

## Help and advice if you have just been given an Advance Payments Code notice

This leaflet tells you about the *Advance Payments Code* or *APC*. It tells you:

- what the *Advance Payments Code* or *APC* is
- what *APC notices* and *APC deposits* are
- what you should or should not do if you have been given an *APC notice*
- where you can get more information or advice about the *APC*

The information we give here is only an overview. It is based upon our understanding of the law and only applies within the Borough of Kirklees. You should not use it as an alternative to independent legal advice.

We give more detailed information in our highways guidance note **Private Streets and the Advance Payments Code**.

You can find all our highways guidance notes and this leaflet on [our highway adoptions webpage](#).

Please see page 5 for addresses of weblinks.

## In this leaflet we use these definitions

### Advance Payments Code or APC

- This is part of the law covering *highways* and other roads and paths. It can be found in [sections 219 to 225](#) of the [Highways Act 1980](#).

### Fronting and frontage

- A building *fronts* onto a *street* if it is immediately adjacent to the *street* even if only the side or back of the building is adjacent.
- The *frontage* of a building onto a *street* is the part of the building – and the plot of land that contains the building – that *fronts* onto the *street*.

### Highway

- A *highway* is a *street* over which the public has a right to travel, sometimes called a right to pass and repass.

### Publicly maintainable highway

- A *publicly maintainable highway* is any *highway* that Kirklees Council, as the local *highway* authority, has a legal duty to maintain.

### Private street

- A *private street* is any *street* that is not a *publicly maintainable highway*.

### Relevant proposed street

- A *relevant proposed street* is any proposed *street* shown on a relevant application for building regulations approval or planning permission.

### Section 38 agreement

- *Section 38 agreements* are made between Kirklees Council and developers under [section 38](#) of the [Highways Act 1980](#). Using them, the council and developers agree that, if the developer builds roads and paths to the agreed layout and standard, the council will adopt them as *publicly maintainable highway*.

### Street

- In normal use, a *street* is a road in a built-up area with, typically, houses or other buildings along it. However, we use the same definition as the [Highways Act 1980](#). This says that a *street* is the whole or any part of any *highway*, road, lane, footway, alley, passage, square, or court or any other land laid out as a way, whether or not it is a thoroughfare and even if it is not made up as a *street*.

## Q 1 What is the Advance Payments Code?

The *Advance Payments Code* or *APC* is a way of making sure that we would have money available should we have to step in to construct or make up a

*private street* or *relevant proposed street* to a satisfactory standard.

The *APC* is part of the law covering *highways* and other roads and paths. It can be found in [sections 219 to 225](#) of the [Highways Act 1980](#).

## Q 2 What's wrong with private streets?

If *private streets* with residential or commercial buildings are not looked after, access might become difficult or even impossible for:

- Residents, workers, or visitors
- In emergencies, the police, fire, or ambulance services
- Servicing and delivery vehicles

In addition, if *private streets* are not properly maintained, they can become dangerous to use. Poor drainage can lead to flooding. Poor street lighting can make areas more appealing to criminals. And poor road surfaces can cause drivers to leave their vehicles outside the development and park dangerously, where they take up scarce parking space, or in the way of traffic.

## Q 3 Why have I been sent an APC notice?

You have been sent an *APC notice* because you have received building regulations approval for a proposed building that *fronts* onto either a *private street* or a *relevant proposed street*.

The law requires us to send the *APC notice* to the person or body that receives building regulations approval, even if they do not own the land where the building would be built.

## Q 4 What is an APC notice?

An *APC notice* is the official way that we tell you how much money – the *APC deposit* – the landowner of the site where your building would be erected might have to pay to us before anyone may start work erecting the building or making the site ready for it.

## Q 5 What is the APC deposit?

Before we issue an *APC notice*, we work out how much money in total we would need should we have to step in to construct or make up to a satisfactory standard the *private street* or *relevant proposed street* where your proposed building will be.

We divide this total amount between the different premises (apart from some types which are legally exempt) on the *private street* or *relevant proposed street* to work out the share for your proposed building. We do this by measuring the *frontage* of your proposed building and its plot and also each

other premises on the *private street*. The *APC deposit* is then your proposed building's share.

## Q 6 Can I give a security instead of paying an APC deposit?

The law allows us to accept a security instead of being paid the *APC deposit*. However, the security has to be to 'our satisfaction' and we do not usually accept them.

If you are thinking of giving us a security instead of paying an *APC deposit*, then please get in touch with our *highway* adoptions team as soon as you can.

## Q 7 What can I do if I disagree with an APC notice?

If you think that an *APC notice* shouldn't have been issued, or that you shouldn't have been sent it, or that the *APC deposit* is too high, then please get in touch with our *highway* adoptions team. We will check whether a notice should have been issued and who it should have been sent to. We will also check the amount of the *APC deposit*.

You can appeal to the Secretary of State for Transport if you have received an *APC notice* – or if you own the land where the building would be erected – and you feel that the amount of the *APC deposit* is excessive.

If you are going to appeal, you have to do so within one month of when the *APC notice* was issued.

You can appeal to the Secretary of State whether or not you have contacted us first.

If you would like us to explain how to appeal to the Secretary of State, then please ask.

## Q 8 When do I have to pay the APC deposit?

You might not have to pay the *APC deposit*. However, before you start work erecting the building or making the site ready for it, the landowner of the site where the building would be erected has a legal obligation to do one of the following:

- pay the *APC deposit* to the council; or
- arrange for a security to cover the amount of the *APC deposit*; or

- enter into a *section 38 agreement* with the council for the *private street*.

If no one starts work erecting the building or making the site ready for it, then no one has to pay the *APC deposit*.

### **Q 9 What if I start work anyway?**

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It is illegal for you to start erecting the building or making the site ready for it without first paying the required *APC deposit* to the council.

If you did start work, you would be committing a criminal offence and could be prosecuted. If you carried on working, you could be prosecuted separately for each day that you carried on.

Currently, you could be fined up to £1000 for each day on which you worked on erecting the building or making the site ready.

### **Q 10 What happens if the proposed building is on more than one street?**

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If your proposed building is on more than one *private street* or *relevant proposed street*, then we treat each *street* separately. It might be that the *APC* applies because of more than one *street*.

If an *APC notice* is required because of the building's frontage onto only one of the *streets*, then we base the deposit required by the *APC notice* only on the length of frontage onto that *street*.

If an *APC notice* is required because of the building's frontage onto more than one *street*, then:

- we issue a separate *APC notice* for each *street*
- we base the *APC deposit* required for each *street* only on the length of frontage onto that *street*

### **Q 11 If I'm the landowner but didn't apply for building regulations approval, does the APC notice still count?**

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Yes, but the *APC notice* is only relevant if you want to erect or make the site ready for the building that has building regulations approval. If you didn't apply for building regulations approval and aren't going to erect the building, then it doesn't matter whether you would have to pay an *APC deposit* first or not.

### **Q 12 Does getting an APC notice mean that you approve of my highway proposals?**

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No, we have sent you an *APC notice* because the law tells us to, not because we think your proposals are any good.

Regardless of whether you have been sent an *APC notice*, you have to have planning permission to build new roads. In addition, we will not adopt new roads as *publicly maintainable highways* unless we have thoroughly assessed them and given them *highways* technical approval.

### **Q 13 Does getting an APC notice mean that I can do works to an existing highway?**

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No, *APC notices* don't affect whether you need permission to do works to an existing *highway*. Doing any works in or to an existing *highway* without our written permission is a criminal offence.

### **Q 14 Does getting an APC notice mean that I don't need to get planning permission for my proposed building?**

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No, *APC notices* don't have anything to do with planning permission. Getting one doesn't affect whether you need planning permission for your proposed building and doesn't change any planning permission you might have been given.

### **Q 15 Once I have paid the APC deposit, will I get any of it back?**

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We will cancel an *APC notice* and refund – with interest – the *APC deposit* if you:

- enter into a *section 38 agreement* with us for the *private street* or *relevant proposed street*; or
- make up the *private street* or *relevant proposed street* and get it adopted by us as *publicly maintainable highway*; or
- make up the *private street* or *relevant proposed street* to a standard that is satisfactory to us but – with our agreement – don't then get it adopted.

We will give this refund to the landowner of the site where the building would be erected, even if they didn't pay the *APC deposit* and even if the land had been sold after the *APC deposit* was paid.

If we have used the *APC deposit* to make the *private street* or *relevant proposed street* up to a satisfactory standard, then we would refund any money that was left over. Again, this would be with interest and would be to the landowner of the site where the building would be erected.

### Q 16 If I have given a security instead of paying an APC deposit, will I get a refund?

If you give us a security instead of paying us an *APC deposit* and we then issue an 'exemption notice' or cancel the *APC notice*, what happens next is complicated and depends upon whether you have sold the site or not. We explain this in more detail in our highways guidance note **Private Streets and the Advance Payments Code**.

### Q 17 What happens if I get a section 38 agreement?

If you enter into a *section 38 agreement* with us after we have issued an *APC notice* for a *private street* or *relevant proposed street*, we will cancel the *APC notice*.

Once a *section 38 agreement* is signed by both you and us, any *APC deposits* already paid for *private streets* or *relevant proposed streets* covered by the agreement will be refunded with interest.

We will give the refund to the owner of the land where the building would be erected, even if they didn't pay the *APC deposit* or enter into the *section 38 agreement* and even if the land had been sold after the *APC deposit* was paid.

### Q 18 Can I make up the private street without a section 38 agreement?

Yes. For small scale works, many developers find it easier to pay the *APC deposit* than to enter into a *section 38 agreement*. After the works have been finished, we can adopt the made-up *street*.

We give more information about how to get a *private street* adopted without a *section 38 agreement* in our highways guidance note **Private Streets and the Advance Payments Code**.

We will charge you a fee for reviewing and inspecting your proposed works and to cover our admin and legal costs. This will be 10% of the amount of the *APC deposit*.

### Q 19 What if I want to keep the private street private?

If you want to make up a *private street* or *relevant proposed street* and then keep it private, the law allows us to issue you with an 'exemption notice'. However, we would not do this unless you were able to satisfy various conditions, including:

- your proposals will make up the *private street* to 'our satisfaction'
- you put suitable arrangements in place to stop anyone forcing us to adopt the *private street* at a later date as *publicly maintainable highway*
- you put suitable arrangements in place to make sure that the *private street* or *relevant proposed street* will be appropriately managed and maintained
- we have inspected your work and confirmed that you have made up the *private street* to 'our satisfaction'

We explain our conditions in more detail and give more information about how to make up a *private street* or *relevant proposed street* and then keep it private in our highways guidance note **Private Streets and the Advance Payments Code**.

We will charge you a fee for reviewing and inspecting your proposed works and to cover our admin and legal costs. This will be 10% of the amount of the *APC deposit*.

If we issue you with an exemption notice after we have already issued an *APC notice*, then we will cancel the *APC notice* and you will not have to pay the *APC deposit*.

If you have already paid the *APC deposit* when we issue you with an exemption notice, then we will refund – with interest – the *APC deposit*.

We will give this refund to the owner of the land where the building would be erected, even if they didn't pay the *APC deposit* and even if the land had been sold after the *APC deposit* was paid.

### Q 20 What if the private street is already made up or partly made up?

If the *private street* is already made up – or partly made up – then the amount of the *APC deposit* will usually be lower than if it wasn't.

Please get in touch with us if you've already made up a *private street* and either you want us to adopt it or you want to keep it private but you want us to issue you with an exemption notice. We can then inspect your works and decide whether they are satisfactory.

We will charge you a fee for inspecting your works and to cover our admin and legal costs. This will usually be 10% of what the *APC deposit* would have been if you hadn't already done any works.

### **Q 21 How would you use the APC deposit or security to make up a private street?**

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The *APC deposit* or security is there to give us the money we would need should we have to step in to construct or make up the *private street* or *relevant proposed street* to a satisfactory standard. If we had to do this, we would usually use the 'Private Street Works Code'.

The Private Street Works Code – like the *APC* – is part of the law covering *highways* and other roads and paths. It can be found in [sections 205 to 218](#) of the [Highways Act 1980](#).

We don't cover the Private Street Works Code in this leaflet, but we do in our highways guidance note **Private Streets and the Advance Payments Code**.

### **Q 22 What happens if I sell the property covered by an APC notice?**

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If you sell a property which is covered by an *APC notice*, then the legal obligations pass to the new owner.

If you sell only part of a property, then we divide the amount of the *APC deposit* between the part you sell and the part you keep. We work this out by measuring the *frontages* onto the *private street* of both the part you sell and the part you keep.

*APC notices* are 'local land charges'. This means that anyone doing 'local searches' in connection with buying a property would find out about any *APC notices* that cover it.

### **Q 23 What happens if the building regulations approval expires?**

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If the building regulations approval expires without you starting work on the building, then you are no

longer allowed to start work on that building. Therefore, it should no longer matter whether you have to pay an *APC deposit* first or not.

### **Q 24 What happens if I decide not to erect the building?**

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You only have to pay the *APC deposit* if you are going to start work on the building. If you're never going to start work, you'll never have to pay.

### **Q 25 What happens if I get new building regulations approval for the same site?**

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Every time you get building regulations approval for a building that *fronts* onto a *private street* or *relevant proposed street*, we will send you an *APC notice*, even if the new approval is for a building with the same footprint as one you already have approval for.

If you have building regulations approval for two different buildings with the same footprint, you can only erect one of them. Therefore, even if you have received two *APC notices*, you will only ever have to pay the *APC deposit* for one of them.

### **Q 26 Where can I get more information?**

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We have written a series of highways guidance notes to help developers and others understand the *highways*-related matters of building work and new developments. These are available on [our highway adoptions webpage](#).

If you have just received an *APC notice*, the most useful ones are:

- **Private Streets and the Advance Payments Code**
- **Private Works to Existing Highways**
- **Section 38 Agreements for Highway Adoptions**
- **Highways Technical Approval**
- **Highway Adoptions Criteria**

Please see the back page for our other highways guidance notes and for ways to get in touch with us.

**Our highway adoptions webpage**  
[www.kirklees.gov.uk/highwayadoptions](http://www.kirklees.gov.uk/highwayadoptions)  
**Highways Act 1980**  
[www.legislation.gov.uk/ukpga/1980/66/contents](http://www.legislation.gov.uk/ukpga/1980/66/contents)

## Further information, comments, and queries

### Kirklees Council highways standards and guidance

#### Highways guidance notes

- Emergency Access, Waste Management, Servicing, and Deliveries
- Existing Roads and Paths Affected by New Developments
- Gradients
- Highway Adoption Drawings
- Highway Adoptions and the CDM Regulations
- Highway Adoptions Criteria
- Highways Technical Approval
- Highways, SuDS, and Private Drainage
- Introduction to Highways and Adoptions
- Operation and Maintenance Manuals for Adopted Highways
- Private Streets and the Advance Payments Code
- Private Works to Existing Highways (Section 184 and 278 Agreements)
- Requirements of New and Improved Roads and Paths
- Requirements of Submitted Documents
- Section 38 Agreements for Highway Adoptions
- Soakaways

#### Other highways documents

- The Advance Payments Code and You: Help and Advice if You Have Just Been Given an Advance Payments Code Notice
- Kirklees Highways Standard Details

### Comments and queries

#### Kirklees Council welcomes comments and queries about this leaflet

*Although Kirklees Council is not responsible for the content of external websites, please report any broken links*

- Huddersfield (01484) 22 1000 – ask for ‘Highway Adoptions’
- [Highways.Section38@kirklees.gov.uk](mailto:Highways.Section38@kirklees.gov.uk)
- [www.kirklees.gov.uk/highwayadoptions](http://www.kirklees.gov.uk/highwayadoptions)
- Kirklees Council  
Highways Service  
PO Box 1720  
Huddersfield  
HD1 9EL



[www.kirklees.gov.uk/highwayadoptions](http://www.kirklees.gov.uk/highwayadoptions)