

Appendix B – Advanced Payment Codes (APC) Process

1. Introduction

1.1. The following guidance explains the Advance Payments Code and how it will be applied by North Yorkshire Council (NYC).

1.2. NYC invites developers to engage at the pre-application stage, or as early on in the process as possible, to establish if the intention is for the development estate roads to be adopted and maintained by NYC, or to remain private. It is NYC's position to actively encourage developers to put forward residential development estate roads for adoption, through the Section 38 process.

1.3. It is recognised that not all estate roads will be adopted and maintained by NYC, and that it may be a developer's intention for a development or part of a development to remain private. Where it is the developer's intention for the development roads to remain private, an APC notice will still be served in accordance with the Highways Act and the APC bond must still be secured.

1.4. For the rest of this document, the terms "estate road(s)" and "street(s)" shall mean the same thing.

2. What is the Advance Payments Code (APC)?

2.1 In line with sections 219 - 225 of the Highways Act 1980 (the Act), the APC requires developers and/or landowners of a new road or street to secure a bond with the Local Highway Authority (NYC) to cover the cost of the proposed street works. Should the road or street not be completed to a satisfactory standard this bond protects NYC and the future residents of a development from the cost of having to complete or remedy unsatisfactory street works.

2.2 The APC makes it a legal requirement that the developer and/or landowner pays a lump sum or provides a financial surety to NYC's satisfaction before works for the purposes of erecting the new buildings / dwellings can commence on site.

3. Procedure

3.1. Serving an APC Notice

3.1.1. NYC will be notified by the relevant District/Council's Building Control Team of the details of any planned construction of a proposed new residential development. Notification will take the form of a list submitted weekly by every District/Council in North Yorkshire providing details of recent building regulation applications and decisions. This will comprise both building notices approved by the District/Council's in their duty as Local Building Control Authority, as well as any 'Initial Notices' served on the District/Council by the developer via a private Building Control Inspector – normally the National House Building Council (NHBC).

3.1.3. NYC will serve notice of the APC under section 220 of the Act within six weeks of the development's building plans being deposited with the relevant District/Council. The notice will require the developer/landowner to make a payment of the sum specified therein.

3.1.4. An APC notice will only be served on a development serving ten or more dwellings.

3.1.5. Once the APC notice has been issued, progress of securing the APC bond will be monitored by NYC officers. If payment of the sum specified is not received from the developer / landowner within the requisite period, NYC will take further action in line with the Act, where appropriate.

3.1.6. The APC bond must be secured with NYC before any works are commenced on site for the purpose of erecting the development buildings / dwellings. Starting works where no security has been provided in accordance with an APC notice is a criminal offence, and NYC will instigate prosecution proceedings, where appropriate.

3.2. Exemptions

3.2.1. For details of the APC exemptions, please refer to section 219, subsection (4) of the Act. It is the responsibility of the developer / landowner to seek legal advice if clarity is required in relation to the legal wording of the Act.

3.2.2. If a S38 agreement is completed (as in, executed, signed and dated) between the parties, an APC exemption will be granted (as per section 219 (4)(d) of the Act). For developers / landowners seeking adoption through a Section 38 agreement, NYC encourages early engagement at pre-application stage with “In Principle” drawings. By completing a S38 agreement early with In Principle drawings an APC bond/surety can be avoided – refer to the Flowchart in Appendix C. However, if works (for the purposes of erecting buildings / dwellings) commence before the Section 38 agreement(s) has been completed, this would constitute a breach under the Act and NYC will seek to take the necessary action pursuant to paragraph 3.1.6 above.

3.3. Calculation of the APC Bond Sum

3.3.1. The APC notice will specify the value of the bond payable. This sum represents the amount which would be recoverable under the Private Street Works Code if NYC were to make up the development’s estate roads. The bond is calculated on the whole street measured from the building regulations plans submitted by the developer. Should the land ownership be transferred to the residents of that private street, the APC notice also includes a breakdown of how the APC bond sum will be apportioned between the residents. In this circumstance, the apportionment of the APC bond sum would be based on the relative frontage length of each property.

3.3.2. The APC bond is calculated using the rates in NYC’s Term Highway Contract. These rates are subject to periodic review.

3.4. Releasing of the APC Bond

3.4.1. Where an APC bond has been paid or secured, NYC will consider refunding the figure or releasing the bond on the following terms:

- i.* NYC determine that an exemption under the Act applies or;
- ii.* on completion of the development an independent Chartered Civil Engineer (employed at the developer’s expense) has certificated that in their professional belief the development streets have been designed and built to a recognised industry standard. NYC will need to be served with a copy of this certification [Please note that notwithstanding that an independent Chartered Civil Engineer has certified the

development's streets does not mean that those streets have been constructed to the adoptable standards of NYC] and;

iii. in addition to clause 3.4.1.ii, NYC are satisfied that a capable management company has been set up to maintain the private development streets in perpetuity. NYC will need detailed information on the structure of the management company, how it is formed and how maintenance will be assumed by the management company in perpetuity (for example through a shareholding). NYC will need to satisfy itself that the management company is financially solvent and therefore will be accountable to the residents of the development in perpetuity. This will only be satisfied once 100% of the dwellings on the development are occupied and therefore exemption will not be considered by NYC until this point. NYC will require evidence that the management company is financially solvent once the last dwelling on the development is sold.

4. Industrial Developments

4.1. The APC would usually only be applied to residential developments. It would only be applied to industrial developments or business parks (having more than three-quarters industrial frontage) if NYC believed it may have to use its powers pursuant to the Private Street Works Code and remedy unsatisfactory street works in the foreseeable future.

4.2. For clarity on this point, please refer to the Highway Act 1980: section 219 subsection (4) clause K, in which items (i) and (ii) must both be applicable for APC exemption.

5 Right of Appeal

5.1. The Highway Act 1980, section 220, subsection (6) details the right to appeal the APC bond sum, within one month of the APC notice being served. Please refer to the Highways Act 1980, for the full text.

6. Further Information

6.1. NYC strongly advises and encourages early engagement (ideally at pre-application stage) on all new developments, so available options can be considered for the future maintenance of the highway. Please contact development.control@northyorks.gov.uk

