



**ST HELENS**  
BOROUGH COUNCIL

## **Section 38 Application Form**

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Application form for developers making an application for a Road Agreement  
under Section 38 of the Highways Act 1980.

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**April 2022**  
**Interim Version -1B**

# HIGHWAYS & INFRASTRUCTURE SERVICE

**INFORMATION TO BE SUPPLIED BY DEVELOPERS AT THE TIME OF REQUESTING THE COUNCIL TO PROCESS A SECTION 38 OF THE HIGHWAYS ACT AGREEMENT 1980**

**ALL SECTIONS MUST BE FULLY COMPLETED IN BLOCK CAPITALS.**

1.	<b>Development Site</b>	
	(i)	Name .....
	and	
	(ii)	Adjacent Road Name .....

2.	<b>Development Area</b> (e.g. Rainford, St. Helens, Haydock, Newton-le-Willows etc.)
	.....

3.	<b>Developer</b> (Not Contractor)
	Name in full .....

4.	<b>Developer's Registered Office Address</b>
	.....
	.....

5.	<b>Developer's Contact Person</b>	
	(i)	Name .....
	(ii)	Tel. No. .... Fax No. ....
	(iii)	Emergency out of hours Tel. No. ....
	(iv)	E-mail Address .....

6.	<b>Developer's Legal Department or Solicitor that will be processing the agreement/s</b>	
	(i)	Name .....
	(ii)	Address .....
	(iii)	Tel. No. .... Fax No. ....
	(iv)	E-mail Address .....

<b>7.</b>	<b>Developer's Surety with regard to bond to be incorporated into the agreement/s.</b>	
	(i)	Name in full (e.g. Barclays Bank PLC) .....
	(ii)	Registered Office Address .....
	(iii)	Tel. No. .... Fax No. ....
(iv)	E-mail Address .....	

<b>8.</b>	<b>Land owner/s upon which the Section 38 road is to be constructed. Proof of title is to be provided by the developer in the form of a copy of a current Land Registry Office Copy Entry and Plan. Where the land upon which the Section 38 road is to be constructed is in multiple ownership then each owner is required to be a party to the Section 38 or Section 38/278 agreement.</b>	
	<b>Owner 1</b>	
	(i)	Name in full .....
	(ii)	Registered Office Address .....
	(iii)	Tel. No. .... Fax No. ....
	(iv)	E-mail Address .....
	<b>Owner 2</b>	
	(i)	Name in full .....
	(ii)	Registered Office Address .....
	(iii)	Tel. No. .... Fax No. ....
	(iv)	E-mail Address .....
	Details of any additional landowners to be supplied on a separate sheet appended to this document.	

<b>9.</b>	<b>Land Mortgage.</b>	<b>Yes/No</b>
	(i)	Name in full (e.g. Barclays Bank PLC) .....
	(ii)	Registered Office Address .....
	(iii)	Tel. No. .... Fax No. ....
	(iv)	E-mail Address .....

## 10. Anticipated Agreement/s Signing Date/s by developer .....

**Note when completing this section the developer must take into account the timescales required for the submission to be processed**

## 11. Time Periods to be inserted into the agreements

The developer should insert below the intended time periods for completion of each stage of the works having due regard to his proposed building construction and occupation programme.

### a. Section 38 or Section 38 Agreement

- |  |              |
|--|--------------|
| i. To Maintenance Certificate from date of agreement signing | ..... Months |
| ii. Maintenance Period                                       | ..12..Months |
| iii. Total to adoption of the roads (i) + (ii)               | ..... Months |

**Note: A Section 38 Agreement Provisional Certificate cannot be issued until a Section 104 Agreement Provisional Certificate has been issued by United Utilities.**

### b. Details of the Section 104 Agreement between the Developer and United Utilities

- |  |              |
|--|--------------|
| i. To Provisional Certificate Stage from date of agreement signing | ..... Month  |
| ii. Maintenance Period   | .....Months  |
| iii. Total to vesting of the sewers (i) + (ii)                     | ..... Months |

Where the works that are to be the subject of the adoption agreement(s) are to connect to other works which are currently the subject of separate adoption agreement(s) (possibly with other developers) the time periods inserted above for completion should be co-ordinated accordingly. Roads and footways should discharge to existing adopted sewers / water course or to new sewers covered by a Section 104 Agreement.

## 12. Bond, Inspection Fee and Legal Fee Requirements

The bond, inspection fee and legal fee requirements for the agreement(s) will be advised by St. Helens Council once the design(s) have been approved. These figures will be based on St. Helens Council Engineering Divisions estimated cost of the adoptable works.

## 13. Surety Sum (Bond)

- The Bond will be in place from the completion of the Agreement and is initially valued at 100% of the Councils estimated cost of the adoptable works.
- After the issue of the Part 1 Certificate (Refer to Note No. 14) the Bond will be reduced to 50% of the Councils estimated cost of the adoptable works.
- After the issue of the Part 2 Certificate (Provisional Certificate) (Refer to Note No. 15) the Bond will be reduced to 25% of the Councils estimated cost of the adoptable works and the minimum 12-month maintenance period will commence.
- After the issue of the Completion Certificate (Refer to Note No. 16) the Bond will be fully released.

Developers are responsible for making application for the issue of the appropriate certificate and bond reduction as the works progress all in accordance with the procedures outlined in the legal agreement.

## 14. Part 1 Works

The **Part 1 Certificate** will be issued when all of the following conditions and works have been completed to the satisfaction of St Helens Borough Councils Highways and Infrastructure Service.

- All highway drainage.
- All other drainage contained within the highway.
- All kerb foundations and kerbs including dropped kerbs at vehicular footway crossings, pedestrian dropped crossings and tactile paving.

- Carriageways sub-base, base, binder courses and any supporting structures.
- Demarcation of sight lines and clearance of visibility splays.
- Footways and footpaths subbase and binder courses.
- Traffic signs and Street name plates erected and approved.
- Street lighting and street furniture erected and ready for use including UTC equipment
- Traffic calming features, where required, completed to binder course and the appropriate warning signs erected.

## 15. Part 2 Works

The **Part 2 Certificate (Provisional Certificate)** will be issued when all of the following conditions and works have been completed to the satisfaction of St Helens Borough Councils Highways and Infrastructure Service.

- Carriageways surface courses completed.
- Footways, footpaths cycleways and cycle paths surface courses completed.
- Visibility splays and highway verges completed including any highway trees.
- Traffic calming features, where required, completed, and approved, including appropriate road markings and warning signs.
- All other works described in the Specification and shown in the Drawings.
- All adoptable sewers completed, and the Developer has provided a copy of the 'Section 104' Provisional Certificate as proof that the sewers have been certified by United Utilities PLC as being on maintenance.
- All outstanding remedial works satisfactorily completed.
- Street lighting and street furniture erected and ready for lighting and proof provided by the Developer that the provision of electricity supply has been arranged with the utility company.
- An RSA Stage 3 has been completed and approved by St Helens Borough Councils Highways and Infrastructure Service.

When the **Part 2 Certificate (Provisional Certificate)** is issued the **Maintenance Period** will commence and the road(s), covered by the agreement(s), will become highway(s) open for use by the public. The Developer will remain the street manager, for the purposes of the New Roads and Street Works Act 1991 and will remain responsible for their maintenance until the **Completion Certificate** is issued. St. Helens Borough Council will have no liability for any injuries/losses incurred on the road(s) covered by the agreement(s) until the **Completion Certificate** is issued.

## 16. Completion Certificate and Formal Adoption

The **Completion Certificate** will not be issued, and the adoptable areas and features will not be adopted, until all the following conditions and documents have been fulfilled and provided, even if the Maintenance Period is extended beyond the minimum 12 months maintenance period.

- Any defects or damage that may arise during the whole of the Maintenance
- Period must be rectified to the satisfaction of St Helens Borough Councils Highways and Infrastructure Service.
- The Developer must provide a copy of the Final Certificate for all sewers included within the Section 104 Agreement which are within the area to be adopted. Certificate is to be issued by United Utilities PLC.
- The Health and Safety File for the development works must be submitted to St Helens Borough Councils Highways and Infrastructure Service and approved.
- Street lighting and street furniture completed, operational, the final test certificates supplied and approved by the Street Lighting Engineer.
- An RSA Stage 4 has been completed and approved by St Helens Borough Council (if applicable).

## 17. Design checks and supervision fees

St Helens Borough Council will charge for the design checks and supervision of the highway works. This fee is **10%** of our estimated highway works costs (Bond Figure), which are calculated using the council term maintenance contracts rates. Once the Section 38 agreement has been signed by all parties, the agreement fees must be paid without delay prior to any works commencing on site.

The council will require an advance non-refundable application fee of **£2,000** (outside the scope of VAT) to cover the initial costs in respects of our initial comments on the proposals and our submission validation checks. Once the agreement has been completed, the application fee of **£2,000** will be deducted from the design checks and supervision of the highway works agreement fees.

## 18. Payment methods

Payments can be made by Standing Order, Online Bank Transfer or BACS using our bank account details shown below or alternatively, you may pay via an official council invoice. Please ensure you have obtained a payment reference prior to making any payments and quote this on all payments / correspondence. Payment references can be obtained by contacting St Helens Borough Council's highways and infrastructure service. Email: [section38@sthelens.gov.uk](mailto:section38@sthelens.gov.uk) or alternatively by telephone: 01744 673303.

Account Name: St Helens Council

Sort Code: 60-70-08

Account No: 94231397

Bank Name: National Westminster Bank

Bank Address: 5 Ormskirk Street, St Helens, Merseyside, WA10 1DR

## 10. Legal Documentation & Legal Fees

The Legal Agreement documentation will be forwarded for signing once the design(s) have been agreed.

An fixed fee of £1000 will also be required to be paid prior to the completion of the agreement to the council's legal service department. This fee is to cover the costs, associated with the drafting, administration and distribution of the agreement. The draft Section 38 agreement documentation will be forwarded to the developer's appointed legal representative for comments once the design checks have been completed, the agreement drawing has been approved and the developer or landowner has provided evidence that they have the right to dedicate the land as public highway. **No variation to the wording of the council's model forms of agreement documentation will be accepted.**

The developer should note that should any changes to the agreement be required after the document has been engrossed then an additional fee of £500 will be required to be paid to our legal service department to cover the additional administrative costs.

### Specification

All layouts, materials and workmanship are to comply with the following specification documents;

St Helens Street Design Guide – Highways for Adoption -	Design
Requirements Manual of Streets -	Guidance
Merseyside Code of Practice on Access & Mobility -	Access Guidelines

Developers are responsible for obtaining current copies of the above document or their successors for use when designing and constructing the works.

## 11. Important Notes

No work should be commenced until the design has been formally approved by the Council as Highway Authority, legal and inspection fees paid, and the agreement/s signed/sealed by the developer, bondsman, additional landowners (if appropriate) and the Council. Any work undertaken in advance of the agreements being in place may constitute an offence under Section 219 of the Highways Act 1980 and the Council may pursue prosecutions.

In order to programme inspection resources, it is required that developers advise the council in writing at least 1 week in advance of commencing work.

Developers are reminded that should the agreement/s not be progressed to full signing stage (for any reason) then they shall be liable for any costs that the Council have incurred in checking and processing application/s.

St Helens Council supervision fees include for an initial submission check (including drawings/calculations) and one subsequent drawing/calculation check (following completion of any drawing/calculation corrections required by St. Helens Council). Supplementary fees may be chargeable at the discretion of St. Helens Council for further drawing/calculation checks other than

those listed above.

Additionally should the works be varied at any time the Council reserves the right to charge additional plan checking and inspection fees for such variations.

Developers are also reminded of the need to satisfy the Council with regard to the New Roads and Street Works Act 1991 licence procedures which should be undertaken in parallel with entering into Section 38 agreements.

The Developer is responsible for giving the correct notice period before commencing works on existing Adopted Public Highway, along with a works duration period for the portion of the works on the Adopted Public Highway as prescribed in the Traffic Management Act 2004. This should be provided in writing to the Streetworks Manager within the Engineering Service of St. Helens Council further to the Section 50 Licence conditions.

**12.** Developers are reminded of their responsibilities under the current Construction (Design and Management) Regulations which apply to virtually all construction works from concept design through to project completion and beyond. An essential part of the Construction (Design and Management) Regulations is the production of the Health and Safety File. The approved Code of Practice, Managing Construction for Health and Safety (H.S.E. L54) gives guidance as to the contents of the Health File as follows:-

- ▶ Record or as-built drawings and plans used and produced throughout the construction process along with the design criteria.
- ▶ General details of the construction methods and materials used.
- ▶ Details of the structures, equipment and maintenance facilities.
- ▶ Maintenance procedures and requirements for the structure.
- ▶ Manuals produced by specialist Contractors and suppliers which outline operating and maintenance procedures and schedules for plant and equipment installed as part of the structure.
- ▶ Details and location of utilities and services including emergency and fire fighting systems.

Developers must ensure that their approved Planning Supervisor prepares the Health and Safety File, and a copy is provided to the Council at the time of requesting adoption of the Section 38 works (usually month 10 of the Maintenance Period).

<b>REQUESTS FOR ADOPTIONS OF ROADS WILL NOT BE PROCESSED UNLESS THE HEALTH AND SAFETY FILE IS PROVIDED.</b>
Signed (Developer) .....
Name of Person Signing .....
Date .....

Developers are advised to retain a copy of the above form before returning it to the Council along with their adoption agreement application/s.

This form once completed together with the required submission documents and all necessary design drawings, calculations etc., to be forwarded to:

St. Helens Borough Council  
Highways & Infrastructure  
Place Services  
PO Box 512  
St. Helens  
Merseyside  
WA10 9JX

Any enquiries concerning completion of the form can be addressed to the above or by telephoning 01744 453303 or by email [Section38@sthelens.gov.uk](mailto:Section38@sthelens.gov.uk)