

Highway Adoption Procedures – A Guide for Developers

Section 38 and Section S278 Developments and Schemes Fees and Charges – April 2024 Revision 2

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Section 1 – Introduction

Solihull Metropolitan Borough Council (SMBC) Highways Services provide the following in connection with Section 38 and Section 278 schemes:

- Technical review of designs prepared by the developer, or their agent / consultant
- Construction inspections / supervisions and post-completion work supervision
- Adoption documentation preparation

Note: Supervision is inspection of the works to ensure it complies with SMBC's requirements and to document any deviation from standards or work approved. The developer is responsible for ensuring the works are being constructed as per the Technically Approved Drawings.

This document sets out and provides examples of SMBC's fees for works carried out under Section 38 and 278 of the Highways Act 1980.

A summary of the charging regime is outlined in Table 1.

All fees will be reviewed on an annual basis.

Section 2 – Fees payable with Timeline

- **Technical Review Fee** – Payment of the Technical Review Fee shall be made before commencement of the technical review process. Payment of all outstanding fees shall be made before issue of the Technical Approval Letter.
- **Legal Fees** will be charged separately by the SMBC Legal Team. Their costs are outlined within Table 1: Summary of Charges. The legal fees must be paid prior to the Legal process being undertaken.
- **Construction Inspections / Supervision and Post Completion Work** – Payment of the inspection / supervision fees shall be made prior to construction works commencing on site.
- **Testing** – All schemes will be subject to testing of the construction materials. The cost of this testing is dependant upon the size of the scheme and if specialist contractors are required to undertake this cost will be passed onto the developer.
- **Adoption** – Officer time taken from the start of the maintenance period until final adoption. Payment of the Adoption Fees (including VAT where applicable) shall be made before issue of the Final Adoption Certificate.
- **Supplementary Fees** – The Developer will also be responsible for payment of all additional fees incurred by the Council for design checks and design reviews carried out for non-standard / specialist items of work. For Section 38 works the technical review fee calculations are based on an estimate of the cost of construction of a standard highway, i.e. carriageway, footway and verge. It does not include for any non-standard / specialist items. Specialist items of work may include structures and major junctions both new and alterations to existing.
- **Additional Fees** – Work in addition to that listed in the fee estimate (i.e. additional meetings, reviews and responses,

dealing with any matters arising from Asset Management Audits, the initial liaison with residents, stakeholders and emergency services etc may incur additional fees.

Section 2 Summary

Fee	Method of Calculation	When Payable
Technical Review Fee	Based on estimated works cost	Before commencement of the technical review process alongside application
Legal Fees	Fixed Charge	Before commencement of the S278 / S37 Legal Agreement Process
Construction Supervision and Post Completion Work	Time Charged	Before completion of the S278 / S37 Agreement Process
Commuted Sums	Based on scope of works	Before completion of the S278 / S37 Agreement Process
Testing	Based on any additional specialist testing contractors' charges	As requested, but prior to the issue of Adoption Certificate
Safety Audits	Fixed Charge	If the Highway Authority response is required, then payment must be made prior to issue to the HA response and sign off
Supplementary Fees	Varies	In advance or on request For site inspection of non-standard items will be payable within 21 days of commencement of works on site
Additional Fees	Time Charged	In advance / on request
Adoption	Time Charged	Before issue of the Adoption Certificate

Section 3 – Calculation of the Bond

The bond is calculated by using 150% of the estimated works cost or the tendered works price if known of which the highest figure is used.

The Bond amount is reduced to 50% of the works cost after the substantial completion certificate is issued.

The Bond is fully released when the Final Completion Certificate has been issued and final adoption completed.

Section 4 – Traffic Regulation Orders and Statutory Notices

The Developer will be responsible for all costs and expenses associated with any Traffic Regulation Orders and statutory notices that are required because of the S278 and S38 works.

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Section 5 – Summary for Fees and Charges

Item	Cost of Works	Section 38	Section 278	Combined S38 and S278
Technical Review (Minimum Fee £5,000)	Less than £250,000	8% of estimated works cost	10% of estimated works cost	Total combined works cost of the S38 and S278 elements used to calculate the Fee. Section 38 Fee Rates used.
	Between £250,000 and £500,000	6% of estimated works cost	6% of estimated works cost	
	Between £500,000 and £1,000,000	5% of estimated works cost + £5,000	5% of estimated works cost + £5,000	
	Between £1,000,000 and £2,000,000	2% of estimated works cost + £35,000	2% of estimated works cost + £35,000	
	More than £2,000,000	1% of estimated works cost + £55,000	1% of estimated works cost + £55,000	
Site inspection / Supervision (Minimum Fee £5,000)	All Schemes	8% of the estimated works cost and time charged	10% of the estimated works cost and time charged	Total combined works cost of the S38 and S278 elements used to calculate the Fee. Section 38 Fee Rates used.
Calculation of estimated works cost	All Schemes	To be provided by the developer and verified by SMBC Officers	To be provided by the developer and verified by SMBC Officers	Total combined works cost of the S38 and S278 elements used to calculate the Fee.
Bond	All Schemes	The bond is calculated at 150% of the estimated works cost initially or the tendered work price if known of which the highest figure is used.	The bond is calculated at 150% of the estimated works cost initially or the tendered work price if known of which the highest figure is used.	Total combined works cost of the S38 and S278 elements used to calculate the Fee. Section 38 Fee Rates used.
Legal Fee	All Schemes	£1,875	£1,875	£1,875

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Post Completion Works Inspections prior to adoption	All Schemes	<u>Time Charged</u> Estimated hours required x hourly rate	<u>Time Charged</u> Estimated hours required x hourly rate	Same as for separate S38 and S278 Agreements
Adoption – Officer time from start of Maintenance period	All Schemes	<u>Time Charged</u> Estimated hours required x hourly rate	<u>Time Charged</u> Estimated hours required x hourly rate	Same as for separate S38 and S278 Agreements
Supplementary fees	All Schemes	Highway Authority Road Safety Audit Stage 1 / 2 Review - £700 Asset Management Audit - £500	Road Safety Audit Review Stage 1 / 2 - £700 Asset Management Audit - £500	Same as for separate S38 and S278 Agreements
	Specialist Items	Urban Traffic Control Technical Review – Time Charged Street Lighting Technical Review – Time Charged Any other specialist items – Time Charged (e.g. Drainage, Flood Risk, Landscape, Structures)	Urban Traffic Control Technical Review – Time Charged Street Lighting Technical Review – Time Charged Any other specialist items – Time Charged	
Additional Fees	All Schemes	Work in addition to that listed in the fee estimate (i.e. additional meetings, reviews and responses, dealing with any matters arising from Asset Management Audits, the initial liaison with residents, stakeholders and emergency services etc may incur additional fees.	Work in addition to that listed in the fee estimate (i.e. additional meetings, reviews and responses, dealing with any matters arising from Asset Management Audits, the initial liaison with residents, stakeholders and emergency services etc may incur additional fees.	Same as for separate S38 and S278 Agreements