

# **Guidance on Stopping Up of the Highway Maintainable at Public Expense**

## **Section 116 Highways Act 1980**

Please note this guidance is for general informative purposes only and is not to be relied upon as legal advice.

### **Summary of procedure**

Where areas of the highway are considered by the County Council, as highway authority, to be unnecessary for highway purposes, the highway rights can be extinguished or 'stopped up' by an Order made by Magistrates. For this to happen the County Council has to make an application to the Magistrates' Court, on behalf of an applicant, under Section 116 of the Highways Act 1980. The successful making of such an Order will remove the highway rights over the land concerned but can retain footpath or bridleway rights if required.

Should the owner wish to enclose or develop the land, planning consent may be required. The Local Planning Authority will be able to provide further advice. If planning permission would be required, an alternatively stopping up process, under Section 247 of the Town & Country Planning Act 1990, might be more suitable.

### **Ownership**

Removal of the highway rights will not confer ownership to the applicant. Once the highway rights are removed control over the land reverts to the freehold or leasehold owner of the subsoil. In many cases, this will not be Suffolk County Council. Where the owner of the subsoil is known, an applicant will need to negotiate a transfer of the land. For example, on many housing estate developments the land still belongs to the original developer or their successors in title. It may be prudent for an applicant to both ascertain the owner of the land and to negotiate any costs involved prior to Section 116 procedures being commenced.

Where the owner of the subsoil is not known and cannot be found, there is a rebuttable legal presumption that the owners of the adjoining properties own the subsoil beneath the highway up to the centreline of the former highway. This is more often the case with older areas of highway. This would be a matter of evidence, and applicants may wish to seek independent legal advice. There is a risk that 3<sup>rd</sup> parties may come forward to claim the land once the highway rights have been removed.

## Recovery of fees and costs

The County Council may recover, from the applicant, the reasonable administrative costs of advising on and processing applications for Orders. Fees for Section 116 Highways Act 1980 applications are as follows: -

Stage 1: No fee

Stage 2: Fee of £590 (no VAT) for advice, drafting of plan etc. – payable upon submission of the application.

Stage 3: Fee of £2,500 - £4,500 (no VAT). This includes: -

- The administrative and legal costs of processing your application including the court application, and for travelling expenses at 45p per mile.
- The cost of inserting Public Notice(s) in the relevant local newspaper(s) concerning the proposed Order and also Notice, if and when the Order has been made.

If the application proceeds to court, an additional fee of £335 (no VAT), to cover costs associated with Suffolk Highways providing a witness at the Magistrates Court, will be required.

## Procedure

### Stage 1: Pre-application procedure

To identify, at an early stage, whether the proposal is likely to be accepted by the public, it is advisable that the applicant consult neighbours in the area and the town or parish council. The town/parish councils have a right of veto, with regard to Section 116 applications. Any concerns raised should be addressed by the applicant, as far as reasonably possible and any written responses should be attached to the application, together with evidence of efforts to resolve any objections.

Note that any objections received during Stages 2 and 3 will delay the process and may add to the cost whilst they are negotiated. It is therefore in an applicant's interest to try and ensure, as far as possible, that any likely objections are addressed prior to submission of an application.

For an initial discussion as to whether your proposal can be considered, please complete the Stage 1 form and send it to the Highway Records Team, who will: -

- Identify the status and extent of the highway you are interested in and
- If deemed a possible location for an application, forward your proposal, for assessment, to the Head of Highway Regulation and a Public Rights of Way Officer (if public rights of way are or could be affected).
- And then, advise you whether an application may be possible.

## Stage 2: Submission of application

It should be noted that the timeframe, between your submission and the Magistrates' Court hearing, can be 12 – 24 months. Applications may be submitted via the Stage 2 form once the pre-application details, outlined above, have been undertaken. Consultations undertaken, together with responses received and evidence of attempts to resolve concerns, must be attached to the application. Plus, details as to the extent of your landownership, in the vicinity of the site. We will then:

- Acknowledge your application, check it and advise you if we can accept it or not.
- Prepare a plan showing the area of highway to be stopped up, which will be agreed with you. This will be used for the legal Order, so it is important that it is correct.
- Consult statutory undertakers to establish the services that may be present within the highway concerned and to obtain their views in relation to the proposal. If they require their apparatus to be moved into the remaining highway, substantial additional costs may be involved and these must be met by the applicant (if they still wish to proceed with the application).
- Consult the district/borough and the town/parish councils for their views on the proposal.
- Notify the local County Councillor as to the proposal.

The fee for providing this service is £590 (no VAT), which must be paid whether or not the applicant decides to proceed with the application, or such objections have been received by the County Council that it is not possible for the application to proceed – following the results of Stage 2.

## Stage 3: Legal process

The application will be submitted to Suffolk Legal to undertake the legal process, including application to the Magistrates' Court. This process takes a minimum of 6 months. Suffolk Legal will: -

- Write to you to confirm they are ready to start.
- Advise you of the estimated Stage 3 application fee, and request half of this up front to enable them to commence. You will also be asked to undertake to provide any outstanding fees at the conclusion of the matter.

Formal notifications are then undertaken with all affected parties, including: -

- Parish/Town Council
- District/Borough Council
- Statutory Undertakers (i.e. water, gas etc.)
- Adjoining landowner(s)
- Local County Councillor
- Other relevant departments within Suffolk County Council
- The Public by notice on site and in advertisements in the press

Suffolk Legal will discuss with you whether you wish to continue with the application (and incur further costs) if the upper estimate of £4,500 is reached. This may happen should complications arise at any stage, such as objections from interested parties. Suffolk Legal cannot however advise you on risks or guarantee an outcome. You will be expected to cover Suffolk Legal's costs whether the application is ultimately successful or not.

Please note - If the application proceeds to the Magistrates' Court, an additional fee of £335 (no VAT) will also be required to cover the costs associated with the Head of Highway Regulation drawing up the witness statement on behalf of Suffolk Highways, attending the Magistrates' Court etc.

### Reservations

All rights to any services under, over, in, above, along or across the highway will remain. The County Council and/or statutory undertakers may require any services to be diverted, or for a wayleave agreement to be entered into if the services are to remain *in situ*. The cost of any such diversions or agreements must be met by the applicant. Agreements with statutory undertakers are a private negotiation between the parties concerned.

If drainage remains *in situ*, the County Council may reserve its right to enter onto the land at any time for the purpose of cleansing or maintaining the highway drainage in accordance with their powers under Section 100 of the Highways Act 1980. Statutory undertakers with apparatus within the land will retain their rights to 24-hour access to their apparatus.

The Council may also stop up and reserve other highway rights as it deems appropriate in the interest of the public.

### Further advice

Highways are complex areas of law and applicants are advised that they may wish to take independent legal advice on any or all parts of the process. For further information on the process, as administered by Suffolk County Council, please contact the Highway Records Team by: -

- Telephone on 01473 265034
- Emailing [highwayrecords@suffolkhighways.org](mailto:highwayrecords@suffolkhighways.org)

Applications should be sent to: -

Highway Records  
Suffolk Highways  
Phoenix House  
3 Goddard Road  
Ipswich  
IP1 5NP