



Highways Act 1980

1980 CHAPTER 66

PART XI

MAKING UP OF PRIVATE STREETS

The advance payments code

219 Payments to be made by owners of new buildings in respect of street works

- (1) Subject to the provisions of this section, where—
- (a) it is proposed to erect a building for which plans are required to be deposited with the local authority in accordance with building regulations, and
 - (b) the building will have a frontage on a private street in which the street works authority have power under the private street works code to require works to be executed or to execute works,

no work shall be done in or for the purpose of erecting the building unless the owner of the land on which it is to be erected or a previous owner thereof has paid to the street works authority, or secured to the satisfaction of that authority the payment to them of, such sum as may be required under section 220 below in respect of the cost of street works in that street.

- (2) If work is done in contravention of subsection (1) above, the owner of the land on which the building is to be erected and, if he is a different person, the person undertaking the erection of the building is guilty of an offence and liable to a fine not exceeding £100, and any further contravention in respect of the same building constitutes a new offence and may be punished accordingly.

Proceedings under this subsection shall not be taken by any person other than the street works authority

- (3) Where the person undertaking the erection of the building is not the owner of the land on which it is to be erected and is charged with an offence under subsection (2) above, it shall be a defence for him to prove that he had reasonable grounds for believing that

Status: This is the original version (as it was originally enacted).

the sum required under section 220 below had been paid or secured by the owner of the land in accordance with subsection (1) above.

- (4) This section does not apply—
- (a) where the owner of the land on which the building is to be erected will be exempt, by virtue of a provision in the private street works code, from liability to expenses incurred in respect of street works in the private street in question;
 - (b) where the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building;
 - (c) where the building is proposed to be erected in a parish or community and plans for the building were deposited with the district council or, according to the date of deposit, the rural district council before the date on which the New Streets Act 1951, or the advance payments code (either in this Act or in the Highways Act 1959) was applied in the parish or community or, as the case may require, in the part of the parish or community in which the building is to be erected ;
 - (d) where an agreement has been made by any person with the street works authority under section 38 above providing for the carrying out at the expense of that person of street works in the whole of the street or a part of the street comprising the whole of the part on which the frontage of the building will be, and for securing that the street or the part thereof, on completion of the works, will become a highway maintainable at the public expense ;
 - (e) where the street works authority, being satisfied that the whole of the street or such a part thereof as aforesaid is not, and is not likely within a reasonable time to be, substantially built-up or in so unsatisfactory a condition as to justify the use of powers under the private street works code for securing the carrying out of street works in the street or part thereof, by notice exempt the building from this section;
 - (f) where the street works authority, being satisfied that the street is not, and is not likely within a reasonable time to become, joined to a highway maintainable at the public expense, by notice exempt the building from this section;
 - (g) where the whole street, being less than 100 yards in length, or a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, was on the material date built-up to such an extent that the aggregate length of the frontages of the buildings on both sides of the street or part constituted at least one half of the aggregate length of all the frontages on both sides of the street or part;
 - (h) where (in a case not falling within paragraph (g) above) the street works authority, being satisfied that the whole of the street was on the material date substantially built-up, by notice exempt the building from this section;
 - (i) where the building is proposed to be erected on land belonging to, or in the possession of—
 - (i) the British Railways Board, the British Transport Docks Board, the British Waterways Board, the London Transport Executive, the National Freight Corporation (as far as included in this paragraph by paragraph 15(a) of Schedule 23 to this Act) or any wholly-owned subsidiary (within the meaning of the Transport Act 1968) or joint subsidiary (within the meaning of section 51(5) of that Act) of any of those bodies;
 - (ii) the council of a county, district or London borough, the Greater London Council or the Common Council;

Status: This is the original version (as it was originally enacted).

- (iii) the Commission for the New Towns or a new town development corporation;
 - (j) where the building is to be erected by a company the objects of which include the provision of industrial premises for use by persons other than the company, being a company the constitution of which prohibits the distribution of the profits of the company to its members, and the cost of the building is to be defrayed wholly or mainly by a government department ;
 - (k) where the street works authority, being satisfied—
 - (i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street not less than 100 yards in length and comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises, and
 - (ii) that their powers under the private street works code are not likely to be exercised in relation to the street, or to that part of it, as the case may be, within a reasonable time,by resolution exempt the street, or that part of it, from this section.
- (5) Where a sum has been paid or secured under this section by the owner of the land in relation to a building proposed to be erected on it, and thereafter a notice is served under subsection (4) above exempting the building from this section, or a resolution is passed under paragraph (k) of that subsection exempting the street or part of a street on which the building will have a frontage from this section, the street works authority shall refund that sum to the person who is for the time being owner of the land or shall release the security, as the case may be.

Where the said sum was paid, and after the payment but before the service of the said notice or the passing of the said resolution, as the case may be, the land in respect of which it was paid was divided into 2 or more parts each having a frontage on the private street in question, the sum is to be treated for the purposes of this subsection as apportioned between the owners of the land according to their respective frontages.

- (6) For the purposes of this section " the material date " is—
- (a) in relation to a building proposed to be erected in an area which before 1st April 1974 was a rural district or a contributory place within a rural district, the date on which the New Streets Act 1951 or the advance payments code (either in this Act or in the Highways Act 1959) was applied in that area;
 - (b) in relation to a building proposed to be erected any where else, 1st October 1951.

220 Determination of liability for, and amount of, payments

- (1) In a case to which section 219 above applies the street works authority shall, within 6 weeks from the passing of any required plans relating to the erection of a building deposited with them or, in a case to which subsection (2) below applies, with the district council, serve a notice on the person by or on whose behalf the plans were deposited requiring the payment or the securing under section 219 above of a sum specified in the

In this subsection and subsection (2) below " required plans " means plans required to be deposited with the local authority in accordance with building regulations.

Status: This is the original version (as it was originally enacted).

- (2) Where (outside Greater London) the advance payments code is in force in the whole or any part of a district, the district council, in any case to which section 219 above may be applicable, shall within one week from the date of the passing of any required plans deposited with them relating to the erection of a building in an area in which that code is in force inform the street works authority that the plans have been passed.
- (3) Subject to the provisions of this section, the sum to be specified in a notice under subsection (1) above is such sum as, in the opinion of the street works authority, would be recoverable under the private street works code in respect of the frontage of the proposed building on the private street if the authority were then to carry out such street works in the street as they would require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense.

In this subsection a reference to a street does not include a reference to a part of a street, except to a part which the street works authority think fit to treat as constituting a separate street for the purposes of this subsection and which comprises the whole of the part on which the frontage of the building will be.

- (4) If, at any time after the service of a notice under subsection (1) above, the street works authority—
- (a) are of opinion that the sum specified in the notice exceeds such sum as in their opinion would be recoverable as mentioned in subsection (3) above if they were then to carry out such street works as are so mentioned, or
 - (b) are of opinion that no sum would be so recoverable,
- they may, by a further notice, served on the person who is for the time being owner of the land on which the building is to be, or has been, erected, substitute a smaller sum for the sum specified in the notice served under subsection (1) above or, as the case may be, intimate that no sum falls to be paid or secured.

This subsection does not apply where a sum has been paid or secured in compliance with a notice served under subsection (1) above and the case is one in which the authority have power to make a refund or release under section 221(1) below.

- (5) Where, under a local Act, the erection of buildings on land having a frontage on a new street is prohibited until works for the construction or sewerage of the street have been carried out in accordance with byelaws, the amount of the sum to be specified in a notice served under this section shall be calculated as if those works had been carried out.
- (6) Where a notice is served on any person under this section (other than a notice intimating that no sum falls to be paid or secured) that person or, if he is a different person, the owner of the land on which the building is to be, or has been, erected, may, not later than one month from the date of the service of the notice, appeal to the Minister and the Minister may substitute a smaller sum for the sum specified by the street works authority.

On an appeal under this subsection, the Minister shall give the appellant an opportunity of being heard before a person appointed by the Minister.

- (7) Where a sum has been paid or secured in compliance with a notice served under subsection (1) above and a notice is subsequently served under subsection (4) above substituting a smaller sum for the sum specified in the first-mentioned notice or intimating that no sum falls to be paid or secured, the street works authority—

- (a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land on which the building is to be, or has been, erected;
 - (b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of that land, shall release the security to the extent of the excess or, as the case may be, the whole security;
 - (c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of that land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and are entitled to realise the security for the purpose of recovering the amount so paid.
- (8) Where land in respect of which a sum has been paid or secured in compliance with a notice under subsection (1) above is subsequently divided into 2 or more parts so that 2 or more owners would, if street works were carried out, incur liability in respect of it, the sum is to be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the street works authority—
- (a) are required under subsection (7)(b) above to release the security only to the extent of the amount apportioned to that owner, and
 - (b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (7)(c) above.
- (9) Where a security is realised for the purpose of recovering an amount paid by a street works authority under subsection (7)(c) above, and the sum produced by realising the security exceeds the amount so paid, the amount of the excess shall be held by the authority and dealt with under the advance payments code as if it had been an amount paid under section 219 above on the date on which the security was realised.

221 Refunds etc. where work done otherwise than at expense of street works authority

- (1) Where—
- (a) a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and
 - (b) any street works are subsequently carried out in the private street in respect of that frontage to the satisfaction of but otherwise than at the expense of the street works authority,

the authority may refund to the person at whose expense the works are carried out the whole or such proportion of that sum or, as the case may be, release the whole or such part of the security, as in their opinion represents the amount by which the liability of the owner of that land in respect of street works has been reduced as a result of the carrying out of the street works in question.

Where the person at whose expense the works are carried out is not the person who is for the time being owner of that land no refund or release shall be made under this subsection unless the owner has been notified of the proposal to make the refund or release and has been afforded an opportunity of making representations to the street works authority in relation to it.

- (2) Where any land which has a frontage on a private street, and in respect of which a sum has been paid or secured under section 219 above, is subsequently divided into 2

Status: This is the original version (as it was originally enacted).

or more parts each having a frontage on that private street, the sum is to be treated as apportioned between the owners thereof according to their respective frontages, and subsection (1) above has effect accordingly.

(3) Where—

- (a) a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, and
- (b) thereafter the street works authority enter into an agreement with any person under section 38 above providing for the carrying out at the expense of that person of street works in respect of that frontage,

that agreement may also provide for the refund of the said sum or a part of it either without interest or with interest at such rate as may be specified in the agreement, or for the release of the whole or a part of the security, as the case may be.

222 Sums paid or secured to be in discharge of further liability for street works

- (1) Where a sum has been paid or secured under section 219 above by the owner of land in respect of the cost of street works to be carried out in the private street on which that land has a frontage, the liability of that owner or any subsequent owner of that land in respect of the carrying out of street works in that street under the private street works code ("the street works liability ") is, as respects that frontage, to be deemed to be discharged to the extent of the sum so paid or secured.
- (2) If, when the street is declared to be a highway which for the purposes of this Act is a highway maintainable at the public expense, the said sum is found to exceed the total street works liability in respect of that frontage or there is no such liability because the street was not made up at the expense of the street works authority, the street works authority—
 - (a) if the sum was paid, shall refund the amount of the excess or, as the case may be, the whole sum to the person who is for the time being owner of the land;
 - (b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of the land, shall release the security to the extent of the excess or, as the case may be, the whole security;
 - (c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of the land, shall pay to that owner an amount equal to the excess or, as the case may be, the whole sum, and are entitled to realise the security for the purpose of recovering the amount so paid.
- (3) Where land in respect of which a sum has been paid or secured under section 219 above is subsequently divided into 2 or more parts so that 2 or more owners incur or would incur the street works liability, the sum is to be treated as apportioned between those owners according to their respective frontages, and if the sum was secured and the security is the property of one only of those owners the street works authority—
 - (a) are required under subsection (2)(b) above to release the security only to the extent to which the amount apportioned to that owner exceeds his street works liability or, as the case may be, to the extent of the whole of that amount, and
 - (b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (2)(c) above.
- (4) Where any refund, release or payment has been made under section 220(7) above, or under section 221 above, the foregoing provisions of this section have effect as if for

references therein to a sum paid or secured there were substituted references to any sum remaining paid or secured.

223 Determination to cease to have effect when plans not proceeded with

- (1) Where, on the occasion of the deposit of plans for the erection of a building, the amount to be paid or secured under section 219 above has been determined under section 220 above, and subsequently—
 - (a) the local authority, under section 66 of the Public Health Act 1936, declare the deposit of the plans to be of no effect, or
 - (b) before any work has been done in or for the purpose of erecting the building the owner gives notice to the local authority of his intention not to proceed with the building,the said determination and any payment made or security given in accordance with it are, unless there have already been carried out or commenced in the street under the private street works code street works in respect of which the owner of the land on which the building was to be erected is liable, of no effect for the purposes of this Part of this Act.
- (2) Where by virtue of subsection (1) above a determination is of no effect and a sum has been paid or security given in accordance with it, the street works authority—
 - (a) if the sum was paid, shall refund it to the person who is for the time being owner of the land ;
 - (b) if the sum was secured and the person whose property is security for the payment of it is for the time being owner of the land, shall release the security;
 - (c) if the sum was secured and the person whose property is security for the payment of it is not for the time being owner of the land, shall pay to that owner an amount equal to the said sum, and are entitled to realise the security for the purpose of recovering the amount so paid.
- (3) Where land in respect of which a sum has been paid or secured as mentioned in subsection (2) above is subsequently divided into 2 or more parts so that 2 or more owners would, if street works were carried out, incur liability in respect thereof, the sum is to be treated as apportioned between those owners according to their respective frontages and, if the sum was secured and the security is the property of one only of those owners, the street works authority—
 - (a) are required under subsection (2)(b) above to release the security only to the extent of the amount apportioned to that owner, and
 - (b) are entitled to realise the security for the purpose of recovering the amount or amounts paid to the other owner or owners under subsection (2)(c) above.
- (4) Where any refund, release or payment has been made under section 220(7) above, or under section 221 above, subsections (2) and (3) above have effect as if for references in those subsections to a sum paid and security given there were substituted references to, respectively, any sum remaining paid and any remaining security.
- (5) Where—
 - (a) a person notifies the local authority in accordance with subsection (1)(b) above of his intention not to proceed with the building and by reason thereof a determination is of no effect, and

Status: This is the original version (as it was originally enacted).

- (b) subsequently notice is given to the local authority by the owner of the land that he intends to proceed with the building in accordance with the plans as originally deposited,

the notice to be served under subsection (1) of section 220 above by the street works authority shall, in lieu of being served as required by that subsection, be served on him within one month from the date of the service of the notice of his intention to proceed with the building, and section 220 has effect accordingly.

- (6) Where the advance payments code is in force in the whole or any part of a district, the district council, in any case to which this section may be applicable, shall within one week inform the county council of the happening of any of the following events:—
- (a) the making of any declaration that the deposit of plans relating to the erection of a building is of no effect,
 - (b) the giving of any notice by an owner of his intention not to proceed with a building, and
 - (c) the giving of any notice by an owner of his intention to proceed with the building in accordance with the plans as originally deposited.

224 Certain matters to be local land charges

- (1) The matters specified in subsection (2) below are local land charges.
- (2) The matters referred to in subsection (1) above are:—
- (a) notices served by a street works authority under section 220(1) or (4) above ;
 - (b) determinations by the Minister under section 220(6) above;
 - (c) payments made and securities given under section 219 above;
 - (d) notices served under subsection (4)(e), (f) or (h) of section 219 above exempting a building from that section;
 - (e) resolutions passed under subsection (4)(k) of section 219 above exempting a street or a part of a street from that section ; and
 - (f) refunds made and releases of securities granted under section 221, 222 or 223 above.
- (3) As respects any matter that is a local land charge by virtue of this section, the street works authority for the street concerned are, notwithstanding anything in section 5(4) of the Local Land Charges Act 1975, to be treated as the originating authority for the purposes of that Act.

225 Interest on sums paid under advance payments code

- (1) Any sum paid by the owner of land to a street works authority under section 219 above, in so far as it continues to be held by the authority, carries simple interest at the appropriate rate from the date of payment until such time as the sum or a part of it remaining so held—
- (a) falls to be set off under section 222 above against the liability of the owner of the land in respect of the carrying out of street works; or
 - (b) falls to be refunded in full under the provisions of the advance payments code;
- and the interest shall be held by the authority until that time and dealt with under those provisions as if it formed part of the said sum.

Status: This is the original version (as it was originally enacted).

This subsection does not apply to any sum in so far as it is repaid under any such agreement as is referred to in section 221(3) above.

- (2) For the purposes of the advance payments code interest on any sum held by a street works authority shall be calculated in respect of each financial year during which it accrues at the appropriate rate prevailing at the commencement of that financial year.
- (3) In this section " the appropriate rate " means the rate at the material time determined by the Treasury in respect of local loans for periods of 10 years on the security of local rates (being a determination under section 6(2) of the National Loans Act 1968, and subject to any relevant direction under the said section 6(2)).