

# HIGHWAY ADOPTION PROCEDURES



## Introduction

Highways Adoption by Milton Keynes Council ensures that certain basic public facilities like street lighting and street cleansing are provided by Milton Keynes Council on new developments. It also ensures rights of access to property for pedestrians and vehicles together with a route for utilities to provide underground services such as water, sewers, gas ect. We would normally seek to adopt roads which serve 6 or more residential properties. Highway Adoption is normally carried out by means of a section 38 agreement under the 1980 Highways Act, entered by Milton Keynes Council and the Developer.

The basic process for adopting highways under a section 38 agreement involves the following process.

- 1) The developer agreeing the detailed design for the proposed highway and obtaining “Technical Approval” from Milton Keynes Council.
- 2) The developer paying all necessary fees and charges to Milton Keynes Council and providing a surety for the Section 38 Agreement.
- 3) The developer entering a formal agreement under section 38 of the 1980 Highways Act.
- 4) The developer constructing the highway in accordance with the approved drawings or variations agreed in writing.
- 5) The developer providing required information and bring the works to a standard which allows the Council to issue the provisional certificate. This will place the site on its maintenance period which will normally be a minimum of 12 months.
- 6) Whilst buildings are occupied the developer must provide basic maintenance such as cleansing, vegetation maintenance and street lighting until the highway is adopted. The developer is to keep residents fully informed of the adoption process.
- 7) The Developer to carry out all necessary works at the end of the maintenance period to enable Milton Keynes Council to issue the final completion certificate and adopt the highway.

Alterations to the highway are carried out under a Section 278 agreement under the 1980 Highways Act. The procedures to be followed for a Section 278 agreement are very similar to those for a Section 38 Agreement but will require road space booking to confirm works dates before works commence.

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## Agreeing the Detailed Design

At the very start of the process, it is necessary to agree the area of proposed highway adoption and agree the surety sum. The appropriate fee can then be calculated, and this will normally need to be paid in advance of Milton Keynes Council accessing the drawings for technical approval and issuing technical audit comments.

In order to agree the drawings for the section 38 agreement the following drawings will need to be submitted after full planning approval has been obtained. The scheme should comply with the Milton Keynes Council Technical Guidance.

- Copy of planning application decision notice
- Agreement plans (pink plan) showing land and equipment for adoption
- Location plan
- Landscape drawing
- Cross sections and longitudinal profiles
- Contoured plan
- Drainage layout plan
- Typical drainage details
- Surface finishes and kerb plan
- Typical construction details
- Vehicle swept paths plan
- Gully catchment plan
- Street Lighting design
- Signing and lining plan
- Junction and bend visibility plan
- Accommodation works and reinstatements to existing highway
- A break down of construction costs for all highway works
- Land for adoption in a *.shape* file for land registry documentation

The pink plan will illustrate the area of works covered by the Section 38 Agreement. The area of proposed highway works will be shaded in pink on this drawing. The site boundary will be shown in a red line on this plan. The location of street lighting columns will be highlighted red. The drainage that is to be adopted by the highway authority should be shown in blue. Private drainage in black. Street signs and other equipment will be highlighted in brown. Works area within the existing highway land covered by a section 278 agreement will be highlighted in a contrasting blue.

The scheme may require a stage 2 safety audit to be undertaken for all works within the existing public highway. This will always be required on roads with speeds more than 30mph. It may also be required at other locations considered appropriate such as outside schools or when appropriate

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design standards have not been applied. The requirement for a safety audit will be agreed at an early stage with Milton Keynes Council. Technical approval will only be granted when we are satisfied with the design response to the safety audit.

At this stage we would recommend that the developer or their appointed consultant liaise with the Traffic Management Officer at the police to discuss potential concerns they may have on sites which include any traffic calming, change in speed limits, controlled crossings and other items which they may have an interest in. If a direct contact is required, please contact the MKCC Highway Adoption Engineer.

Milton Keynes Council will adopt highway drainage for the purpose of draining the proposed public highway. In exceptional circumstances we may agree to accept some water which is from the private development into the proposed highway drains. But we will not do this unless we are satisfied there is no reasonable alternative. The design of the highway drain will need to be supported by appropriate calculations. The highway drainage must have a right of discharge.

This will normally be via adopted sewers under a section 104 agreement but may discharge directly into water courses with land drainage consent from the Lead Local Flood Authority. Technical Approval will only be granted when the discharge rights are supported by a letter of intent from Anglian Water that the drainage proposals are suitable for inclusion in a 104 agreements or similar document.

Structures will need to be designed and approved in accordance with the current DMRB guidance and accepted by the Milton Keynes Bridges and Highway Structures Team via assessments of AIP's, design check certificates and construction drawings. Commuted sums may be payable for all structures and needs to be agreed by the Milton Keynes Bridges and Highways Structures Team.

Street Lighting will need to be approved by Milton Keynes Council and be in accordance with the current Milton Keynes Council Street Lighting Specification.

After we are satisfied with the proposals of the section 38 or 278 we will issue a formal certificate of Technical Approval. The Technical Approval certificate may have certain design issues reserved or qualified. These issues will need to be approved at a latter stage possibly after construction has started.

Works on section 38 sites should not begin until Technical Approval has been granted. No works can commence on section 278 sites until the agreement and road booking is in place.

## **Paying fees and charges to Milton Keynes Council and providing the surety for the section 38 and 278 Agreement.**

Typically, our section 38 and 278 fees are based on 10% + £3747 of the bond required for the site. The bond is typically the cost required to construct the site. You will be required to provide us with

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a breakdown of construction costs to enable us to work out the bond. However an estimate of fees is undertaken on every site to determine what works are being undertaken and costs involved based on standard construction figures. For a section 38 or 278 there is a minimum amount required for each agreement, additionally any extras such as street lighting and safety audit fees. Below is a quick list of what we would charge:

- Section 38 / 278 Fees = 10% of bond + £3,747, a minimum of £3,747 is required.
- Street light approval fees = £956 + VAT for up to 10 columns, £1,912 + VAT for up to 50 columns, or £2,884 + VAT for up to 100 columns.
- Street light design fees = £1,922.50 + VAT for up to 10 columns, £3,812.50 + VAT for up to 50 columns, or £5,700 + VAT for up to 100 columns.
- Street light and Electrical Design fees (S278 only) = £2,603.33 + VAT for up to 10 columns, £5,200.83 + VAT for up to 50 columns, or £7,795.83 + VAT for up to 100 columns
- Road Safety Audit Fee = 5% of the bond + £2,000 to a maximum of £6,000+ VAT. This will cover all stages of the safety audit process and for MKCC to either carry out the audits themselves, or review/accept external safety audits.
- Traffic Signal Approval Fee = £961 + VAT per junction / crossing
- Section 38/278 Legal Fee = £3500

There are a few exceptions made to the fees depending on the size of the site and what works are being carried out.

- On large projects with costs estimated to exceed £15m a section 38/278 fee will only be 8%
- On very small sites, with bonds typically no greater than £25,000 we have a short form section 278, where a cash deposit is paid instead of securing a bond. This is a template agreement signed by highways and the contractor / developer and leaves out the legal teams, therefore the legal fees aren't required.
- Bridge AIP (Approval) and inspections fees are estimated case by case.
- If a large section 38 is submitted and then broken down into phases before being sent to legal, additional section 38/278 legal fees of £3500 will be required for each agreement entered.

An example of the fees required based on an assumed bond of £100,000, with the inclusion of approval of 10 street light columns and some traffic signals is shown below:

Section 38/278 Fee: £13,747

Street Light Approval Fees: £956 + VAT

Safety Audit Fee: £6000 + VAT

Legal Fee: £3,500

Traffic Signal Approval Fees: £961 + VAT

On all sites fees are split into stage 1 and stage 2 fees payable at different times.

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Stage 1 fees (3% of bond +£3,747 + streetlight, road safety, structure, and traffic signal fees payable prior to technical audit comments being made.

Stage 2 fees (7% of bond) + legal fees payable once technical approval is granted, and legal instructions issued.

If there are minor highway works being carried out, I would recommend looking onto at our NRSWA Streetworks team, they have a breakdown of fees required for any works on the highway with don't relate to section 38 / 278 submissions.

A section 278 is required for all alteration to the highway layout and all fees need to be paid and an agreement in place before any work is carried out on the highway.

Additional fees may be charged if the completion date is reached, and the provisional completion certificate has not been reached, thus meaning construction on going and works not completed.

The extra fees will be up to 1% of the surety sum for each month after the completion date has passed without the provisional completion certificate being issued.

Any section 278 road space booking to agree works dates and temporary traffic management will need to be applied for through the MKC highways licences and permits webpage and issued by the MKCC Streetworks Team, all relevant road space booking fees will be charged and paid at this stage of which the fees can be found online. You should seek comments from the Senior Highways Engineer dealing with the Technical Approval Process prior to making road space booking to discuss process.

*Fees are subject to change 1<sup>st</sup> April each year, confirm fees with MKC Highway Adoption for any proposed scheme.*

## **The developer entering a formal agreement under section 38 /278 of The Highways act.**

The agreements are standard agreements produced by our legal department. We have five different types of agreement.

- Section 38 agreement for new sections of public highway.
- Section 278 agreement for alterations to existing highways.
- Combined 278/38 agreement which reduces the number of agreements required if both types of agreement are required.
- Short Form section 278 agreements for alterations to existing highways. This is a standard pro forma which cannot be amended. It is intended for smaller scale works on the existing public highway. It is supported by a simple cash deposit and only requires the payment of fees and simple signature to complete.

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- Omnibus Section 38 agreement with the Homes and Community Agency. This involves just one agreement for all adoptions. Each scheme is added to the agreement by inclusion on a schedule. Milton Keynes Council is happy to consider omnibus type agreements for other developers.

To enter into an agreement for any of the above agreements the developer is required to provide/have obtained the following

- Technically approved design of the proposed scheme.
- Agreed all fees, commuted sums, and provision of surety.
- Name address and contact details of the solicitor working on your behalf including phone number and email.
- Name address and contact details of the bond provider.
- Completion date for the scheme.

You will be required to provide copies of the agreement plans and site location plan for the development prior to engrossment of the agreement.

After all the above documents have been provided the appropriate legal instruction will be sent to Milton Keynes Council legal department. From issue of legal instruction, you have 12 months maximum to enter into the legal agreement otherwise new legal fees will be charged at the current years cost for each agreement required.

Once the legal agreement is signed the Highways Adoption Engineer will need a copy of the Agreement Plan in a *.Shape* file for land registry documentation.

## **The Developer constructing the works in accordance with Approved Drawings.**

Before starting on site for a section 38 agreement technical approval must have been obtained. The agreement should be signed within three months of works starting on site. Before starting on site for a section 278 agreement technical approval must have been obtained and all fees and charges paid with the full agreement signed. No works are permitted on the existing public highways without an agreement in place and road space booked through the Milton Keynes Council Streetworks Team.

Before starting on site, the developer must arrange for a pre-start meeting and provide a programme of works which identifies the date of completion of the highway works. The inspector or engineering responsible for inspecting the site will attend the prestart meeting.

Milton Keynes Council will inspect all highway drains before backfilling. No backfill of highway drains should take place until this inspection is undertaken. The backfill for trenches shall be approved prior to works being undertaken.

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The developer will arrange for CBR and plate bearing test to be carried out at intervals and locations agreed with Milton Keynes Council on formation, top of subbase and any complicated back fill locations such as adjacent to culverts. Density tests will be undertaken on all tarmac layers to ensure correct compliance.

The developer must allow the inspector from Milton Keynes Council to always inspect the works. The developer is required to invite the inspector to inspect all formations before covering. The formation should only be covered if the inspector confirms they are unable to take up a reasonable offer to inspect before covering.

The inspection will be invited to inspect the works on each road included within the scheme to inspect the following:

- Installation of drainage and backfill of trenches
- Road and footway formation
- Road and footway subbase
- Construction of gullies and connection of laterals
- Kerb works such as kerb race base and backing and kerbs of different types
- Utility trenches backfill
- Streetlight and sign installation and backfill
- Inspect the laying and compaction of all tarmac and blockwork.

All tests shall be carried out at the developer's expense by accredited laboratories. The developer shall provide copies of these test results to Milton Keynes Council. We may agree to wave some or all of these tests but will only do so in writing. The developer may also be required to carry out other tests as required

The developer will be required to provide street lighting test certificates. The street lighting will need to be confirmed as acceptable before the maintenance certificate is issued. The stage 3 safety audit will need to be undertaken and all necessary amendments implemented prior to the provisional maintenance certificate is issued.

Milton Keynes Council will only issue the provisional maintenance certificate when we are satisfied that works are completed to reasonable satisfaction. The issue of this certificate will commence the minimum 12-month maintenance period for the works. We will release up to 75% of bond on issuing the Provisional completion certificate.

## **Developer Providing Basic Maintenance and Information to Residents.**

After the first occupation and until the roads are adopted, the developer is required to offer certain basic facilities and maintenance. The developer must provide carriageway and footways to binder course level. The street lighting and drainage must be provided. The developer must ensure that



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the proposed highway is safe for the public to use, and all direction signs and street name plates installed.

The developer will be required to provide a schedule of maintenance on the development. This must provide for the following maintenance services.

- Street cleansing which includes removal of weeds, channel and gully cleansing on at least a monthly schedule.
- Grass verge and shrub cutting and tree trimming to be undertaken at least 12 times per year.
- Street Lighting maintenance service.
- Basic Highways maintenance service including emergency inspection and repair.

The developer is required to provide the name and contact details of the service provider as well as a copy of the order to the contractor for these services.

The developer will be required to issue an information letter to all residents outlining the obligations of the developer for maintenance. The letter will include details of maintenance schedules and contact information on service providers. A copy of this letter will be issued to Milton Keynes Council.

## **Milton Keynes Council issuing Final Completion Certificate and Adopting Roads.**

After the maintenance period has been completed an inspection will be undertaken with the developer to identify all outstanding maintenance and remedial works. Before the final completion certificate is issued all these outstanding remedial works must be completed. The developer will also be required to provide the Health and Safety File, As-built drawings and S278-38 Post Construction Inventory As-built.

### Post Construction Inventory As built

- Sheet provided by MKC adoption engineer on request

### As-built Agreement Plan (everything shown on 1 plan) in PDF, AutoCad and Shape Format

- Area of highway you worked in highlighted in blue
- Area of land up for adoptions highlighted in pink
- Drainage being adopted by MKC in contrasting blue
- Private drainage in black
- Street light locations in red
- Street name plates shown in black
- Ordinance survey grid locations shown on plan
- Eastings and northings of all MKC assets in table on same page [gully pots, streetlights, signal posts, street name plates, signs and any other adoptable assets]



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- Street names shown on roads
- Streetlights numbered next to column plot locations

Separate and more detailed/clearer As built drawings for each aspect of adoption (along with above)

- Street Lighting, traffic signal & electrically connected furniture drawings
- Drainage drawings detailing highway drainage in blue and private drainage in black
- Signs drawings, with specification and legend where they are unique
- Detailed drawings of other assets such as underpasses, crossings etc
- Specification documents, detailing component specification (such as column/lantern & gully cover/depth etc)

As-built landscaping plan:

- Location and area in M<sup>2</sup> of grass verge shown in light green
- Locations of area in M<sup>2</sup> of hedge / shrubs / bushes shown in dark green
- Location and type of tree shown in black outline
- Easting and northings of trees and start and end point of grass verge / shrubs shown on plan

As-Built Sewer Details: [if only adopting gully pots this isn't required]

- Construction details of sewer that will be adopted by MKC.

Health and Safety File:

- Material specification
- Construction thickness of road / footway / redway / verge
- Copies of risk assessments
- Copies of method statements
- Test results
- Warranty certificate on assets [gully pots, streetlights, signal posts, street name plates, signs and any other adoptable assets]

Once Milton Keynes Council has the adoption information and all works are completed, we will proceed with issuing the final certificate and adopting the development in accordance with the section 38 or section 278 agreement.