

HIGHWAYS ACT 1980 – SECTIONS 116 AND 117 STOPPING-UP OF HIGHWAY

Notes for Guidance to Applicants

1. Please read carefully the entire contents of the information pack. If there is anything that you do not fully understand please contact Anthony Agate on (07892) 788301, or write to Balfour Beatty Living Places, Unit 3, Thorn Business Park, Hereford, HR2 6JT or email Anthony.agate@balfourbeatty.com
2. Under the above relevant sections of the Highways Act 1980, a section of public highway or highway land can only be stopped up (i.e. have its public highway rights removed) by the highway authority (i.e. Herefordshire Council) securing an Order to do so through the Magistrates' Court. In securing this, it must be shown that the highway in question is "unnecessary" (for use as highway). This point may be challenged by anyone wishing to do so in the court. A highway may also be diverted by this process if it can be shown that, to do so, would make it "nearer or more commodious to the public".
3. In some cases, where other public rights of way connect with the route, it may be necessary to retain certain public rights. For example, it may be possible to stop up rights for motorised users subject to the retention of, say, public footpath or bridleway rights, or it may be that an alternative route be provided for public use.
4. Before completing the application form you should submit a plan, using the contact details above, outlining the area of land that you wish to apply for a stopping up of the highway rights. This will then be assessed by Balfour Beatty Living Places (BBLP) highway engineers, acting as agents for Herefordshire Council, for comment or any amendment as necessary.

Land Ownership

5. It will be necessary to demonstrate to the Court that the consent of all those with a legal interest in the land concerned has been obtained.
6. If you are the freehold owner of the highway / highway land in question, you should seek the consent of any other party that may have a legal interest (e.g. a mortgage company) before proceeding.
7. If you are not the registered owner of the freehold you should endeavour to ascertain this. You will be required to provide BBLP with the result of a Land Registry Index Map search and, if the land is registered, office copies (with plan) of any titles in relation to both the application land and any adjoining land. Land Registry information can be obtained from the Land Registry website, which charges for this service, as follows: -

<https://www.gov.uk/search-property-information-land-registry>

<https://www.gov.uk/get-information-about-property-and-land/overview>
8. In the event that Herefordshire Council is the owner of the sub-soil, you will be required to negotiate the purchase of the land with the Herefordshire Council's Property Services.

9. There may also be cases where a third party (e.g. a former developer) owns the sub-soil. In this case, if you are seeking to acquire the land, you will need to conduct your own negotiations with any third party owner for purchase of the sub-soil.
10. If it cannot be established that there is a freehold owner of the sub-soil, the land may be considered to have reverted to you, as the adjoining landowner (if that is the case), by a presumption at common law (i.e. by implication) or, if there is separate ownerships on either side of the highway in question, you might jointly be presumed to own up to half way. You may wish to seek independent legal advice on this point.
11. Please obtain the written consent of any landowner adjoining the highway subject to the application, using **the enclosed form**. If the application is to involve a diversion, you must also obtain the consent of all the landowners and occupiers of (or of anyone having an interest in) the land crossed by the proposed alternative route. Please note that it may be necessary for the owner of the land to enter into separate agreements to ensure that third party access rights to land and property are preserved.

Consultation

Town and Parish Council

12. You should then write to the appropriate Town or Parish Council using the **specimen letter 1**. Be aware that an application to stop up an unclassified road cannot be pursued without the written consent of the Town / Parish Council and, in respect of any other type of highway, is unlikely to be pursued by BBLP without such consent.

Statutory Undertakers

13. You should then write to the various statutory undertakers using the **specimen letter 2** (the enclosed plans indicate which offices you should contact). Please note the National Grid may charge you for the required information.
14. Where any statutory undertaker has plant affected by the proposal you will need to obtain its written consent that it is satisfied its rights are protected under the Highways Act 1980, or that it will enter into a wayleave agreement with you (and any mortgage company and any other company that may have a charge on your property) to allow its continued access to the plant, or that it is willing to relocate the plant.
15. You must meet the cost of any relocation and the council may require some form of security from you (e.g. an initial payment or bond) in respect of any undertakers' costs prior to obtaining any stopping up order. Alternatively, the council may require you to have agreed and executed any such wayleave agreement prior to the hearing date in the Magistrates' Court which will probably involve you paying, or agreeing to pay, the undertakers' costs for the same. You may need to seek separate legal advice on this point.

Open Spaces' Society

16. In the event that the highway in question is highway land, such as highway verge (as opposed to a carriageway) you should then consult with The Open Spaces' Society using **specimen letter 3**.

User Group Organisations

17. In the event that the section of highway to be stopped up includes part of a carriageway or other linear route where there might be connecting access to other highways / public rights of way, you should consult with path user group organisations – including the Open Spaces' Society – using the **specimen letter 3**. A list of these organisations will be

provided. If any objections to the proposal are received, the applicant should try to reach agreement with the respective group(s) before formally submitting an application.

Application Form and Procedure

18. Once you have the written consents above, complete and submit the application form to the address on the form. Please ensure that you have answered all the questions in full and that all the required written consents are attached as incomplete forms may be rejected.
19. On receipt of your application, complete with the necessary consents, and if there are no other technical difficulties, BBLP will prepare a report for the approval of Herefordshire Council to seek to have the public highway (or other land with highway rights) declared as being unnecessary and surplus to highway authority requirements.
20. Subject to approval in (18) above, Herefordshire Council's Legal Services will then formally make application to the Magistrates' Court for a stopping up order, which requires notice of the hearing being advertised in the local press. The court must be satisfied: -
 - a) that any freehold or leasehold owners of the highway the subject of the application, and land directly adjoining the highway land, have consented to the application;
 - b) that, where the highway is an unclassified road, formal notice has been given to the Town / Parish Council, (more than two months before the formal application to the Magistrates' Court), and that it does not object; and
 - c) that there are clear written consents etc from the relevant statutory undertakers and evidence that other consultations have taken place.
21. At least 28 days before the hearing date the Herefordshire Council's Legal Services will give formal notice of the hearing date to: -
 - i. owners and occupiers of land adjoining the highway subject of the application;
 - ii. statutory undertakers having apparatus under, in, upon, over, along or across the highway (i.e. gas, water, electricity and telephone);
 - iii. the Secretary of State for Transport (if a classified road);
 - iv. the Town / Parish Council;
 - v. any other person with a legal interest in land over which the highway is to be diverted (if the highway is being diverted).
22. In addition, a public notice of the hearing date will be advertised in the local press and London Gazette and similar notices will be placed on site.
23. Please note that these procedural steps may take some time and BBLP or Herefordshire Council may require additional information from third parties. Please, therefore, accept that there may be some delay.
24. The appropriate Herefordshire Council officers will attend the Magistrates' Court hearing and seek to satisfy the Magistrates that the highway is unnecessary or, if a diversion, that the diversion is nearer, or more commodious to the public, and that a stopping up Order should be granted. Should the hearing be adjourned to a later date (e.g. because objectors appear on the day of the hearing), the council will incur additional costs which

must be met by the applicant(s). In any event, you will be advised of the date and time of any hearing at which you are entitled to attend to observe the proceedings.

25. If an Order is obtained, the highway rights over the land will be extinguished (in some circumstances this is conditional on any new diversion route being put in place) and the land will revert to the owner of the sub-soil.
26. Please note that if a highway stopping up order is obtained, this does not give consent for any planning permission that may be required (e.g. if there is an intention to enclose the land and/or change its use to garden land). In this respect you would need to liaise directly with the Planning Office of Herefordshire Council.