.278 agreement.



## DEVELOPER ACTIONS

45. Developers contemplating a S.278 Agreement should make an early approach to the Council to open preliminary discussions. It is important that approaches of this sort are made in good time in view of the stages which must be completed before an agreement can take effect and the relevant road works carried out. It is desirable for the proposals to be sufficiently worked up for the road implications to be assessed, the location and nature of works determined.
46. If it is established in the initial discussions that the Council is prepared to enter into a S.278 Agreement, the next step will be for the Developer to submit further details, subject to the requirements of the S.278 Agreement application form (see appendices – How to make a S.278 Agreement).
47. The Developer is also reminded that they are responsible for and must ensure compliance with:
  - the S.278 Agreement Application Form, with all associated information
  - The Construction (Design & Management) Regulations 2015
  - Road Safety Audits Procedures (all four stages)
  - Design Manual for Roads and Bridges (DMRB) and/or other relevant best practice guidance

**Note: any 'design departure' must go through a formal Shropshire Council Approval process before it can be accepted as part of the final design**

## CARRYING OUT THE WORKS

48. Since the Council is legally responsible for all road works on Shropshire's adopted highway network, it follows that the Council will only consider allowing the Developer's consultant and/or contractor to design and/or undertake the works on the public highway, subject to prior approval of the consultants'/contractors' competence and for the work to be independently validated at the Developer's expense.
49. Once the Council has the information necessary to proceed with a S.278 Agreement, it's legal advisors will normally expect to issue that draft within about four weeks. Progress thereafter will inevitably depend on the complexity of the works involved and the Developer's ability to provide any further details necessary to allow the Agreement to be completed.
50. It should be noted that any works on Shropshire's adopted highway network will require coordination in terms of programmed execution, to avoid conflict with any other planned works on the network. Therefore, the proposed works shall be noticed and managed in accordance with the requirements of the New Roads and Streetworks Act 1991, the Traffic Management Act 2004 and the West Midlands and Shires Permitting Scheme (WASP). This will include agreeing the mode, manner and timing of the works on the Highway, or those which affect the Highway users, with Shropshire Council's Traffic Manager. At least three months' notice is required prior to the commencement on site, notice is required, to ensure the disruption is minimised and the highway space is booked and a permit can be issued.

## C.7. ADVANCE PAYMENTS CODE

51. Shropshire Council do not currently apply the Advance Payments Code on new developments. However, Developers are strongly recommended to enter into a Section 38 Agreement, prior to starting work on any new roads, to ensure that they can be dedicated as highway maintainable at public expense (adopted).  
[www.legislation.gov.uk/ukpga/1980/66/part/XI/crossheading/the-advance-payments-code](http://www.legislation.gov.uk/ukpga/1980/66/part/XI/crossheading/the-advance-payments-code)

## C.8. PRIVATE STREET WORKS CODE

52. Any works within a *private street* which are to be carried out by the Council, must be carried out under the *Private Street Works Code* or as *Urgent Repairs*. The Private Street Works Code establishes the works needed to improve the street to an acceptable standard. It applies to old and new private streets.
53. The procedure can be initiated by the frontager (owner of the premises) approaching the Council, or by the Council itself. In either event the Council needs to make the appropriate resolutions and to arrange to apportion the costs amongst the frontagers and collect those costs.
54. When all the works are completed to bring the street up to adoptable standards, the frontagers may then request the Council to adopt the street.

(Also refer to **SMART Part E Technical Note 17 - Private Street Works Code Q&A**)

### PRIVATE ESTATES

55. Where new streets are constructed and it is the intentions of the Developer not to request the Council to adopt them, the Council will still require the streets to be constructed to adoptable standards and inspected. However, the Council may waive this requirement, subject to a suitable Private Street Management Agreement being in place, to which the future residents will be required to enter, to ensure satisfactory maintenance of the private streets, in perpetuity.
56. The sum deposited under the Advance Payments Code will be retained (or the security not released) until the streets are eventually adopted, subject to reduction under Section 221(1) Highways Act 1980.
57. An appropriate mechanism to ensure the continued future maintenance and management of the private streets and communal spaces must be arranged at the outset of the design process. The legal agreement must be completed prior to the completion of the development.

### URGENT REPAIRS

58. Even if a street is “private” the Street Works Authority has a duty to deal with repairs where these are urgently needed to remove danger to traffic (whether vehicular or pedestrian). This gives the Street Works Authority power to get the work done without having to wait for the frontagers to agree amongst themselves on how to deal with the problem. The costs may be recharged to the frontagers.
59. Where the Street Works Authority requires urgent repairs to be carried out the frontagers can request that instead of having only the urgent repairs carried out that the street should be made up properly through the Private Street Works Code and adopted. If the frontagers request this, the Street Works Authority must implement the Code and must adopt the street. This applies even if the private street is narrow. The frontagers are liable only for the cost of making up the existing width of the street. If it needs to be widened the costs fall on the Street Works Authority. These costs may include having to acquire land and paying any compensation which becomes due.
60. Cost to make up a Private Street may be avoided by using powers under Section 230(7) (HA 1980) to deal with urgent repairs to private streets. These powers enable the Street Works Authority to carry out the repairs itself, at its own cost. The frontagers do not then acquire the right to have the street adopted.

## C.9. ADDITIONAL LEGAL AGREEMENTS

61. The following section provides an overview of the additional legal agreements, which can be entered by the Developer with Shropshire Council, to ensure that appropriate legal protection and compliance is established in the proposals, as it affects the local highway.
62. It is considered that if any development is likely to require any of the following agreements/licences then early discussions should be entered into with the Highway Authority.

### **HIGHWAYS ACT 1980:**

#### 63. SECTION 116 – STOPPING UP OR DIVERSION OF A HIGHWAY

<http://www.legislation.gov.uk/ukpga/1980/66/section/116>

Where it is intended to construct a highway, which will require the “Stopping Up” or divert any part of an existing highway an application must be made to the appropriate Highway Authority.

#### 64. SECTION 142 – PLANTING OF TREES & SHRUBS IN THE HIGHWAY

<http://www.legislation.gov.uk/ukpga/1980/66/section/142>

Where it is intended to plant trees or shrubs within the highway, including verges or other highway adoptable land. This must be approved by the Highway Authority.

#### 65. SECTION 167 - RETAINING WALLS NEAR STREETS

<http://www.legislation.gov.uk/ukpga/1980/66/section/167>

Where it is intended to construct a retaining wall close to any street the design and construction must be approved by the Local Authority. If the Local Authority is not the Highway Authority it must consult with the appropriate Highway Authority (i.e. Highways England for trunk roads).

#### 66. SECTION 176 - CONSTRUCTION OF BRIDGES OVER ANY HIGHWAY

[www.legislation.gov.uk/ukpga/1980/66/section/176](http://www.legislation.gov.uk/ukpga/1980/66/section/176)

This section empowers the Highway Authority to control, by the issue of a licence, the construction of a private bridge over a Highway. A 'bridge' means a structure, the sole purpose of which is to provide a way over a Highway.

A licence is required whether or not the Highway is maintainable at the public expense. No licence is required where the bridge is over a private street which is not a Highway.

#### 67. SECTION 177 - CONSTRUCTION OF BUILDINGS OVER A HIGHWAY

[www.legislation.gov.uk/ukpga/1980/66/section/177](http://www.legislation.gov.uk/ukpga/1980/66/section/177)

Through this section the Highway Authority has the power to control the construction or alteration of buildings which span or extend over part of a Highway maintainable at the public expense.

#### 68. S.179 - CONSTRUCTION OF CELLARS, VAULTS UNDER A STREET

[www.legislation.gov.uk/ukpga/1980/66/section/179](http://www.legislation.gov.uk/ukpga/1980/66/section/179)

A licence is required for the construction of any part of a building (including vaults, arches and cellars whether they are part of a building or not) under any part of a street. The Highway Authority grants the licence in respect of buildings under a Highway, whether or not the Highway is maintainable at the public expense.

When a licence is issued, the Authority must immediately give notice to any statutory undertakers who have apparatus under the street.

69. **SECTION 228 – ADOPTION FOLLOWING THE EXECUTION OF WORKS**  
[www.legislation.gov.uk/ukpga/1980/66/section/228](http://www.legislation.gov.uk/ukpga/1980/66/section/228)

This is usually used for the adoption of small areas of private land, immediately adjacent to an existing public highway, which has been improved (to an adoptable standard) following approval by the Local Authority.

## **TOWN & COUNTRY PLANNING ACT 1990**

70. **SECTION 106 – PLANNING OBLIGATIONS**  
<http://www.legislation.gov.uk/ukpga/1990/8/section/106>

This is used to impose planning obligations, by agreement, on a developer/landowner to facilitate appropriate legal, financial and/or infrastructure requirements are undertaken as part of any development.

71. **SECTION 247 – HIGHWAYS AFFECTED BY DEVELOPMENT: ORDERS BY SECRETARY OF STATE** <http://www.legislation.gov.uk/ukpga/1990/8/section/247>

This is used to enable the “stopping-up or diversion” of a highway, via the Secretary of State, for the purposes of enabling development to be carried out

## **LAND COMPENSATION ACT 1973**

72. **SECTION 1 – RIGHT TO COMPENSATION**  
<http://www.legislation.gov.uk/ukpga/1973/26/section/1>

This can be used by adjacent landowners where any public works undertaken have caused a depreciation in value of that land. The Council shall indemnify itself of such claims made, within all Section 38 and 278 Agreements under the Highways Act 1980.