



**Dorset County Council**

## **Highways Act 1980 – The Advance Payments Code**

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General Guidance for Developers

**October 2017**

## 1. Introduction

This guidance has been prepared primarily for developers and their agents, with the aim of providing an overview of the Advance Payments Code ('APC') and its application by Dorset County Council.

In particular, this guidance covers:-

- When an APC notice will be served;
- What to do if you receive an APC notice;
- How the amount payable under the notice is calculated; and
- When the Council will consider exempting a site from the provisions of the APC.

A flow chart summarising the APC procedure can be found at Appendix A of this guidance note.

The Council strongly advises that you involve both the Council and the Local Planning Authority in the early stages of your development proposals as this provides us with an opportunity to identify any potential issues before an application for planning permission is made.

It is the Council's practice to serve APC notices on all developments containing more than five dwellings.

## 2. The Advance Payments Code

The APC is a statutory mechanism for ensuring that new streets are constructed to a satisfactory standard and is set out under sections 219 - 225 Highways Act 1980.

The APC allows the Council, in its role as Street Works Authority, to secure payment towards the future cost of making up a private street prior to the commencement of any building works associated with the development. The intention of the APC is to reduce the liability of future owners should the street be 'made up' at a later date using the provisions of the Private Street Works Code.

The APC can only be applied to new buildings, which will, when constructed, have frontage on to a private street. It does not apply to existing buildings or new buildings which will have frontage onto an existing highway.

The procedure begins when either plans for new buildings deposited with the local planning authority in accordance with building regulations are approved or an Initial Notice is deposited with the Local Planning Authority. The Council then has six weeks to serve notice on the applicant (or the landowner if different), requiring payment of a specified sum of monies. The amount payable is that which, in the opinion of the Council, would be recoverable under the private street works code in respect of the proposed building. The APC notice is served irrespective of the landowner's intention for the adoption of the new street.

## 3. The APC Notice

The Council has six weeks from the approval of the deposited plans (or the deposit of an initial notice) in which to serve the APC notice. The Council receives weekly reports from all of the local planning authorities' within Dorset to this effect.

The notice served will specify the amount payable in respect of each building. If you are laying out a completely new street and own all of the land on which the buildings fronting the street will be built, then this will be the cost of making up the whole street to an adoptable standard.

Once the notice has been served, then no construction work may be commenced upon the buildings until such time as the requested sum has been deposited or secured to the Council's satisfaction. The notice does not prevent construction work from being undertaken on the street itself.

Payment can be made wither by way of cash deposit or a temporary bond. Please note that the Council will only consider use of a temporary bond, where the landowner/developer has confirmed his intention to enter into a section 38 agreement or has applied for a private street exemption.

All cash deposits will carry simple interest from the date of payment until such time as:

- the monies are utilised under the Private Street Works Code; or
- the monies due to be refunded because the landowner has entered into a section 38 agreement; or
- the developer has completed the road to the standard required to achieve a Private Street Exemption.

#### 4. Calculating the APC Deposit Sum

The APC notice will specify the sum payable in respect of each building to which the code can be applied. This sum represents the amount which would be recoverable under the Private Street Works Code if the Council were to make up the road and the Councils reasonable administration costs.

The sum is calculated as follows:

- the total length of frontage for the whole street (including existing buildings) is measured from the plan submitted by the Developer;
- the cost of constructing the road is then calculated using the Council's pre-approved rates;
- the cost of total construction is divided by the total length of frontage to establish a linear metre rate;
- the frontage of each plot to which the APC applies is measured and noted upon the APC Master Plan.
- the linear length of each frontage to which the APC applies is multiplied by the linear metre construction rate to calculate the amount recoverable under the APC.

The Council's rates are based upon SPON's Civil Engineering and Highway Works Price Book and include an 8.5% uplift in respect of the Council's administrative costs. These rates will be subject to periodic review.



Extract from an APC Calculation Master Plan

APC Calculation - Radipole Court, Weymouth			
<b>Total Road Length:</b>	<b>Metres</b>	<b>Cost per metre</b>	<b>Total Cost of Construction</b>
	169.1	£525	£88,777.50
<b>DLI Admin Fee:</b>	<b>%</b>		<b>Total DLI Fee</b>
	7.5%		£6,658.31
<b>Final Cost:</b>			<b>Total</b>
			£95,435.81
<b>Total Frontage Length:</b>	<b>Metres</b>	<b>Unflanked Frontage Length:</b>	<b>Metres</b>
	145.98		23.05
<b>Plot Number</b>	<b>Frontage Length (m)</b>	<b>Cost per metre</b>	<b>APC Sum per plot</b>
8	4.81	£653.76	£3,144.58
9	5.04	£653.76	£3,294.95
10	5.33	£653.76	£3,484.54
11	5.18	£653.76	£3,386.47
12	5.26	£653.76	£3,438.77
13	5.17	£653.76	£3,379.94
14	5.15	£653.76	£3,366.86
15	4.79	£653.76	£3,131.51
Block 7	18.20	£653.76	£11,898.42
Block 6	22.07	£653.76	£14,428.47
16	4.68	£653.76	£3,059.59
17	5.10	£653.76	£3,334.17
18	5.34	£653.76	£3,491.08
19	5.11	£653.76	£3,340.71
20	5.37	£653.76	£3,510.69
21	5.32	£653.76	£3,478.00
22	5.12	£653.76	£3,347.25
23	28.94	£653.76	£18,919.80
0	0.00	£653.76	£0.00
0	0.00	£653.76	£0.00
	<b>145.98</b>		<b>£95,435.81</b>

Example of an APC Deposit Sum Schedule

Where a development contains a number of different road construction types (e.g. a 7.3m wide carriageway with two contiguous 2m footways, a 5m carriageway with a contiguous 2m wide footway and a 1m service margin, and a 7.5m wide shared surface), the linear rates for individual APC sums will be varied accordingly, dependent upon the type of highway layout the plot fronts.

## 5. Right of Appeal

s220 Highway Act 1980 provides that the person on who the notice is served, or if he is a different person the owner of the land on which the building is to be erected, may within one month of the service of the notice appeal to the Secretary of State who may substitute a smaller sum than that specified by the Council.

Further guidance can be found at [LINK].

## 6. Exemptions

Section 219 (4) Highways Act 1980 sets out the exemptions to the APC.

Some exemptions are automatic and do not require the Council to take any action whereas others are qualified and applied at the Council's discretion via the issuing a notice or the passing of a resolution.

The exemptions are listed in Appendix B.

An exemption will be issued if you enter into a Section 38 Agreement to provide for the future adoption of the roads. For further guidance on the Section 38 process, please see our guidance at:

<https://www.dorsetforyou.gov.uk/article/387376/Highway-adoptions>

The Council acknowledges that some developers may not want the new street to be adopted and that on occasions the intended design and layout of a street may not or cannot meet the Council's standards making adoption under adoption impossible. In these circumstances the Council will consider refunding or releasing the APC sum (as appropriate) where the developer/landowner enters into a Private Street Agreement. For further information please our guidance at: [link].

## 7. Refunding the APC Deposit

The Council will refund the APC Deposit either:

- upon the issue of a qualified exemption notice; or
- upon the adoption of the private street as publicly maintained highway.

The deposit is payable to the person who has borne the cost of making up the street.

If this person is not the owner, for the time being, of the land on which the building has been erected then no refund or release will be made until the owner of that land has been afforded the opportunity of making representations to the Council.

The Council will have due regard to any representations made by the landowner and we strongly suggest that the rights to receive the refund of the APC sum are reserved in any plot sales.

## 8. Prosecution

If the landowner or a third party commences construction of the buildings in breach of the APC notice, then the Council will need to take legal action.

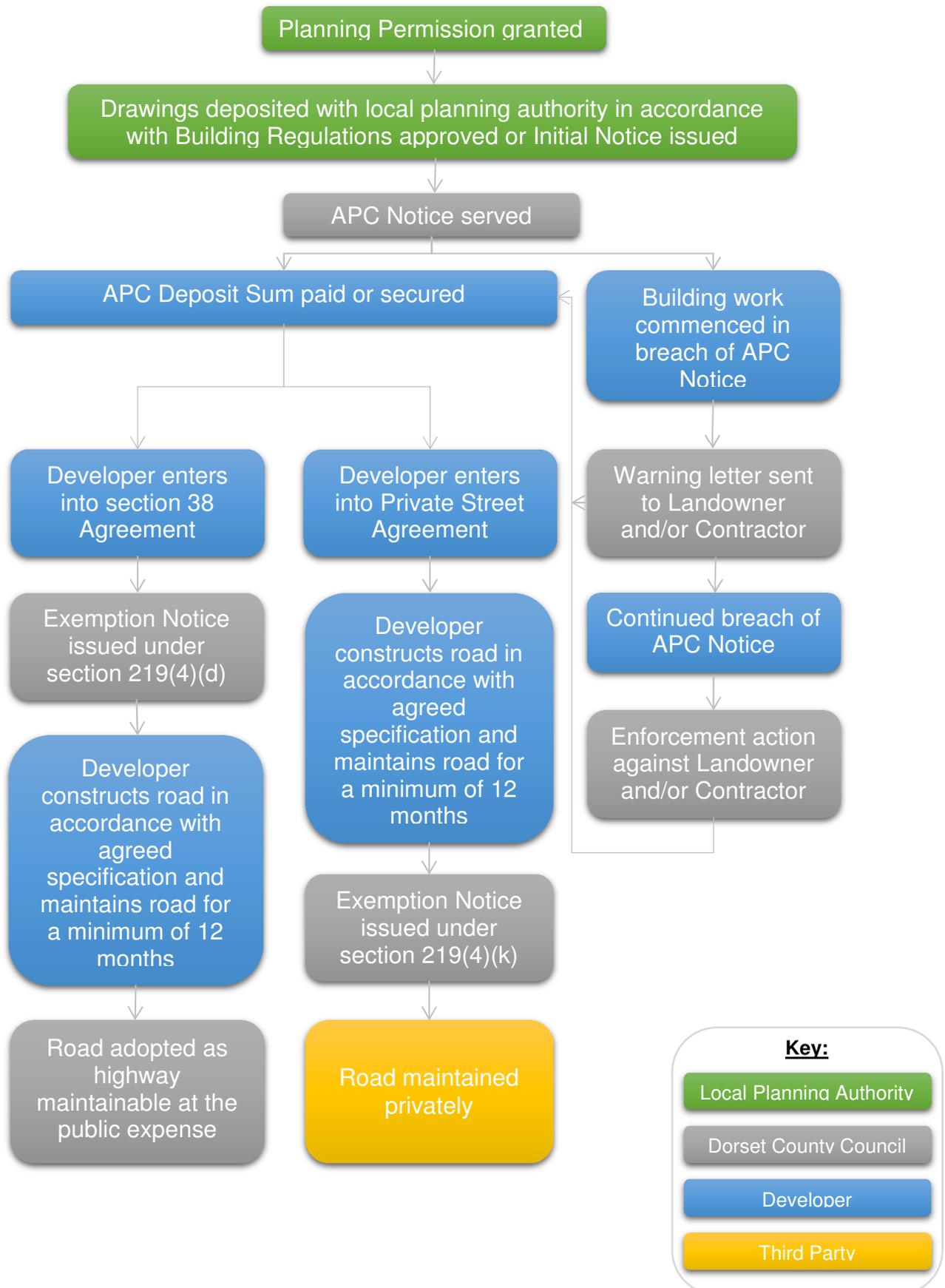
Once the APC Notice has been served DLI engineers will undertake monthly site inspections until such time as the requested sum has been received in respect of all affected buildings. If a breach is noted, the engineer must record this within the DLI database and complete a site inspection report complete with photographs of the alleged breach.

A standard warning letter will be sent to the landowner and/or the person who is undertaking the construction. The letter will give notice of the Council's intention to take legal action if work does not cease immediately. Further inspections will be undertaken on a weekly basis to monitor construction work on the site.

If a further breach occurs, whether in respect of the same plot or another upon the same street, then DLI must instruct legal services to begin prosecution proceedings. Each contravention of the notice shall constitute a new offence and will be prosecuted as such.

Either the landowner or the person undertaking the construction work may be prosecuted. If convicted they will be liable to pay a fine of £1000 for each separate breach.

## APPENDIX A: FLOW CHART



## APPENDIX B: EXEMPTIONS

Section	Exemption	
219(4)(a)	the owner of the land on which the building is to be erected will be exempt, by virtue of a provision in the private street works code, from liability to expenses incurred in respect of street works in the private street	Automatic
219(4)(b)	the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building	Automatic
219(4)(c)	where plans for the building were deposited with the district council before 1 October 1951	Automatic
219(4)(d)	where an agreement has been made by any person with the Council under section 38 Highways Act 1980 providing for the carrying out at the expense of that person of street works in the whole (or part) of the street and for securing that the street or the part thereof, on completion of the works, will become a highway maintainable at the public expense	Qualified
219(4)(e)	where the Council, is satisfied that the whole of the street or such a part thereof, is not, and is not likely within a reasonable time to be, substantially built-up or in so unsatisfactory a condition as to justify the use of powers under the private street works code for securing the carrying out of street works in the street or part thereof (see Private Street Agreements)	Qualified
219(4)(f)	Where the Council is satisfied that within a reasonable period of time the street is not likely to be joined to a highway which is maintainable at the public expense	Qualified
219(4)(g)	where the whole street, being less than 100 yards in length, or a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, was on the material date built-up to such an extent that the aggregate length of the frontages of the buildings on both sides of the street or part constituted at least one half of the aggregate length of all the frontages on both sides of the street or part	Automatic
219(4)(h)	where (in a case not falling within paragraph (g) above) the Council is satisfied that the whole of the street was substantially built-up on 1 October 1951.	Qualified

219(4)(i)	<p>where the building is proposed to be erected on land belonging to, or in the possession of:</p> <p>(i) the British Railways Board, Canal &amp; River Trust, Transport for London, any wholly-owned subsidiary (within the meaning of the Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies other than Transport for London, or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999);</p> <p>(ii) the council of a county, district or London borough or the Common Council;</p> <p>(iii) the new towns residuary body or a new town development corporation.</p>	Automatic
219(4)(j)	<p>the building is to be erected by a company the objects of which include the provision of industrial premises for use by persons other than the company, being a company, the constitution of which prohibits the distribution of profits of the company to its members and the cost of the building is to be defrayed wholly or mainly by a government department</p>	Automatic
219(4)(k)	<p>where the Council is satisfied:</p> <p>(i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises, and</p> <p>(ii) that their powers under the private street works code are not likely to be exercised in relation to the street, or to that part of it, as the case may be, within a reasonable time (see Private Street Agreement)</p>	Qualified (requires resolution)