The 6Cs Design Guide

Appendix J: Advance payment code (APC)

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APC1: Introduction

1.1 This appendix gives background information on the Advance Payment Code (APC) and its application. Please note that the guidance it contains applies both to roads that are to be adopted and to those that are to remain private.

APC2: About the APC

- What is it?
- Which new buildings are exempt?

What is it?

1.2 The advance payments code (APC) forms part of the Highways Act 1980 (Sections 219-225).

1.3 Under Section 219 the code secures payment of the expenses for carrying out street works in private streets next to new buildings. This makes sure that we can complete the roadworks if you (the developer) fail to complete them. If work is started on a building before the appropriate sum has been paid or secured, the owner may have to pay a fine. Certain buildings are exempt for various reasons. These exemptions are listed in Section 219(4) and are also discussed in paragraph 1.11.

1.4 Under Section 220, the APC is tied to passing building plans. The district council must tell us within one week that they have passed the plans. If a payment is needed, we must serve notice of the sum that is required to be paid on the person who deposited the plans within six weeks of them being passed. You should note that the APC is not tied to planning approvals.

1.5 Section 221 states that where work is carried out in the street after a notice has been served, we can serve another notice substituting a smaller sum. And, we can sometimes pay refunds when deposits have been made and the liability for road charges under the private street works code has been reduced.

1.6 Section 222/3 states that where a street is eventually made up under the private street works code, the money deposited under the APC can be used to discharge (cancel) the liability for road charges. We will refund any excess to the person who is, at that time, the owner of the land.

1.7 Section 224 states that all transactions made under the APC must be registered in the register of local land charges.

1.8 Section 225 states that any sum paid to us must carry simple interest at the rate fixed by the Treasury under the National Loans Act 1968.

1.9 If work is carried out before the sum stated under the APC has been paid, Section 219(1) states that the owner of the land and the person carrying out the building are guilty of an offence and may be fined up to £100. Any further work carried out on the same building before payment is made is treated as a new offence. You should note that the fine applies to each building that is being constructed.

1.10 You can pay the APC assessment as a cash deposit or by an appropriate security

Which new buildings are exempt?

1.11 Under Section 219 (4) certain buildings are exempt from payment under the APC. They may or may not require an exemption notice to be served.

Buildings are exempt but **do not** need an exemption notice when:

a) the owner of the land on which the building is to be erected is exempt from liability for expenses under the code;

b) the proposed building will be erected within the curtilage (boundaries) of an existing building;

c) plans for the building were deposited before the code was applied in the district;

d) a Section 38 agreement has been made with us;

e) on the date that the code came into force:

- the whole of the street was less than 100 yards long and was at least 50% built-up; or
- a part of the street, not less than 100 yards, was at least 50% built up;

f) a building is to be erected on land belonging to, or held by, certain boards, councils and commissions including both county and district councils; and

g) an industrial building is to be erected by a company that is not for that company's own use and the cost of the building has been mainly paid by a government department.

Buildings are exempt but **do** need an exemption notice when:

a) within a reasonable time, the street is not likely to become joined to a highway which is maintained at public expense;

b) in a case (not falling within paragraph e) above where on the date that the code came into force, the whole street was substantially built-up; and

c) the street is not and, within a reasonable time, is not likely to become:

- very built-up; or
- in such bad condition that we would use our powers under the private street works code.

1.12 We will make a case-by-case decision where more than three-quarters of the frontage consists of, or is likely to consist of, industrial premises and the private street works code is not likely to be applied within a reasonable time.

1.13 The 6Cs Councils have various policies on applying APCs. In Leicestershire the following standards apply:

- Five or less new residential buildings off a private drive are exempt.
- An APC will apply to industrial premises.

For the other 6Cs Councils approach please contact the appropriate Council (See Appendix A).

APC3: Our APC process

- How it affects you
- Paying the APC assessment
- Refunding advanced payment code money and sureties

1.14 Our APC process applies both to roads that are to remain private and to those that are to be adopted.

How it affects you

1.15 You cannot begin work on any ***building*** on any plot that needs an APC assessment until:

- you have secured the APC or paid by cheque for either the whole assessment or for the amount assessed for the plot you intend to build; and
- you have entered into a Section 38 road adoption agreement with us.

1.16 You can start work on the ***road*** within your property at any time. However, we may not return your APC money or bond if you do not follow our APC process.

Note: The APC process does not apply to existing roads. You are not allowed to carry out any work within the highway without our permission. You will need to contact our Area Manager to get a permit or have works carried out by us. You can find contact details in Appendix A.

Paying the APC assessment

1.17 When we serve an APC assessment under S220(3), each new building has an individual assessment associated with it. The landowner, normally the developer, must pay this calculated assessment before he or she starts construction on each new building.

1.18 The APC sum does not have to be paid before the road is constructed, only before construction starts on a new building, and then only the individual assessment sum for that building. Although the landowner may decide to pay a batch of individual APC sums for convenience, the code does not need this.

1.19 If you start work on a building before you have paid or secured the appropriate sum, you may be fined.

1.20 Under Section 220(4) the APC sum may be reassessed if the amount held is more than the value of the works to be done to complete the road. However, it is our policy not to reassess the APC sum until the road is fully complete to our satisfaction.

1.21 The landowner can pay an APC assessment either by depositing money or providing an acceptable surety. If the assessment is paid in money, we will add simple interest to the deposited sum

Refunding advanced payment code money and sureties

1.22 **Roads that are to remain private:** The following process will lead to the return of the deposited money or surety.

- The developer must agree a construction specification with us for a private roadway that is fit for its purpose.
- The developer then sends layout and construction drawing to us for technical approval (see paragraph 1.26). We need three copies (one for the office records and two for the inspector).
- The developer then pays an inspection and administration fee. See APC7.
- The developer informs us when he or she plans to start construction on the roadway.

The developer then liaises with the inspector, notifying him or her at each significant phase of construction so as to allow each phase to be inspected (see paragraph 1.30).

- When the roadway has been constructed to a satisfactory standard fit for its purpose, and certified by the inspector, we will serve an exemption notice under 219(4e) and we will return the money in full with interest added if appropriate, or your security can be cancelled. We will not refund part of your money.

1.23 If construction is carried out without inspection, the inspector may ask for testing to make sure the construction is of a suitable standard. The developer must pay for this. If the correct processes are not followed, we will not serve an exemption notice and we will not return any money or surety.

1.24 The process above does not mean that we will adopt private roads nor does it mean the roads are of an adoptable standard. They will remain as private roadways and you (the developer) must take steps to make this clear to residents, as set out in Part 3, paragraph 3.209.

1.25 **Roads that are to be adopted:** We still serve and APC assessment for roads which are to be adopted. When you enter into a Section 38 agreement with us, we will cancel the APC assessment and we will refund your money, with interest added if appropriate, cancel your bond or return your security.

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APC4: Technical approval of private roadways

- Drawings needed for assessment

Note: For technical approval of roads that are to be adopted, please see Part 5

1.26 We will normally require the following for all roadways.

Drawings needed for assessment

- Layout plan showing (1:500 preferred)
    - Details of access on to the highway including gradients.
    - Clearly defined delineation details showing the boundary and extent of the public highway. (The highway boundary is must be clearly marked on-site with a row of edgings or similar.)
    - Suitable street signs and nameplates are proposed and located in a prominent position with the words ‘Private road’.
    - Gates for vehicles are set back, normally at least five metres, behind the highway boundary and are hung so they open inwards only.
- Cross sections and long sections (if available)
    - Gradients of the access drives must not normally be more than 1:20 for the first five metres behind the highway boundary but we may allow a maximum gradient to be relaxed to 1:10 in difficult situations (such as on a steep site).
    - Drainage is provided within the site which makes sure surface water does not drain into the public highway.
- Construction specification
    - CBR values have been provided, if necessary for type, and a suitable sub-base and capping layer thickness is proposed.
    - We approve the specification for a private roadway.

1.27 We may also need the following information, depending on the development.

- We may want to see that our suggested planning conditions have been taken into account within the design.
- We may need evidence that purchasers and residents have been clearly told about the private status of the roadway and what they must do to maintain it. Evidence we will accept includes copies of the sale deeds and sales literature.
- If street lighting is proposed, will it be maintained by the developer, management company, residents or someone else? Have the residents been clearly told who is responsible? Evidence we will accept includes copies of the sale deeds and sales literature.
- We may need evidence that a management company is to be employed and what maintenance it is responsible for. Evidence we will accept includes signed contract documents or correspondence from a solicitor which gives details of the arrangements.

1.28 We will issue an approval when we are satisfied with the information you show us. This approval is for the items above only and does not mean the road is of an adoptable standard.

Note: We will give technical approval to the construction specification only.

The proposed roadway is not to be adopted and so we will assess the geometric layout through the planning process and recommend the attachment of conditions if we consider them appropriate.

APC5: Private road construction standards

Note: For roads that are proposed to be adopted, please refer to Part 4.

1.29 For roads that are not proposed to be adopted (that is, remain private) the following standards will apply.

		Road less than 25m long serving 6 to 25 dwellings	Road more than 25m long serving 6 to 25 dwellings	Road serving more than 25 dwellings
Bituminous	Surface course CGM	30mm	30mm	40mm
	Binder course DBM	85mm	60mm	60mm
	Base DBM	-	110mm	150
	Sub-base & Capping	270mm Type 1 GSB(a)	See Table MC4, Part 4	See Table MC4, Part 4
Block Paving	Blockwork	60mm	80mm	80mm
	Bedding sand (compacted)	30mm	30mm	30mm
	Base DBM	90mm	110mm	150mm
	Sub-base & Capping	270mm Type 1 GSB(a)	See Table MC4 Part 4	See Table MC4 Part 4

Key
CGM = Close graded macadam
DBM = Dense bitumen macadam

APC6: Inspecting the works

1.30 You will need to contact our area office to arrange for an inspector to visit the site. The inspector will not attend until he or she has a layout plan and you have paid our fees. Generally, our inspector would need to witness the construction at the following stages.

- Subgrade (to assess any capping requirements from CBR test results)
- Sub-base level
- Base level
- Bindercourse level
- Surface course or blockwork level

APC7: Our fees

1.31 **For a private road (non-adoptable standard)** – 3% of the estimated roadwork's costs or £2000 (whichever is greater).

1.32 **For a private road (adoptable standard)** – 7% of the estimated roadwork's costs or £2000 (whichever is greater). This is the same fee as for a Section 38 agreement as the same checking and inspection process will apply.

For more details, or for enquiries about the assessment and procedures, please contact us on 0116 305 6782, or email HDC@leics.gov.uk