



**Havering**  
LONDON BOROUGH

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# S38 & S278 PROCESS

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Sections 38 & 278, Highways Act 1980 as amended



**FEBRUARY 2024**

LONDON BOROUGH OF HAVERING

## INTRODUCTION

These processes are works that are required due to the development. It is usually at the frontage or the surrounding areas. These works must be completed prior to the occupation as agreed in the planning decision notice.

The extent of the works would be discussed and established during the planning application stage. Therefore, the size and the type of works would vary between sites.

To progress with the works, the developer will have to be secured via either a 'Section 278 Agreement' or a 'S38 Agreement'.

Furthermore, the developer should consider the location of the statutory undertaker's plant. It is the responsibility of the developer to conduct investigations to see whether any diversions are required. Therefore, the developer is responsible for planning, paying, and scheduling of any necessary diversions, which must be completed prior to the start of any highway work.

No work shall be carried out by the developer or any contractor until the Highways have fully approved the proposed works including layout, levels, materials and traffic management.

## PROCESS FOR S278 & S38 AGREEMENTS

- Stage 1. **SUBMISSION:** An application is completed and submitted to Havering via email [schemes@havering.gov.uk](mailto:schemes@havering.gov.uk). Please see a list of documents required to be submitted below at the **Submission Package** section.
- Stage 2. **ASSESSMENT:** An engineer will assess the application and make contact to discuss next steps. Additional information may be requested before the application is validated. Technical fees will be requested.
- Stage 3. **TECHNICAL APPROVAL:** An engineer will assess the drawings including design and specification, and revisions to the drawings may be requested. Once technical approval is given the application can be progressed.
- Stage 4. **DRAFTING OF AGREEMENT:** Once costs have been established and agreed, Highways will instruct the Council's legal services team and the legal agreement process can commence. Legal costs will be required.
- Stage 5. **SEALING OF AGREEMENT:** The Developers' solicitors and Councils' legal team agree on conditions and sign the agreement. Relevant payments are made to the Council.
- Stage 6. **CONSTRUCTION:** The engineer will supervise the works and a certificate of completion will be issued on satisfactory completion.
- Stage 7. **COMPLETION OF WORKS:** The Engineer will review the completed works with the applicant and the contractor. This is to ensure the works were completed according to the technical approved drawings.
- Stage 8. **MAINTENANCE PERIOD:** a year
- Stage 9. **FINAL REVIEW:** Once the year of Maintenance Period has elapsed, the council's engineer, developer and contractor, review the works and agree on any defects that needs to be resolved.

## S278 TIMESCALES

STAGES		TIMESCALES & RESPONSES
Stage 1	SUBMISSION	-
Stage 2	ASSESSMENT	Approx. 3 weeks
Stage 3	TECHNICAL APPROVAL	Approx. 4 - 10 weeks
Stage 4	DRAFTING OF AGREEMENT	Approx. 4 weeks
Stage 5	SEALING OF AGREEMENT	Approx. 2 - 4 weeks
Stage 6	CONSTRUCTION	-
Stage 7	COMPLETION OF WORK	-
Stage 8	MAINTENANCE PERIOD	1 year
Stage 9	FINAL REVIEW	Approx. 2 weeks

## S38 TIMESCALES

STAGES		TIMESCALES & RESPONSES
Stage 1	SUBMISSION	-
Stage 2	ASSESSMENT	Approx. 3 - 5 weeks
Stage 3	TECHNICAL APPROVAL	Approx. 5 - 12 weeks
Stage 4	DRAFTING OF AGREEMENT	Approx. 5 weeks
Stage 5	SEALING OF AGREEMENT	Approx. 2 - 4 weeks
Stage 6	CONSTRUCTION	-
Stage 7	COMPLETION OF WORK	-
Stage 8	MAINTENANCE PERIOD	1 year
Stage 9	FINAL REVIEW	Approx. 2 weeks

## SUBMISSION PACKAGE

To begin the process, please submit the following documents to [schemes@havering.gov.uk](mailto:schemes@havering.gov.uk):

- S278/38 application form
- General Arrangement
- Construction Details
- Setting Out
- Location Plan
- S278 boundary plan
- Drainage plan
- S38 shaded area
- Traffic Management
- Vehicle Tracking
- Contour plan

## FEES

Our technical fee is 12.50% of the value of the works, subject to a minimum charge of £6,500 which is payable in advance and discounted against the total fee charge if greater. The value of the works shall exclude traffic signal and utility works costs. Our temporary road closure, parking bay suspension, scaffolding and crane licence fees are separately chargeable. Our legal agreement fees are charged separately and will be calculated when the draft legal agreement is prepared.

Payment should be via BACS or CHAPS, please quote given reference in the transaction as this will assist our finance team in allocating the payment to the correct budget;

National Westminster  
Bank Sort code: 60 18 01  
Account: 14871734

Please advise in advance so that we may inform our finance team that the payment is about to be made as this will ensure it is processed quickly.

## COUNCIL UNDERTAKING

We are able to undertake S278 works on behalf of a developer which will require a shorter agreement and will not require a deposit/ bond or 12-month maintenance period. Works will be procured through our term highways contractor using term contract rates. We will provide a cost estimate for the works which must be settled in full before we are able to programme the works.

## BOND/ DEPOSIT

A performance bond will be required to cover the full costs of the works (both S38 and S278), including any traffic signal works, but excluding utility works as long as evidence that diversion works have been paid for or are not required. The deposit/ bond will generally be reduced on completion to 25% of the original sum for a further 12-month maintenance period.

## FUTURE MAINTENANCE

A maintenance contribution of 20% of the construction value of all adoptable (S38) and highway modifications (S278) works is applicable and to be paid prior to the issue of the Final completion certificate. The adoption of highway structures will be assessed on a case by case basis. Transport for London will impose separate maintenance contribution sums for traffic signal works.