

Section 278 Agreements (Highways Act 1980)

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What is a Section 278 Agreement?

A section 278 agreement (or s278) is a section of the Highways Act 1980 that allows developers to enter into a legal agreement with the council (in our capacity as the Highway Authority) to make permanent alterations or improvements to a public highway, as part of a planning approval.



Background:

The Highway Authority are a statutory consultee to planning applications that impact on highway e.g. by the formation of an access or alteration of an existing access or where development will result in a material increase in or the change in the character of traffic entering or leaving the highway.

The Strategic Development team is responsible for preparing responses to planning applications received from the 12 Essex Districts and the Minerals and Waste Planning Authority. The team of 21 Engineers and Officers respond to well over 5000 applications a year, these can range from a dropped kerb crossing to large residential and commercial development including Garden Communities.

The Highway Authority consultation response:

On the assumption that the principle of development is acceptable in principle and not contrary to current policy and standards the Highway Authority response will usually require the developer to carry out highway works, of some description. In its simplest form this may be the creation of a new access but often highway mitigation is required across a wider area and may include new or upgraded junctions, new roads, cycleways, crossings, bus stops or works to the Public Rights of Way network.

These works are secured by the Local Planning Authority in the first instance by a planning obligation, (Section 106 Agreement) or a planning condition(s) attached to a grant of planning consent. The mechanism for delivery of the highway works secured through the planning process is a legal agreement under Section 278 of the Highways Act 1980 and this is drafted by Essex Legal Services.

Advantages of Section 278 Agreements vs contributions:

The Highway Authority have successfully used Section 278 Agreements to deliver £Ms of developer related highway works for many years and it remains our favoured approach as opposed to taking highway contributions via S106 for direct delivery by Essex County Council.

The big advantages of this is that all the risk in delivery of the works rests with the developer and not Essex County Council. This has been particularly relevant in recent times where construction costs have increased significantly during the covid pandemic for example.

Developer funded works are managed by the Development Management Team in Essex Highways who carry out technical checks on drawings submitted by a developer before issuing a works licence, completion and maintenance certificates. All fees and bonds are covered within the Section 278 as is land and noise compensation and commuted sums for maintenance.



Exceptions:

Financial contributions may be taken in exceptional circumstances for large scale strategic transportation schemes with more than one funding source, which have been identified through the Local Plan and associated Infrastructure Delivery Plan.

However these do come with their risks!



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Danbury

New junction

New junction

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Any questions?

