

STOPPING-UP ORDERS
GUIDANCE NOTES FOR APPLICANTS

A Stopping-Up Order is required if part of the public highway is to be used for another purpose. Planning permission is also needed if the effect of the Order is to remove the public rights that exist over the surface of the highway.

The Town and Country Planning Act allows the Secretary of State to Stop-Up land that is public highway when it is required for development. To apply for a Stopping-Up Order under this Act, an application must be made to the Government Office for the South East at the same time that the planning application is made.

The Government Office for the South East undertakes all the necessary consultations, including consultation with the Highway Authority, and, if successful, are usually able to make the Stopping-Up Order in 4 to 6 months.

The Highways Act 1980 also has provision for Stopping-Up Orders. Applications are dealt with by the City Council, as highway authority, but the City Council does not have the power to remove highway rights. This can only be done by a Court of Law.

Applications under the Highways Act 1980 require the City Council to undertake a great deal of work; they are therefore both lengthy and expensive.

Applications may only go ahead if it is agreed by the highway authority that the land in question is not required for highway purposes. Any use by the public, even if it is unwelcome, makes this difficult to demonstrate.

If an application is accepted by the City Council, we are obliged to serve notice on the Parish Council for the area, together with the statutory undertakers, which includes the utilities. All parties have the opportunity to object. If a Parish Council objects, the application may proceed no further. A statutory undertaker may object if there are apparatus on the proposed site. The statutory undertakers may insist on their apparatus being moved, which can increase the cost further or, if any apparatus remains, then they retain rights of access that may restrict the use that the land can be put to. In addition, the City Council is obliged to serve notice on adjoining landowners, any of whom may object.

A detailed survey is also required before the Director of Environment gives formal authorisation. In some cases, the application may require Member approval.

At this stage, the City Council's solicitors can be instructed to take the matter further. They are required to prepare statements that can be put before a

Appendix 1

court. They are also obliged to advertise the Order in the press and post notices on site, throughout the objection period.

Only when this has been completed, can the matter be brought before a Court. The Magistrates will hear statements and consider any objections before reaching a decision.

It should be appreciated from the outset that there can be no guarantee that any application will be a success.

The costs of making a Stopping-Up Order under the Highways Act 1980 are high. The current cost is approximately £3,300, a large part of which is advertising costs and solicitors fees. In addition to this must be added the cost of the survey, which can be £500 to £800. It must be considered that these costs can be incurred for no useful result if the application fails.

It should also be appreciated that the Stopping-Up Order only removes highway rights from an area of land. It does not change its ownership. The applicant will therefore need to carry out his or her own research to determine the freehold of the land, and then negotiate a purchase price, which will be in addition to figure above.

The whole procedure under the Highways Act 1980 is lengthy. A straightforward application can take in excess of 18 months, and in some cases much longer, although some applications, if unopposed, can be determined quicker.

Stopping-Up is a complex area of law, and we would also advise anybody considering making an application to seek legal advice first. We would also advise an applicant to consider appointing an agent, such as an experienced Solicitor, Surveyor or Architect, to act for them.