

Commuted Sum at New Development

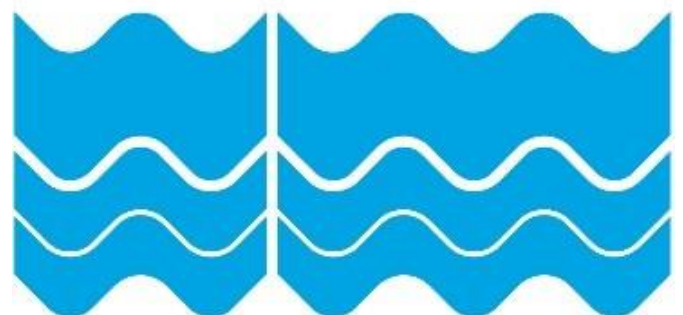
Guidance Note

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1. Overview

This Guidance Note outlines the East Sussex County Council (**the Council**) approach to commuted sums in the context of new development and is intended to assist developers in understanding their responsibilities when proposing highway works to be adopted by the Authority.

Commuted sums are financial contributions paid by developers to cover the long-term maintenance costs of specific highway assets provided as part of a development and subsequently adopted by the Highway Authority under a Section 38 or Section 278 agreement (Highways Act 1980). These contributions are necessary to ensure that non-standard or higher maintenance features, such as street lighting, landscaped areas and bespoke materials can be properly maintained over their design life without creating a future financial liability for the public.

This guidance provides clarity and consistency to support early engagement between developers and the Authority. It sets out:

- The policy and legislative context for commuted sums, including relevant national guidance
- The types of highway infrastructure and features that may attract a commuted sum
- The basis and assumptions used in calculating commuted sums
- Payment terms and procedures
- How commuted sums are managed and utilised by the Authority

By setting out clear expectations, the Guidance Note helps developers plan appropriately, facilitates smoother negotiations and legal agreements, and supports the delivery of high quality, adoptable highway infrastructure.

For all enquiries relating to commuted sums, early engagement is strongly encouraged. Please contact the Transport Development Planning Team, who act as the primary point of contact and can provide advice and support throughout the planning and adoption process

2. Introduction

Commuted sums are financial contributions provided by developers or third parties to the Highway Authority to cover the long-term maintenance costs of new or enhanced highway infrastructure.

These sums are typically secured through legal agreements under Sections 38 and 278 of the Highways Act 1980. This guidance note outlines the Council's approach, criteria and method for assessing, calculating, and securing commuted sums to ensure the sustainability and financial viability of adopted highway assets over their lifecycle.

2.1. Background

The Highway Authority has a statutory responsibility for the maintenance and management of adopted highways within its administrative area, including a responsibility for keeping the highway safe for users. This duty extends beyond the surface and includes the “structure and fabric” of the highway.

When a highway is adopted or altered, the Highway Authority therefore takes on full responsibility for it. This responsibility is not limited to the physical maintenance of the asset by cleaning, repairing, and replacing. It includes potential liability to defend claims for breach of statutory duty and negligence.

Highway Authorities can agree to adopt new roads and secure improvements to existing roads under the Highways Act 1980, using Section 38 for new roads provided on private land, and Section 278 for alterations made to existing publicly maintained highways.

The style, location and expectation of developments have changed over recent years with more emphasis being placed on delivering ‘quality’ environments with enhanced materials and street design. This has coincided with moves to develop more constrained and challenging sites, which has raised questions over the adoption and the safety, maintainability and future funding of road layouts which vary from the ‘normal’ standard of highways authorities, and on which funding levels are based.

These challenges often lead to the introduction of higher levels of maintenance and may also involve added features which place additional burdens on future maintenance but are often the only way to allow the practical development of the site.

The intent of collecting commuted sums is not to stifle innovation, but rather to allow the Authority greater flexibility to consider adopting ‘non-standard’ layouts and materials without placing undue burdens either on its maintenance budget or its Council Taxpayers.

2.2. Legislative Basis for Commuted Sums

The powers to seek commuted sums are provided under Section 38(6) and Section 278(3) of the Highways Act 1980. These provisions enable the Highway Authority to secure financial contributions from third parties — typically developers — for the future maintenance of highways that are either newly constructed and adopted (under Section 38) or improved as part of development works (under Section 278).

It is sometimes argued that commuted sums should be limited to covering only “extra over” costs — that is, the additional cost of maintaining non-standard construction, specialist materials, or exceptional features. However, this interpretation has been clarified by the courts.

In *Redrow Homes Ltd v Knowsley Metropolitan Borough Council* [2009] the Court of Appeal confirmed that it is lawful for Highway Authorities to require commuted sums to cover the full scope of future maintenance costs, not just for non-standard or

exceptional items. This applies to both new highways adopted under Section 38 agreements and to highway improvements delivered through Section 278 agreements.

The Court emphasised the wide and unqualified wording of both Section 38(6) and Section 278(3), noting that these provisions do not restrict the types of maintenance costs that may be secured, nor do they set limitations on how the amount of the commuted sum should be calculated. The ruling affirms the Authority's ability to apply commuted sums comprehensively to support the long-term maintenance of adopted highway infrastructure.

3. Assets Liable for Commuted Sums

For the purposes of adoption or alterations under Section 38 or Section 278 of the Highways Act 1980, the term "highway" encompasses all works, infrastructure, and associated elements necessary for its construction, operation, and maintenance. This includes, but is not limited to:

- Carriageways
- Footways and footpaths
- Cycle tracks
- Roundabouts
- Traffic calming measures
- Street furniture
- Bridges, subways, tunnels and retaining walls
- Pedestrian refuges
- Verges
- Culverts and ditches
- Street lighting and illuminated signs
- Traffic signal infrastructure
- Fencing and gates
- Planting, soft landscaping and trees
- Drainage systems, including Sustainable Urban Drainage Systems (SuDS)
- Any other objects or features legitimately located within the highway with the consent of the Highway Authority

While the legal position allows the Highway Authority to seek commuted sums for all elements of future maintenance, in practice the Council applies a targeted and proportionate approach.

As such, commuted sums will generally be sought only for:

- Non-standard carriageway and footway construction (e.g. block paving, coloured surfacing)
- Drainage infrastructure, including SuDS features requiring specialist maintenance

- Street lighting, where additional or non-standard equipment is proposed
- Street furniture not specified in the Authority's standard details
- Landscaping and trees, including planted verges and green infrastructure
- Traffic signal equipment, including new signalised junctions or crossings
- Structures, such as bridges, retaining walls, culverts, and subways

Definitions of what constitutes 'standard' construction or specification are provided in the section below, and developers are encouraged to consult early with Transport Development Planning to clarify any site-specific requirements.

4. Commuted Sum Payments

The payment of commuted sums will be formally secured through the relevant Section 38 or Section 278 agreement, based on the approved design drawings submitted as part of the technical approval process.

A 'provisional' commuted sum will be calculated at the time of agreement and will be payable in full prior to execution of the legal agreement.

Should the design be amended during construction — for example, through the substitution of materials, addition of non-standard features, or other changes that affect future maintenance liability — any increase in the commuted sum value will be assessed accordingly. In such cases, the additional payment must be made prior to the issue of the Final Certificate.

This approach ensures that the final commuted sum accurately reflects the highway assets being adopted and supports the long-term maintainability of the infrastructure.

5. ESCC Standard Construction Specifications

This section outlines the Council's standard construction specifications for adoptable highway infrastructure. Adherence to these standards is expected in all developments, unless otherwise agreed with the Highway Authority. Use of non-standard materials or proprietary systems may result in commuted sums being applied.

5.1. Carriageway Construction

Two standard types of carriageway construction are specified for residential streets, aligned with the street's primary function as defined in local Design Codes:

Movement Priority Streets - Designed to facilitate efficient vehicular movement:

- Surface course: 40 mm thick HRA 55/14 F surf 40/60* to EN 13108-4
- Binder course: 60 mm thick AC20 dense bin 40/60 to EN 13108-1
- Roadbase: 100 mm thick AC32 dense base 40/60 to EN 13108-1
- Subbase: Type 1 Granular Subbase, minimum 150 mm thick

Place Priority Streets - Designed to support a balance between movement and a sense of place:

- Surface course: 25 mm thick HRA 30/10 F surf 40/60* to EN 13108-4
- Binder course: 50 mm thick AC20 dense bin 40/60 to EN 13108-1
- Roadbase: 75 mm thick AC32 dense base 40/60 to EN 13108-1
- Subbase: Type 1 Granular Subbase, minimum 100 mm thick

Footway Construction - Standard across all street types:

- Surface course: 25 mm thick HRA 15/10 F surf 40/60* to EN 13108-4
- Binder course: 45 mm thick AC20 dense bin 100/150 to EN 13108-1
- Subbase: 100 mm thick Type 1 Granular Subbase

Cycleway / Vehicle Crossover Construction

- Surface course: 25 mm thick HRA 15/10 F surf 40/60* to EN 13108-4
- Binder course: 45 mm thick AC20 dense bin 100/150 to EN 13108-1
- Subbase: 150 mm thick Type 1 Granular Subbase

Kerbing and Edging

- All precast concrete kerbs and edgings to conform with BS EN 1340

Tactile Paving

- Tactile paving units must be 400 mm x 400 mm x 65 mm thick and installed in accordance with DfT Guidance for the Use of Tactile Paving
- Stick-on tactile paving is not acceptable

Drainage

- Surface water must discharge directly to an adopted sewer (regulated by an OFWAT-recognised water company) or a permitted watercourse
- Use of precast concrete pipes and gully pots, with ironwork to BS EN 124
- Twin-wall plastic pipes may only be used by prior agreement

Traffic Signs and Road Markings

- All to conform with the Traffic Signs Regulations and General Directions (TSRGD) 2016

Highway Lighting

- Must use standard ESCC lighting columns and fittings, including any illuminated traffic signs and bollards

Notes on Materials and Commuted Sums

- Recycled subbase or capping materials may be accepted subject to testing and site inspection.

- Coloured surface finishes (e.g. asphalts or chippings) may be used to vary appearance and texture.
- Proprietary surfacing materials require prior written agreement from ESCC.
- *Substitution of Hot Rolled Asphalt with Asphalt Concrete is permitted*; however, in such cases the developer will be charged a commuted sum equivalent to the first surface treatment (e.g. surface dressing for carriageways or slurry seal for footways and cycleways) to reflect the reduced initial durability.

6. Basis of Commuted Sum Calculation

Commuted sums are calculated on the basis that the payment received by the Highway Authority will be invested and will accrue interest over time. This investment return contributes toward the cost of future maintenance when it becomes due.

As such, the amount payable is discounted to reflect its net present value (NPV) — i.e. the value today of a future expense. This ensures that developers pay a fair and proportionate amount now, rather than the full projected cost at the point of maintenance.

6.1. Commuted Sum Calculation Formula

The commuted sum is calculated using the following formula to determine the net present value of future maintenance costs:

$$\text{Commuted Sum} = \sum Mp / (1 + D/100)^T$$

- Mp = Estimated periodic maintenance cost
- D = Discount rate (effective annual interest rate) (%)
- T = Time period before expenditure will be incurred (years)
- Commuted Sum = The total of all discounted future maintenance costs

6.2. Explanation of Terms:

Maintenance Cost (Mp): This is based on the Council's current contract rates and reflects a 'whole life costing' approach. The maintenance regime considers the frequency of treatments and replacement intervals according to planned maintenance schedules. An additional percentage may be added to cover design and supervision costs where appropriate.

Discount Rate (D): The recommended effective annual discount rate is 2.2%, derived as follows:

$$D = ((1.045/1.0225) - 1) \times 100 = 2.2\%$$

Where:

- 1.045 represents the assumed long-term neutral base interest rate of 4.5%
- 1.0225 represents the inflation rate of 2.25% (based on RPI-X, which excludes mortgage payments)

This formula accounts for both the interest earned on the commuted sum and inflation's impact on increasing future maintenance costs.

- *Time Period (T)*: For developments with an expected lifespan of 60 years or more, a default period of 60 years will be used for the calculation of commuted sums to cover future maintenance.

7. Period of Commuted Sum Calculation

The 60-year period is conventionally used to represent the expected lifespan of housing and highway assets. This timeframe strikes a reasonable balance between adequately covering future maintenance and replacement costs while recognising the inherent uncertainties about whether and when such costs will be incurred.

7.1. Considerations for the 60-Year Period:

Replacement of Shorter-Life Assets

Commuted sums must account for assets that have a shorter lifespan than the overall development. For example, components that require replacement or major refurbishment before 60 years should be factored into the calculation to ensure sufficient funds are available.

7.2. Exceptions to the 60-Year Standard:

Developments with a Shorter Expected Lifespan

Where a development is designed with an expected life of less than 60 years, it is reasonable for commuted sums to be calculated based on the development's anticipated lifespan rather than the standard 60 years.

7.3. Assets with Known Shorter Maintenance Cycles

For some assets, such as traffic signals or vehicle-activated signs, commuted sums may be calculated for shorter periods (e.g., 15 or 30 years) to reflect the typical interval before major repair or refurbishment is required.

7.4. Substantial Assets Serving the Wider Public Network

In cases where a highway authority adopts a major asset, such as a bridge, that forms part of the strategic public network rather than solely serving a development, it may be appropriate to seek commuted sums covering a longer period than 60 years. This reflects the long-term nature and importance of such infrastructure.

7.5. Bridge Management Recommendations

The Bridge Management Code recommends adopting a design life of 120 years for bridges, adjusted according to whole-life cost analyses that may indicate a shorter economic lifespan. Commuted sum calculations for these assets typically include provisions for both routine maintenance and complete replacement over this extended timeframe.

8. Spending Commuted Sums

While commuted sums are received with the intention of funding the future maintenance of specific highway assets, it is recognised that strict adherence to their original purpose over long periods is often impractical.

Given the extended timescales involved, changes in maintenance practices, technologies, and available materials are inevitable. Some products or materials specified at the time of construction may no longer be available, making exact like-for-like replacements impossible. Modern asset management practices will therefore be employed to ensure that the overall quality and safety of the infrastructure are maintained to the required standards.

Decisions on the expenditure of commuted sums will be made based on prioritised need and the availability of resources at the time of maintenance or replacement.

All commuted sum funds will be ring-fenced and reinvested within the highway maintenance budget, generally targeted toward the specific asset category for which the funds were collected. These monies will be treated as additional to the Council's normal maintenance budget allocations.

It should be noted that the Council cannot guarantee the maintenance or replacement of non-standard elements to the original condition or in a like-for-like manner beyond the scope of available resources and prevailing maintenance practices.