

EAST SUSSEX COUNTY COUNCIL

Minor Works Section 278 Agreement Guidance Notes

February 2024

This document is intended to assist developers when their planning permission requires them to undertake minor development related highway works under Sec 278 of the Highways Act 1980.

A Minor Works Sec 278 Agreement may be used in lieu of a full Sec 278 Agreement where land is not required to be dedicated as highway and where a refundable cash deposit is payable to the County Council in lieu of a separate legally binding guarantee (bond provided by a surety).

The Developer shall enter the following information into the Minor Works Sec 278 Agreement Form and send all other information by email and Post to East Sussex County Council, Transport Development Control.

For help with completing the Agreement Form, please see **Appendix 4**.

1. The name, registration number and registered address of developer.
2. The location of the proposed works.
3. The estimated length of time for the completion of the highway works. Please allow sufficient time to account for any unexpected delays.
4. A description of the required highway works. This should be non-technical but sufficiently detailed to identify each element of the works.
5. The estimated total cost of the works.
6. The total cost of the works forming the Cash Deposit
7. A copy of the Planning Application Form and approved drawing.
8. A copy of the Planning Application Decision Notice.
9. Two copies of a 1/500 scale Agreement Drawing based upon a site survey showing the existing highway land upon which works are to be carried out coloured pink.
10. Two copies of a 1:1250 Ordnance Survey location plan, preferably incorporated on the above Agreement Drawing.
11. One set of drawings comprising technical details for the proposed works. Engineering drawings shall be produced by a competent Engineer in PDF format (sent electronically) and in paper format (sent by post) and shall include all specifications to a standard to enable construction. Such details shall include a detailed design layout, longitudinal and cross sections and construction details of the following where relevant:
 - Carriageway or drainage works
 - Road Markings
 - Signs
 - Bus Stops
 - Street Furniture
 - Street Lighting
 - Statutory Authorities equipment

All of the above will need to be approved prior to construction. Where required, the works will need to satisfactorily meet the requirements of a Road Safety Audit.

12. A detailed bill of quantities of the total cost of the works. This shall be used for calculating the fee of 10% of the estimated works cost or £2000.00, whichever is the greater.
13. A detailed bill of quantities for relocating utility equipment if necessary. This shall be added to the estimate for the total cost of the works for the purpose of calculating the deposit.
14. The payment of a cash deposit equal to the cost of the works including the cost of relocating or altering any utility equipment.
15. A commuted sum may be payable if nonstandard materials or features requiring enhanced levels of maintenance are used. The fee will be confirmed by the Transport Development Control Team and will need to be paid prior to the Minor Works Sec 278 agreement be completed.
16. The payment of an agreement fee of 10% of the estimated total cost of the works (or a minimum of £2000.00) to cover administrative costs, engineering assessment and inspection. Additional costs will be incurred for any Traffic Regulations Orders required, if applicable.
17. The payment of an additional fee of £500.00 to cover the Council's legal costs.
18. Written confirmation that the Developer will pay all costs incurred by the County Council if the Agreement is not signed.
19. Confirmation that the Developer will comply with the terms of these Guidance Notes.

Two signed paper copies of the agreement shall be sent by post to Transport Development Control (TDC) for completion by ESCC's Solicitors. Once complete a paper copy will be returned to the Developer.

Please note that failure to provide a completed Agreement Form and any of the requirements above will result in your application being rejected or delayed. Full details of the Minor Works Sec 278 Process can be found at Appendix 1.

The following explanatory notes also so apply to all Agreements unless otherwise agreed.

- a) The Developer will be responsible for funding any additional works which may be reasonably required and as a result of any inadequacies in the Agreement drawings or arising from unforeseen circumstances before or during construction.
- b) Separately from the Agreement, the developer shall be responsible for applying for and gaining a permit from East Sussex Highways, Network Management Team to implement the works on the highway. The notice period varies depending upon the scale of the works and the classification of the road, but an application may need to be submitted at least 3 months in advance of the intended start date.
- c) Highway works may also be subject to a Lane Rental Charge if they occur on the most congested sections of our Strategic Road Network within peak periods. The developer is responsible for paying any Lane Rental Charges as maybe necessary. Further information on Street Work Permits and Lane Rental can be obtained by contacting the East Sussex Highways, Network Management Team. They can be contact on 0345 60 80 193 or at network.management@eastsussexhighways.com
- d) The Developer is also responsible for agreeing and informing residents, businesses, and Councillors of the construction of the works in accordance with details to be agreed in advance with the Transport Development Control team.

- e) Where appropriate, East Sussex County Council, as Highway Authority, will require developers to pay a commuted sum to pay for the additional future maintenance costs of the works if nonstandard materials or features requiring enhanced levels of maintenance are used. The fee will be confirmed by the Transport Development Control Team and will need to be paid prior to the Minor Works Sec 278 agreement be completed.
- f) The Agreement Fee is calculated at a rate of 10% of the estimated cost of the works or £2000.00, whichever is the greater and payable with the Developer's submission of the Agreement.
- g) East Sussex County Council will hold in trust for the duration of the works, a Cash Deposit equal to the estimated Cost of Works in order to mitigate against the failure of the Developer to carry out or complete the works in the agreed time period, or its failure to carry out any remedial works to the satisfaction of the County Council. Upon the issue of the Provisional Certificate, 75% of the Cash Deposit will be returned to the Developer, with the remaining 25% returned upon issue of the Final Certificate.
- h) The Developer is responsible for the full costs incurred in respect of the following:
 - a) any Stage 1,2,3 (and potentially 4) Road Safety Audits required.
 - b) any alteration to, or provision of new Traffic Regulation Orders (to include advertising, processing Orders, staff admin cost, resolution of objections, signs, road markings etc.).
- i) East Sussex Highways (ESH) / Balfour Beatty Living Places (BBLP), East Sussex's Street Lighting Contractor manages the streetlights in East Sussex on behalf of the County Council. Specification and adoption details for streetlights in new developments can be obtained from the East Sussex Highways, Street Lighting Team. They can be contacted on 0345 60 90 193 or at streetlighting@eastsussexhighways.com
- j) ESH/BBLP will check Sec 278 Agreement Street lighting designs to ensure that they meet the council's requirements. It is therefore recommended that developers employ ESH / BBLP to design street lighting in order to avoid delays associated with designs produced by others. Developers may still use others, but ESH / BBLP will need to check their designs. Street lighting on Sec 278 agreements works must be installed by ESH / BBLP. Others cannot work on streetlights on the public highway, unless otherwise agreed in writing by ESH / BBLP. Once technical approval has been issued the developer should make their own arrangements directly with ESH / BBLP to install the approved street lighting. Developers need to include street lighting information on their as-built drawings submission and the works been signed off by ESH, before the Sec 278 works are handed over to the council.

Applications for Minor Works Sec 278 Agreements should be submitted to TDC at:

East Sussex County Council
Transport Development Control
West C, County Hall
St Anne's Crescent
East Sussex
BN7 1UE

Email: developmentcontrol.transport@eastsussex.gov.uk

Tel: 01273 482254

Website: [Transport Development Control | East Sussex County Council](#)

Before submitting your application, please ensure that you have included the following:

- A copy of the Planning Application Form and approved drawing **(by email)**
- A copy of the Planning Application Decision Notice **(by email)**
- 2 copies of a 1/500 scale Agreement Drawing based upon a site survey **(If A3 size or smaller by email, by post if larger than A3)**
- 2 copies of a 1:1250 Ordnance Survey location plan **(If A3 size or smaller by email, by post if larger than A3)**
- 1 set of technical drawings **(If A3 size or smaller by email, by post if larger than A3)**
- A bill of quantities (estimate) of the total cost of the works including utility equipment **(by email)**
- Payments **(BACS Transfer or Invoice if requested):**
 - Cash deposit
 - Agreement fee
 - Council's legal costs (£500.00)
 - Commuted Sum (if applicable)
- Two signed paper copies of the agreement **(by post).**

Appendix 1: Pre - Construction Process Map

Stage 1: Transportation Development Control (TDC) receive an enquiry from a developer for S278 Agreement

Stage 2: Does the enquiry include the need for Land Dedication or a Surety? If yes go to Stage 3 if no go to Stage 4.

Stage 3: TDC send the developer the Sec 278 Guidance Notes for them to submit

Stage 4: TDC send the developer the Minor Works Sec 278 Guidance Notes including the TDC contact information

Stage 5: Developer submits the Minor Works Sec 278 Application to TDC which includes a completed Minor Works Sec 278 Agreement Form, drawings, payments and all the information required by the guidance Notes

Stage 6: TDC review the returned application including 2 paper copies of the Agreement, ensuring that all sections have been correctly completed and that all payments and drawings have been received. TDC issue instructions to ESCC (East Sussex County Council) Legal team to complete the Agreement. Once completed ESCC Legal inform the Local Planning Authority Planning Register, return the completed agreement to the developer and sends a copy of the completed agreement to TDC.

Stage 7: TDC to assess the technical drawings for Technical Approval including any necessary Road Safety Audits or Traffic Regulation Orders, or other procedural requirements. Once satisfied, TDC will issue written technical approval to the Developer. The Developer will then consult with ESH Network Management Team and TDC to agree a provisional start date.

Stage 8: TDC save the Agreement including technically approved drawings and other documentation onto Mastergov and email a copy of the completed Agreement to ESCC Highways Information Team, ESCC Local Highways Team, TDC Principal Development Engineer, ESCC Network Management Team

Stage 9: TDC can then inform the Developer that the S278 works may commence.

Appendix 2: Post Construction Process Map

Stage1: Works Commence on Site subject to ESH Network Management Team and ESCC TDC Team

Stage 2: TDC inspect the works at intervals agreed with the Developer

Stage 3: The Developer notifies TDC upon completion of works.

Stage 4: TDC undertakes a final inspection and requests a Stage 3 Safety Audit (where required) and provides a list of defects to the developer.

Stage 5: The Developer to resolve any Stage 3 Safety Audit actions and identified defects as agreed with TDC Engineer.

Stage 6: TDC inspect the works and once satisfied advise the Developer that the works are substantially complete.

Stage 7: TDC checks that all the relevant clauses of the Agreement have been met. Once satisfied TDC shall.

- Issue the provisional certificate, copied to ESCC Local Highways Team, ESH / BBLP Infrastructure, ESCC Legal Services and ESCC Highway Information Team and TDC Business Support
- Confirm commencement of the 12-month Maintenance Period
- Return 75% of the cash deposit to the Developer.

Stage 8: During the maintenance period the Developer prepares and provides As Built drawings and Health and Safety file prior to the issue of the final certificate.

Stage 9: At the end of the 12-month Maintenance Period the Developer requests a final inspection from TDC.

Stage 10: TDC inspects the works and provides a list of any further defects to the Developer. TDC checks that all the relevant clauses of the Agreement have been met, once satisfied that all defects have been addressed TDC shall:

- Issue the final certificate, copied to ESCC Local Highways Team, ESH / BBLP, ESCC Legal Services and ESCC Highway Information Team and TDC Business Support
- Return the remaining 25% cash deposit to the developer.
- Send the As Built drawings to ESCC Local Highway team, ESCC Highways Information Team and ESH / BBLP
- Save the Health and Safety file, Agreement, As Built drawings and final certificate onto Mastergov

Appendix 3: Works Communication

East Sussex County Council Highways Works Communication and Customer Engagement Plan

Guidance for Works Constructed under Section 278 of the Highways Act 1980

Prior to the commencement of works relating to your Sec 278 Agreement with East Sussex County Council and to ensure smooth delivery of your works, you have an obligation to make advance contact with our Network Management Team to obtain the necessary Permit, pay any necessary Lane Rental fees and to agree advanced communications with Transport Development Control Team

Prior to the advanced notification of any works by the developer/contractor, final sign off must be obtained from the ESCC. As a guide, the developer/contractor must provide the following information in advance of ESCC sign off:

- A description of the planning application and summary of any consultation that relate to the works.
- Details of proposed works (for example: location, description, dates).
- Name and contacts for the contractor.
- Copy of the leaflet to be distributed and date to be delivered, other methods of communication for example: signs to be displayed, traffic management/diversion route

Appendix 4: Minor Works S278 Form

The following are guidance notes to assist with completing the Minor Works Sec 278 Form. Please check that the form has been completed thoroughly prior to submitting to ESCC. If further assistance is needed, please speak to the Transport Development Control Officer dealing with the Agreement.

SCHEDULE A

The Development:	Brief description of planning application
Address:	
Planning Application Reference Number:	Planning Reference Number
The Agreement Drawing:	Drawing Reference Number

Full Description of s278 Works:

Complete Schedule A by providing:

- Brief description of the planning application proposals
- Address of works (Location Address)
- Planning Reference number
- Agree final drawing reference number.

Please enter a full description of the Minor Works S278 works to be completed.

For individuals, complete the following:

This deed has been duly executed the day and year first before written.

Signed as a deed by Full Name of Individual / Acting Power of Attorney (delete as appropriate)

Full Name of Individual / Acting Power of Attorney (BLOCK CAPITALS) in the presence of a witness

Signature:

Signature of witness: Witness Name (Block Capitals):

Witness Address:

If you are a Limited Company, otherwise than under a common seal, complete the following:

Executed as a deed by

acting by [a director and its secretary] / [two directors]

Signature of Director: Name (Block Capitals):

Signature of [Secretary][Director]: Name (Block Capitals):

Once all the fields have been completed, please remember to sign the form and return all drawings, documents and payments required by these guidance notes to Transport Development Control.

Appendix 5: FAQ's

What is a Minor Works Sec 278 Agreement?

Until recently the Council used three mechanisms for delivering private resident/developer works in the highway, (i) a standard vehicle crossover process, (ii) a highways licence and (iii) a full Sec 278 Agreement. A Minor Works Sec 278 agreement provides another option.

Will certain cases be referred to East Sussex Highways for delivery by a highway Sec 184 licence? Yes, for a simple vehicle crossover. The resident or developer will apply to highways for a crossover using the existing crossover. All other works will be managed by Transport Development Control (TDC) in the form of a Sec 171 Licence, Minor Works S278 or full S278 Agreement.

What's the threshold for the type of works to be delivered by Minor Works Sec 278?

The Minor Works Sec 278 could be used to deliver schemes that include works greater in scope than just a simple vehicle crossover. For example, where a new bell mouth access is required with minor footway works.

Is there an upper threshold in regard to the value of works deliverable by a Minor Works S278? The threshold is determined by the value of the works. Subject to the works being eligible, those with a value of less than £50,000 may be delivered by a Minor Works Sec 278, whereas those with a value exceeding £50,000 will be delivered by a normal Sec 278.

Can I use a Minor Works Sec 278 for works with a value greater than £50,000?

In some cases, this may be appropriate. If the works are compliant with the Minor Works Sec 278 process in all other regards and if the works are simple and their construction and will have little overall impact on highway users, this may be possible subject to agreement with TDC.

Can the Minor Works Sec 278 be used for works where land dedication is required?

No, if land dedication is required, a full S278 should be used. In some cases, it may be possible to progress a Minor Works S278 Agreement alongside a separate land dedication Agreement, again subject to agreement with TDC.

Can a Surety be used for a Minor Works Sec 278?

A Surety is a financial guarantee that provides a Bond that can be called upon by ESCC where the developer fails to complete the works. A Surety may only be used in a full Sec 278 where the Surety, (normally a financial institution or NHBC), is required to be a signatory to the Agreement. Minor Works Sec 278's may only use a cash deposit and as with full Sec 278's, this must be of equal value to the full cost of the works, including any Stats costs.

Can I change the standard wording of the Minor Works S278 Agreement?

If it necessary to change the standard wording approval MUST be obtained from ESCC Legal Services at the time of issuing Instructions. Additional legal costs may be incurred by the developer.

How much is the TDC fee?

The minimum fee for a Minor Works Sec 278 is 10% of the cost of the works (excluding Stats costs) or £2000.00 whichever is the greater.

How are ESCC's Legal Costs being met?

The Minor Works Sec 278 Agreement includes a requirement for a flat rate fee of £500.00 to cover Legal Services' costs in executing the Agreement.

How long does it take to complete a Minor Works S278 Agreement?

Once a signed Agreement has been received and approved by TDC and all other requirements have been met, TDC will send the Agreement to ESCC Legal Services for completion. From its receipt ESCC Legal Services aim to return signed and sealed Agreements as soon as possible.

Who will assess the construction details and in section works delivered by Minor Works Section 278 agreements?

The construction details for Minor Works Sec 278's will be assessed by TDC and subsequently inspected in the same manner as full Sec 278's.

What if there is no Director or Secretary within the company to provide a second signature on the Agreement Form?

The Companies Act 2006 s44(2)(b) allows a company to execute a document under the law of England by a single director if that signature is witnessed and attested by an independent witness. Therefore, the signature block can be executed with the company name following the words 'Executed as a deed by' rather than the name of the director. The words next to the second signature box, Secretary/Director, can be struck through and the word Witness written instead. The witness should sign and put their name in block capitals in the existing boxes.