



**Dorset County Council**

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

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**Private Street Exemption - Guidance for Developers**

**September 2018**

## 1. Introduction

This guidance has been prepared for developers who have received an APC notice and do not wish to offer their roads for adoption as highway maintainable at the public expense. Please see the Council's guidance note entitled 'Highways Act 1980 – Advance Payments Code : General Guidance for Developers' for further information on the Advance Payments Code (APC).

## 2. The Advance Payments Code

The Advance Payments Code ('APC') is a statutory mechanism for ensuring that new streets are constructed to a satisfactory standard and is set out in sections 219 - 225 Highways Act 1980. The aim 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 Private Street Works code is another statutory mechanism set out in sections 205 – 218 of the Highways Act 1980. In essence, it provides the Council with the power to make up an unadopted road and apportion the expenses of the required works to the relevant frontagers.

The APC notice which you have received specifies the amount which, in the opinion of the Council, would be recoverable under the Private Street Works Code in respect of each proposed building.

The APC is served irrespective of the landowner's intention for the adoption of the new street.

Once the APC notice has been served, no construction work may be commenced upon the affected buildings until such time as the requested sum has been deposited or secured to the Council's satisfaction. It is an offence to undertake any construction work in breach of the APC Notice and Council officers inspect sites at regular intervals to ensure that no construction works are undertaken until such time as the APC sum has been paid or secured.

If work is undertaken in breach of the notice, then the Council may prosecute both the landowner and the person undertaking the works. If found guilty either party may be liable to a fine, with each breach being prosecuted as separate offence.

## 3. Options for Developers

### A. Pay the Requested Sum by Cash Deposit and do not seek a Refund.

The first option is to pay the APC Sum and not seek to a refund.

The APC sum can either be paid upfront in full or alternatively, developers may pay for each building individually as construction progresses. A breakdown of the sum apportioned to each building can be provided on request.

Any monies received will be held by the County Council in perpetuity pending an application by the frontagers for the making up and adoption of the street as a highway maintainable at the public expense. If and when such an application is received, the monies held will be set off against the amount due from the individual frontagers under the Private Street Works Code.

**B. Pay the Requested Sum by Cash Deposit or secure with a Temporary Bond and seek a Refund/Exemption under Section 219(4)(e) Highways Act 1980 (The Private Street Exemption).**

Section 219(4)(e) gives highway authorities the power to exempt certain streets from the provisions of the APC where they are satisfied that the street has been constructed in such a way that it is unlikely that they will be required to use their powers under the Private Street Works Code.

The Council has a number of conditions which must be satisfied before an exemption notice will be issued under this section which are detailed in section 4 of this guidance.

This exemption does not remove the liability to pay the APC Sum in advance of the commencement any building works. However any monies paid will be refunded on the issue of the exemption notice. In addition, the Council will allow the APC sum to be secured by way of temporary bond, where the developer is seeking an exemption under this section.

#### 4. Conditions for an Exemption

In order to obtain an exemption under section 219(4)(e) you will need to construct the street in accordance with our specification and comply with a number of other conditions.

If either the street would not be suitable for adoption in the future because of its layout and/or geometry or you wish for the street to remain private then you will need to construct the road in accordance with our most basic specification contained an Appendix A and pay a fee representative of 3.5% of the APC Sum.

The fees payable represent 12 months of the Council's administration and inspection fees. If the works are not completed within a 12 month period then you will be responsible for any additional fees which the Council incurs.

Alternatively, if the street has been designed to an otherwise adoptable standard in terms of layout, geometry and proposed construction then you can elect to pay a fee representative of 8.5% of the APC Sum and the Council will assess the design and inspect the works for all of the proposed infrastructure to the same level as it would do if the infrastructure was being offered for adoption as highway maintainable at public expense.

You will also need to accord with the Council's other terms and conditions which are set out in Appendix B. In particular, we will require you to satisfy the following conditions in order to demonstrate your intention to keep the street 'private':

- Deposit a map with the Council under section 31(6) of Highways Act 1980 identifying the streets to remain private and, if applicable, the roads to be offered for adoption as publicly maintained highway.
- Erect road signs indicating that the roads are unadopted.
- Evidence to the Council that you have informed potential purchasers of the properties fronting an unadopted road of your plans to leave the roads unadopted.
- Evidence arrangements for the future maintenance of the Road.
- Mark the boundary between the private road and the publicly maintained highway with an appropriate pre-cast concrete channel block, kerb or similar as agreed with the Council.

## 5. Making an Application

Application forms can be obtained from the Highways Development Team, who will advise as to the appropriate form of specification and level of fees.

An application will not be accepted where the APC sum remains outstanding. This can be paid by way of cash deposit or temporary bond. You will be responsible for any costs that the Council incurs in negotiating a temporary bond in addition to the standard application fees discussed above.

The application forms should also be accompanied by a plan at a scale of 1:500 showing the full extent of the street to be exempted from the APC coloured pink.

## 6. Refunding the APC Sum/Releasing an APC bond

The Council will only issue an exemption notice where they are satisfied that the road has been made up to a standard which means that the exercise of their powers under the Private Street Works Code would be unjustified.

If an exemption notice is issued then any monies paid or secured pursuant to an APC notice will be refunded/released. The repayment will be made to the owner of each building at the date of the issue of the exemption notice and not the person who bore the cost of making up the street or the person who paid the APC sum, in accordance with section 219(5) Highways Act 1980.

For this reason, developers and/or landowners may wish to reserve the right to receive this payment in any plot sales or otherwise come to an agreement and should seek independent legal advice on this matter.

## Appendix A - Construction Specification

BITUMINOUS ROAD CONSTRUCTION					
Construction Layer	Material	DCC Specification Clause	Material Construction Depth		
			Access Road	Feeder Road	Local Distributer & Industrial Roads
Surface Course	AC10 Close Graded Asphaltic Concrete Surface Course	420	30 mm	30 mm	40 mm
Binder Course	AC20 Dense Heavy Duty Asphaltic Concrete Binder Course	414	50 mm	50 mm	60 mm
Base	AC32 Dense Heavy Duty Asphaltic Concrete Base	410	80 mm	100 mm	130 mm
Sub-Base	Type 1 Sub-Base (Specification for Highway Works, Volume 1, Series 800 Clause 803)	408	To be Determined in Accordance with IAN 73/06 Rev 1 (2009)		
Capping	6F2 or 6F5 (Specification for Highway Works, Volume 1, Series 600 Table 6/2)	407			

BLOCK PAVED ROAD CONSTRUCTION					
Construction Layer	Material	DCC Specification Clause	Material Construction Depth		
			Access Road	Feeder Road	Local Distributer & Industrial Roads
Surface Course	Precast Concrete Block Paviour	613	80 mm	80 mm	80 mm
Bedding Layer	Sand	430	30 mm	30 mm	30 mm
Base	AC32 Dense Heavy Duty Asphaltic Concrete Base	410	80 mm	100 mm	130 mm
Sub-Base	Type 1 Sub-Base (Specification for Highway Works, Volume 1, Series 800 Clause 803)	408	To be Determined in Accordance with IAN 73/06 Rev 1 (2009)		
Capping	6F2 or 6F5 (Specification for Highway Works, Volume 1, Series 600 Table 6/2)	407			

## Appendix B – Sample Terms & Conditions

1. The Council reserves the right to refuse any application for an exemption from the Advance Payments Code under section 219(4)(e) Highways Act 1980.
2. The road must be constructed in accordance with the Specification.
3. The Company shall be responsible for the cost of constructing the Road together with all associated costs including any costs incurred by the Council in connection with this application.
4. No exemption notice shall be issued until such time as the Road has been certified by the Council as being substantially complete and maintained thereafter for a minimum period of 6 months.
5. The Company shall provide the Council with a minimum of three working days' notice of:
  - The intended date for the commencement of the construction of the Road.
  - The undertaking of key stages of road construction as defined in the Specification.
  - Substantial completion of the Road.
  - Expiry of the initial 6 month maintenance period.
6. Failure to provide the Council with the requested notice periods in clause 5 above may mean that a Council Officer is unable to attend the Site to inspect crucial stages of construction.
7. All materials used or intended to be used in connection with the construction of the Road must be tested by an independent, UKAS accredited testing facility to assure their quality. The Company shall bear the full costs of such testing and produce copies of all material testing certificates when requested.
8. If the intended works proceed without a Council officer present and/or without independent material testing then the Company must arrange for and bear the full cost of core sampling tests to determine the quality of construction.
9. No exemption notice shall be issued until:
  - The Council is satisfied that the Road has been constructed to a standard which means that the use of its powers under the private street works code would be unjustified.
  - The Council is satisfied that all terms and conditions have been complied with.
  - All monies due and owing to the Council have been paid together with any interest payable.
  - The Council is satisfied that proper arrangements have been made for the future maintenance of the Road.
  - The Council has received written confirmation from the relevant statutory undertaker that any sewer constructed beneath the road is certified as being

or having been on maintenance pursuant to an agreement under section 104 Water Industry Act 1991.

- The Company has:
  - Provided the proper officer with a PDF computer file showing the road as constructed.
  - Deposited a map with the Council under Section 31(6) Highways Act 1980 identifying the roads which are to remain private.
  - Erected road signs clearly indicating that the road is unadopted.