

# CYNGOR SIR CEREDIGION COUNTY COUNCIL

**Report to:** Cabinet

**Date of meeting:** 21<sup>st</sup> December 2023

**Title:** Report on the Amendment of the Fees and Charges 2023 – 2024 in relation to Sections 37, 38 and 278 Highways Act 1980

**Purpose of the report:** To approve the amendments to the Fees and Charges 2023 – 2024

**For:** Decision

**Cabinet Portfolio and Cabinet Member:**

**Councillor Keith Henson (Highways and Environmental Services and Carbon Management) and Councillor Matthew Vaux (Partnerships, Housing, Legal and Governance and Public Protection)**

**Introduction**

On 14 February 2023 Cabinet approved the Council’s Fees and Charges effective from 1 April 2023. This includes the fees chargeable by Legal Services and Highways and Environmental Services for entering legal agreements for the adoption of highways under Section 38 of the Highways Act 1980 (“the Act”). However, there is more than one statutory route to adopt a private road, under section 37 for instance, and through private construction work on the adopted highway that will need to be done to an adoptable standard through a section 278 agreement. This report aims to consolidate the fees chargeable for work that the Council does which is in reality very similar for each part of the Act.

Section 38 provides the Council with the power to enter into an agreement whereby a developer agrees to construct a road to a particular standard and dedicate the road as a highway once complete. The Council agrees under such an agreement to adopt the road so that it becomes maintainable at the public expense, provided it has been constructed to the agreed standard. The fees and charges associated with entering into section 38 agreements are set out in the Fees and Charges 2023 – 24 as approved by Cabinet:

[www.ceredigion.gov.uk/your-council/budgets-finance/fees-and-charges/](http://www.ceredigion.gov.uk/your-council/budgets-finance/fees-and-charges/)

For information the current fees for section 38/278 agreements are set out as follows;

**Legal Services**

<b>Section 38/278 Charge</b>	
1% fee on up to the first £500,000 worth of work	Minimum £1,050 - Maximum £5,250
Section 38/278 variation charge	£622.00

## **Highways & Environmental Services**

<b>Section 38 Supervision and Administration Fees</b>		
Works up to £500,000		£6,000
Works in excess of £500,000	First £500,000	8% of value of works
	Next £500,000 value in excess of £0.5m	7% of value of works
	Next £2,000,000 value in excess of £1m	6% of value of works
	Remainder of works value in excess of £3m	5% of value of works

Section 37 of the Act is an alternative route to the above which enables a developer to complete the construction of a road before serving a notice on the Council declaring their intention to dedicate the road as highway. This route is rarely used by developers as it involves a number of stages where there is potential for referral to the Magistrates Court and, as such, there is risk that the proposed adoption via s.37 may fail. Historically the Council has not set a fee for adoptions via s.37 as they are rarely proposed however the work required to ensure that a road is up to adoptable standard and/or to make a complaint to the Magistrates Court if it considers that the proposed highway would not be of sufficient utility to the public to justify it being maintained at public expense, is not insubstantial. The Council would need to request and be satisfied with the evidence provided that all the Council's requirements that would normally be part of any s.38 agreement are met. In effect the approval work is the same as for s.38 agreements but done in a different order, and will include both intrusive (e.g. coring) and non-intrusive (e.g. CCTV) surveys, after the road has been constructed.

Section 278 of the Highways Act 1980 is an agreement between a third party and the Council that allows them to carry out new work within the adopted highway boundary or alterations to the existing adopted highway asset as an agent of the Council as highway authority. The works covered by this part of Act are normally included as part of s.38 Agreements but can be used as a standalone agreement where there is no linked s.38 works. Fees that are commensurate with s.38 fees have been consistently applied by the Council in the past and the inclusion in this paper is to remove any doubt or anomaly that they will be applicable. The Legal Services fee approved by Cabinet for s.278 agreements is identical to that of s.38 agreements.

To ensure that costs can be fully recovered for S.278 agreements and any future Section 37 notices received by the Council, it is recommended that the Fees and Charges 2023 – 2024 are amended to include fees and charges relating to the adoption of highways under Section 37 and Section 278 of the Highways Act 1980.

**Wellbeing of Future Generations:**

**Has an Integrated Impact Assessment been completed? If, not, please state why.**

No. This report does not represent a change in policy or strategy.

**Summary of Integrated Impact Assessment:**

**Long term:** N/A  
**Collaboration:** N/A  
**Involvement:** N/A  
**Prevention:** N/A  
**Integration:** N/A

**Recommendation(s):**

**That Cabinet APPROVES the amendment of the Fees and Charges 2023 – 2024 as follows:**

“Section 37, 38 and 278 Supervision & Administration Fees” for Highways & Environmental Services (p41)

and

“Section 37/38/278 charge” under Legal Services (p29)

**Reasons for decision:**

**To ensure that the Council can fully recover costs for responding to Section 37 notices and requests under s.38 and s.278 of the Highways Act 1980.**

**Overview and Scrutiny:**

N/A

**Policy Framework:**

Fees and Charges 2023 - 24

**Corporate Well-being Objectives:**

N/A

**Finance and Procurement implications:**

The approval of this recommendation will enable the Council to fully recover costs for responding to requests for Section 278 agreements and Section 37 notices.

**Legal Implications:**

Improved good governance around fee setting for s.278 agreements and s.37 notices.

**Staffing implications:**

None

**Property / asset implications:**

None

**Risk(s):**

Failure to amend the Fees and Charges 2023 – 24 could result in the inability of the Council to fully recover costs arising in relation to Sections 37 and 278 of the Highways Act 1980.

**Statutory Powers:**

Highways Act 1980

**Background Papers:**

14 February 2023 Cabinet Report – ‘Report of the CLO – Finance & Procurement upon Fees and Charges’: <https://council.ceredigion.gov.uk/documents/s4584/Report-%20Fees%20and%20Charges.pdf?LLL=0>

**Appendices:**

None

**Corporate Lead Officer:**

Elin Prysor, Corporate Lead Officer- Legal & Governance Services

Rhodri Llwyd, Corporate Lead Officer: Highways & Environmental Services

**Reporting Officer:**

Louise Harries, Senior Lawyer – Non-contentious (Property)

Steve Hallows, Service Manager (Highways Development)

**Date:**

12.12.2023