

# Stopping Up of a Highway – Guidance Notes

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## **Introduction:**

It is sometimes necessary to alter or remove sections of existing public highway.

Public highways are protected by law and exist in perpetuity. Therefore a process needs to be followed before highway rights can be removed and access for the public restricted. This process which results in the making of a legal order is known as “Stopping Up the Highway”.

The Stopping Up of a Highway allows the underlying land to be used for other purposes, which would not be possible if it were to remain as part of the public highway network. Stopping Up removes all public right of access as well as the Highway Authority’s responsibilities for the area, effectively transferring responsibility for the land back to the original owner of the sub soil.

It is important to understand that land ownership is separate issue to that of stopping up, and the two are not linked. The sub soil over which a public highway runs is often not owned by Solihull Council as the Highways Authority. To find out who owns the sub soil of a piece of land you would need to go to Land Registry. They do charge for this and can advise you of the likely cost when you contact them. If the removal of highway rights is successful then where the owner of the sub soil is known you will need to negotiate a transfer of the land to yourself. Where the owner of the sub soil is not known and cannot be found, there is a legal presumption that the owners of the adjoining properties own the subsoil beneath the former highway out to the center line of the former highway. It may be prudent for you to take independent legal advice with regard to land ownership issues before you proceed any further.

Public Highways can be stopped up for a variety of reasons but typically fall into one of two categories.

- 1) Stopping Up or Diversion to allow development to take place
- 2) Stopping Up where the highway is no longer required for public use.

## **Stopping up of highway as part of a planning application:**

Stopping Up requests related to a development are typically dealt with through the planning process and should be highlighted at the time of your application and referenced within it. Stopping up requests which include all purpose highway will normally be dealt with by the National Case Work Team and applications should therefore be submitted directly to the Department for Transport. Further information on this process is available here:

<http://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways>.

Applications affecting footpaths, bridleways and cycle tracks only are dealt with by the Local Authority under Section 257 of the Town and Country Planning Act 1990. Such orders are only made by the Council as the Local Planning Authority to enable development to be carried out.

If you wish to apply to stop-up or divert a public footpath, bridleway or cycle track to enable a development to be carried out, please ensure that the matter is raised with your planning officer and is referenced in any subsequent planning application.

In considering such an application, the applicant will need to clearly demonstrate to the Authority that the footpath or bridleway proposed to be stopped up or diverted will be

affected by the proposed development. Therefore, a copy of the planning permission, together with the approved site layout plan clearly showing the boundary of the development area by a red line or similar means, must be enclosed with an application.

In certain circumstances an outline planning permission may be acceptable for the purposes of publishing a draft order provided it contains sufficient information to show that the proposed stopping up or diversion is necessary. This has the benefit of speeding up the process overall. If this is something that may be of interest please contact us using the details at the bottom of this document.

**\*\*Please note that authority to stop-up or divert a Way is not conferred through the approval of a planning application.**

Approval to stop-up or divert a Way is only given once the Stopping-Up or Diversion Order has been confirmed and notice of its confirmation has been published. Any obstruction of or interference with the way concerned is not only an offence but may make it impossible to proceed with the making or confirmation of an Order.

**Stopping up highway where it is no longer required for public use:**

Solihull Council as Highway Authority has powers which enable it to stop up and divert public highway where it can be shown that the highway in question is no longer required for public use.

Sections 116, 117, 118 and 119 of the Highways Act 1980 provide mechanisms which allow for the stopping up and/or diversion of public highway.

**S116 and S117 Orders:** Using these powers, the Council can make an application to the magistrates' court to stop up or divert an area of public highway. An application and any objections to it are heard by the Court at a time and date specified following a period of notification.

An Order cannot be made by Magistrates without the consent of any Parish/Town Council where the highway is unclassified or is a public right of way. For further information and enquiries please contact the Traffic Management Team using the details at the foot of this document.

If the Court agrees to make an order, this terminates the highway rights and frees the land from Highway Authority control. The land reverts to the landowner who can then enclose or subject to planning permission develop the land. Because of this, it is important that any landownership issues are resolved prior to an application being made.

Section 117 of the Highways Act 1980 is the means whereby an individual who wants a highway to be stopped up or diverted can ask the Highway Authority to make an application under Section 116 of the same act. Please note that this is a discretionary power of the Authority and consequently applications will only be approved if a strong need can be shown.

**\*\*Please note that the Highway Authority has a general presumption against the removal of highway rights on verges.**

**Fees:**

The making of a stopping up order should be a cost neutral exercise for Solihull Council Highway Services and we will therefore look to recharge our costs for processing, making and advertising such orders. This applies to requests from both internal and external clients, including applications made through Section 257 of the Town and County Planning Act 1990 and Section 117 of the Highways Act 1980 which provide a specific mechanism to allow the Authority to recover reasonable costs.

There is a standard fee for processing such applications of £2480 (as of 1<sup>st</sup> April 2020). This is as set out in the schedule below. Applications will not be processed without full payment of this fee. Please note, this fee only covers costs incurred by the Authority in processing an application. Further fees may be applicable such as in instances where a stopping up will require the removal of apparatus or other diversionary works. For further information on this element please contact the Traffic Management Team using the details at the foot of this document.

<b>Item</b>	<b>Details</b>	<b>Including</b>	<b>Fee</b>
Process application	<p>Acknowledgement of receipt</p> <p>Checking of application including comparison of existing records.</p> <p>Consultation with Statutory Undertakers and other consultees as specified.</p> <p>Assessment of implications and feasibility.</p> <p>Preparation of notice</p> <p>Publication of notice in press</p> <p>Publish notice on website</p> <p>Publish notice in Connect Centre</p>	<p>Officer time, computer work, general administration, Legal Fees</p> <p>(18 hours)</p>	£1250
Post notice of application	<p>Post notices on site at or near either end of the route to which the application relates.</p> <p>Inspection of notices and replacement as necessary.</p> <p>Removal of notice following decision of magistrates.</p>	<p>Officer time, general administration, travel expenses (5 hours)</p>	£270
Update registers	<p>Add entries to relevant registers (paper and electronic forms)</p>	<p>Officer time, general administration, scanning and digitisation of records</p>	£110

		(2 hour)	
Advertising fees	Publish of notice in newspapers as per Schedule 12 requirements.	Officer time, general administration (1.5 hours)	£525
Decision Making	Legal fees associated with preparing and presenting the application.	Officer time, general administration (7 hours)	£400
<b>Total fee</b>			<b>£2555</b>

For further information on this process and to apply for a stopping up order under Section 117 of the Highways Act 1980 please contact the Traffic Management Team at Solihull Council using the details at the foot of this document.

**Section 118 and 119 Orders** – Orders made under these powers relate specifically to stopping up or diverting public footpaths or bridleways. Applications are considered and made by the Council as Highways Authority.

The process for altering a public footpath or bridleway can be drawn out and contentious, and many applications are unsuccessful. It is therefore recommended that you discuss your proposals with the Authority and carry out informal consultation with stakeholders before you submit an application as this will reduce delay and any wasted effort.

Further information on public rights of way can be found here:  
<http://www.solihull.gov.uk/Resident/Leisure-parks/fitness/walking>.

**Contact us:**

For further information, guidance and to submit a stopping-up order:

Traffic Management, Highway Services, Solihull Council, Council House, Solihull, B91 3QT

Telephone: 0121 704 8000

Email: [Highways@solihull.gov.uk](mailto:Highways@solihull.gov.uk)



HIGHWAYS ACT 1980 - SECTION 116-117

APPLICATION FOR SOLIHULL MBC TO APPLY TO THE MAGISTRATES COURT TO AUTHORISE STOPPING UP OR DIVERSION OF HIGHWAY

**Developer's Details**

Contact Name: .....

Company Name: .....

Address: .....

.....

On Behalf of: .....

Email address: .....

Telephone number: .....

Agents Details

***In making this application the applicant named above:***

- *Agrees to pay the Authorities fee for making such applications. This fee includes the cost of the full procedure under the Act including processing and advertising the application as well as the Council's legal fees in making the application in the Magistrates Court. Details of the current fee structure are set out within the associated guidance notes.*
- *Please note additional costs may be incurred in instances where a stopping up will require the removal of apparatus or other diversionary works. For further information on this element please contact the Traffic Management Team using the details at the foot of this document.*

**Location of public highway to be stopped up**

City/Town/Village: .....

Road/street name (if known): .....

Description of location and extent of highway to be stopped up: .....



If "Yes", please attach these consents to this application

If "No", please attach names and addresses of persons whose consents you have not obtained (*continue on separate page if needed*):

- .....
- .....
- .....

Signed ..... Date .....

**Please return to:**  
Traffic Management  
Highway Services  
Places Directorate  
Solihull Borough Council  
The Council House  
Solihull  
B91 3QT



TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257

APPLICATION TO SOLIHULL MBC FOR THE STOPPING UP/DIVERSION OF NON-VEHICULAR HIGHWAYS (FOOTWAYS/FOOTPATHS/BRIDLEWAYS AND CYCLEWAYS)

**1. Applicant's Details**

Contact Name: .....

Company Name: .....

Address: .....

.....

On Behalf of: .....

Email address: .....

Telephone number: .....

***In making this application the applicant named above:***

- *Agrees to pay the Authorities fee for making such applications. This fee includes the cost of the full procedure under the Act including processing and advertising the application as well as the Council's legal fees in making the application. Details of the current fee structure are set out within the associated guidance notes.*
- *Please note additional costs may be incurred in instances where a stopping up will require the removal of apparatus or other diversionary works. For further information on this element please contact the Traffic Management Team using the details at the foot of this document.*

**2. Highways to be diverted or stopped up**

Status of the Highway:      Footpath       Bridleway       Cycle Way

Location of Highway: *Parish:* .....

*Road/Street Name (if known):* .....

*Lengths of Highway affected:* .....

.....

.....

Application sought:      Diversion       Stopping Up



### 3. Planning Permission

Has planning permission been granted:      Yes               No

Planning Application reference number: .....

Date planning permission granted: .....

Was approval given to make a Diversion/Stopping Up Order as part of the planning permission:      Yes               No \*\*

*\*\* if approval has not been given the matter may need to be referred back to the Councils Planning Committee for consideration which could result in a delay in processing your application.*

Have works begun on site:      Yes               No

If so, when? .....

Are the works substantially complete?      Yes               No  \*\*

*\*\* if works are substantially complete it may not be possible to progress an application. Please use the contact us details at the foot of this application pack if this is the case.*

***NOTE – Neither the granting of planning approval or the submission of a stopping-up/diversion application provides authorisation to close or restrict access to public highway. Any routes affected by development works should remain open until such time as the appropriate order has been confirmed. In certain circumstances it may be possible to apply for a temporary closure of the route to allow works to proceed. This is at the applicant's risk. Please contact the Councils Traffic Management Team for further information.***

### 4. Justification

Why is the Stopping Up/Diversion required?

*Please describe the development and why it necessitates the Stopping Up or Diversion of the Highway(s). Please include a plan showing the location and effect of the proposal at an appropriate scale including any proposed diversion.*

What will happen to the land over which the Highway(s) passed?

How will the land which is the subject of a stopping up order be maintained in the future? Please confirm details of any arrangements that have been put in place including the provision of any private rights of access as necessary.

**5. Details of New Highway**

If applying for a Stopping Up Order only please proceed to section 6 below.

Status of proposed path: *Footpath*     *Bridleway*     *Cycle Track*

Lengths in metres of section(s) to be created: .....

.....

.....

Description of surface: .....

Description of new structures proposed: .....

Proposed path width: .....

**6. Landownership**

Please provide the names and contact details of all landowners, occupiers and other persons with any legal interest in the land to which this application is subject:

Name: ..... Address: .....

Interest in land: ..... ,

Telephone number: ..... Email: .....

Name: ..... Address: .....

Interest in land: ..... ,

Telephone number: ..... Email: .....

Name: ..... Address: .....

Interest in land: ..... ,

Telephone number: ..... Email: .....

Please include any additional owners/occupiers/persons with a legal interest in the land on a separate sheet.

If the highway is being diverted, who owns the land which the new route crosses?

Name: ..... Address: .....

..... ,

Telephone number: ..... Email: .....

**7. Consents**

**Warning** – if there is no evidence to the contrary, then it is presumed that the owners of the adjoining land own the sub-soil of the highway, up to the centre line. The making of an order may be delayed or frustrated if you fail to obtain consent from the owner of the sub-soil.

Have you obtained written consent from everyone who has a legal interest in the land over which the highway to be stopped up runs? Yes  No

If "Yes", please attach these consents to this application

If "No", please provide names and addresses of persons whose consents you have not obtained (continue on separate page if needed):

Have you obtained written consent from everyone who has a legal interest in the land over which the diverted highway crosses? Yes  No  N/A

If "Yes", please attach these consents to this application

If "No", please provide names and addresses of persons whose consents you have not obtained (*continue on separate page if needed*):

## 8. Public Utilities

Have you carried out consultations with the Public Utility Companies/Service Providers?  
Yes  No

If "Yes", please provide details of those apparatus or interests affected by the Diversion or Stopping Up and provide details of the actions you propose to take in response to this:

## 9. Declaration

I/We

- (a) understand that no authority for the Diversion or Stopping Up of a highway is conferred unless or until an Order has been made and confirmed;
- (b) declare that, except to the extent authorised by or under some other statutory provision, the highway(s) to be Diverted or Stopped Up are in no way obstructed and are fully available for use;
- (c) undertake in the case of a diversion application, to put new path(s) in place to the standards agreed by Solihull Council, should the proposals succeed;
- (d) apply for the Diversion or Stopping Up of the highway(s) described above;

(e) declare that, to the best of my/our knowledge and belief, all particulars inserted on this form are true and accurate.

Signed ..... Date .....

Position: .....

**Please return to:**  
Traffic Management  
Highway Services  
Places Directorate  
Solihull Borough Council  
The Council House  
Solihull  
B91 3QT