
Bath & North East Somerset Council

Highways and Drainage

Highways Stopping Up Pack

Advice to interested parties requesting
public highway to be stopped up under
section 116 of the Highways Act 1980

GUIDANCE FOR INTERESTED PARTIES

Bath & North East Somerset Council (“the Authority”) have a discretionary power under the Highways Act 1980 to apply to the Magistrates’ Court to seek to stop up public highways. These Guidance Notes are intended to provide a background to the process for any member of the public seeking to have a section of public highway stopped up. A guide on how to complete the necessary form is contained at Appendix 1 and the forms themselves are contained at Appendix 2.

Please note that this pack applies to the stopping up of full vehicular highways only. Enquiries relating to public rights of way (e.g. footpaths and bridleways) should be directed to the Public Rights of Way team; it should be noted that the Authority will only process requests to stop up public rights of way in exceptional circumstances.

Legislation

Under section 116 of the Highways Act 1980, a magistrate can authorise the stopping up of public highway if it is deemed to be ‘*unnecessary*’ for public use. Members of the public cannot apply directly to the Magistrates’ Court, but a request can be made to the Authority and the Authority has a discretionary power to apply to the Magistrates’ court. It should also be noted that when the land is needed in order to implement planning permission, an application can be made to the Department of Transport to stop up the land under s247 Town & Country Planning Act 1990. Full details and an application form are available on the Department of Transport’s website.

Landownership

The Authority has no powers to sell the public’s interest in a highway. However, the land can be acquired by firstly removing the highway rights from the land and secondly buying the land from the current owner. The first stage is a legal process to which the public, and certain other parties, have a right of objection; the second stage is a private transaction with the landowner. The land beneath a highway can be owned by a variety of people and the title will not necessarily be held by the Authority. It should be noted that the title to highway land cannot be claimed through adverse possession and any obstruction of the highway may be a criminal offence.

It is recommended that contact is made with the landowner prior to requesting the stopping up of highway rights; otherwise it is possible that a ‘ransom strip’ will be created. The first stage in establishing who owns land is to carry out a SIM search at Land Registry (<http://landregistry.gov.uk>).

Process

The process for dealing with the stopping up of public highway can be complex and time consuming. If the highway is outside the city of Bath then, prior to submitting your request, you will need to obtain written confirmation from the town or parish council that they do not object to the proposals. Before you make a request to stop up highway, it is also advisable to informally consult with other interested parties to gauge the likely wider support and opposition to the proposals. If interested parties require further information or advice in addition to that contained in this pack then this can be sought from the Authority.

The completed forms (see Appendix 2) should be accompanied by:

- A plan made to a readily recognisable scale not less than 1:1,250 with the full length and width of highway to be stopped up edged in red.
- Written confirmation from the town/parish council that they do not object to the proposed stopping up of the public highway (only if outside Bath).
- A cheque made payable to 'Bath & North East Somerset Council' for the sum of £2,977 (see Costs section below).
- Proof of title to the land, if ownership of the land is registered.

Interested parties will then be informed when the Authority is in a position to process the request. As the Authority's power to apply for highways stopping up orders is purely discretionary, it can withdraw from the process at any time if it becomes apparent that the proposals do not meet the statutory criteria. Prospective applicants should be aware that there is a significant likelihood that the Authority will not exercise its discretion and apply to the Magistrates court if an objection has been lodged on legally relevant grounds. Even if the Authority applies to the Magistrates' court it cannot guarantee that the Magistrates' court will agree to stop up the public highway.

Requests are ordinarily dealt with in chronological order of receipt and the process of stopping up public highway is both lengthy and complex; a flowchart of the process can be found overleaf. The Authority will carry out an informal consultation and decide whether or not to apply to the Magistrates' court to stop up the public highway. If the Authority decides to pursue the proposals, the Authority will draft an order, apply to Bath Magistrates' Court for a date for the hearing and advertise notice of the draft order.

On the day of the hearing, the Authority's representative will present the Authority's case to the magistrates. It is advisable for interested parties to attend the hearing in case the Magistrates have any questions. The Magistrates will also hear any objections to the proposed stopping up; the only valid ground for objecting is that the land is still necessary as a highway. The Court has indicated that if objections are made, an adjournment to the hearing will be made and further costs will be incurred if the application continues to be pursued at a later hearing.

If the Magistrates decide to make a stopping up order then the highway rights will be removed from the time the order is signed. If the Magistrates reject the application then the highway rights will continue to exist and the interested party who originally requested the stopping up will still be liable for the costs incurred (see Costs section below).

As a general estimation of timescales, the time period from the start of processing to a decision by the Magistrates' court as to whether or not to stop up the public highway is likely to be at least five months.

The Authority will consider each case on its merits and there is no presumption that it will agree to the proposals.

Cost

If interested parties require any further information or advice in addition to that contained in this pack then this can be sought from the Authority for a fee of £47 per hour plus VAT. Pre-Application Advice gives interested parties the opportunity to have a site meeting and discuss their proposals with a case officer, ask questions about the applicable law and process, explore issues which may not have been considered, have a Land Registry search carried out on their behalf and seek a provisional opinion about the likelihood of success. Alternatively, interested parties may wish to seek independent legal advice.

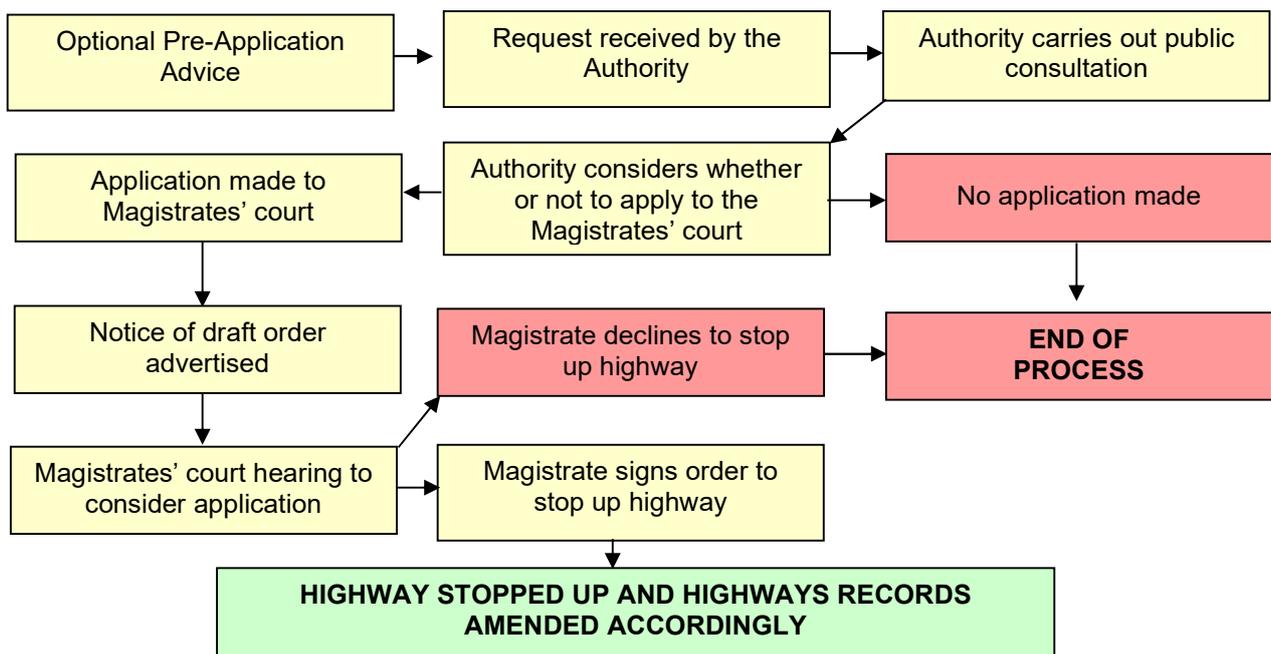
Interested parties will be charged £2,977 up to and including the Magistrate's Court hearing and a cheque for this amount must be included with the application. The figure represents the costs incurred by the Authority in processing an application; these costs include officer time, legal costs, mileage, newspaper notices, consumables and the applicable court fees. If, following the public consultation, the Authority decides not to apply to the Magistrates' court then £1,836 of the original fee will be refunded. The applicant must also undertake to cover the cost of all unforeseen legal as is necessary beyond the Magistrate's Court hearing in accordance with the Authority's current Legal Fees and Charges Schedule.

Furthermore, the cost of any diversion of any statutory undertaker's apparatus and/or the cost of entering into any wayleave agreements is also to be met by the interested party. As stated above, the stopping up of public highway is a separate process to the purchase of the freehold title to the land and the fee does not therefore include purchase of the land.

Additional Considerations

It should be noted that no authority for the stopping up of a highway is conferred unless and until it has been stopped up by a magistrate. Any preliminary obstruction of, or interference with, the highway concerned may not only be an offence, but may make it impossible to proceed with the making of an order.

FLOWCHART OF THE HIGHWAYS STOPPING UP PROCESS



APPENDIX 1

HOW TO COMPLETE THE APPLICATION FORM

- Section 1 Complete name and contact details of interested party
- Section 2 Complete name and contact details of agent, if applicable
- Section 3
- (a) Complete with name of the highway as shown on a plan enclosed with form.
 - (b) Complete names of all parishes affected by the proposals.
 - (c) Measure on site and use a scale-rule to ensure that the plan corresponds with the situation on site.
 - (d) Measure on site and use a scale-rule to ensure that the plan corresponds with the situation on site.
 - (e) e.g. *“the section of Back Lane immediately to the south of Dairy Cottage centred on grid reference ST 5725 6467”*
 - (f) Confirm whether the section of public highway which is being requested to be stopped up is unobstructed and can currently be used by the public. Obstruction or interference with the highway may make it impossible to proceed with the making of an order.
- Section 4 Please complete with an explanation as to why the section of public highway is ‘unnecessary’ for public use; it is not sufficient to just state that the highway is unnecessary.
- Section 5 Complete ownership details
- (a) Confirm what your interest is in the land over which the highway currently runs. For example, whether you are the owner, occupier or a prospective purchaser.
 - (b) If you are not the landowner you must write to inform the landowner of the proposals and attach a copy of the correspondence. If it has not been possible to identify or locate the landowner then a written statement setting out what steps have been taken to try to identify the landowner must instead be attached.
 - (c) Answer either ‘yes’ or ‘no’ depending upon whether the section of public highway which the request seeks to stop up provides either the sole or primary means of access to property such as a private dwelling, commercial premises or other land.
 - (d) If the answer to 5(b) is ‘yes’ then you will need to enclose written confirmation from anyone with an interest in that property that they consent to the proposals. The Authority is highly unlikely to seek the stopping up of a section of public highway if it restricts access to another property and anyone with an interest in that property has not consented to the proposals.

- Section 6 Enclose the required documents with the completed form:
- (a) The plan should be to a readily recognisable scale, so that distances can be measured using a standard scale rule e.g. 1:500 is acceptable but 1:478 is not acceptable. The plan should not be to a scale of less than 1:1,250 e.g. 1:1,000 is acceptable but 1:2,500 is not acceptable. A red line should be drawn around the full extent of public highway which the Authority is requested to seek to have stopped up. It is important that this section of highway is accurately delineated because the Authority will be carrying out a public consultation and potentially applying to the Magistrates' court based upon the section of highway identified on this plan.
 - (b) If the town or parish council for the area affected objects to the proposals, then the Magistrates' court cannot stop up the public highway. Therefore, requests to the Authority to get the highway stopped up must be accompanied by written confirmation from the town or parish council that they do not object to the proposals. Written confirmation is not required for highways within the city of Bath as there will be no town or parish councils for the land affected.
 - (c) A cheque made payable to 'Bath & North East Somerset Council' for £2,977 must be enclosed with the completed form. Please write your name, address and telephone number on the rear of the cheque in case it becomes separated from the completed form.
 - (d) Applications are expected to conclude in the Magistrate's Court; however, applicants must undertake to cover the Authority's costs if the matter proceeds beyond that point. Applicants will be charged in accordance with the Authority's current Legal Fees and Charges Schedule which is available upon request.
 - (e) If ownership of the land over which the public highway runs is registered then the completed form should be accompanied by a copy of the Land Registry's Official Copy for the property dated within 28 days of receipt of the completed form by the Authority. Please state if the land is unregistered.
 - (f) The application will be publicly accessible on the Authority's website; please tick the box if you grant consent for your name and postal address to be shown unredacted on the application. Applicants telephone number, email address and signature will always be redacted.

Declaration The declaration should be carefully read before signing and dating.

PLEASE SEND THE COMPLETED FORM ALONG WITH THE REQUIRED DOCUMENTS TO:

**PUBLIC RIGHTS OF WAY
BATH & NORTH EAST SOMERSET COUNCIL
LEWIS HOUSE, MANVERS STREET, BATH, BA1 1JG**

APPENDIX 2

**FORM FOR REQUESTING THE
STOPPING UP OF PUBLIC HIGHWAY**

SECTION 116 OF THE HIGHWAYS ACT 1980

IMPORTANT

No authority for the stopping up of a highway is conferred unless and until a Magistrates' court order has been made and come into effect. Any preliminary obstruction of, or interference with, the highway concerned may not only be an offence, but may make it impossible to proceed with the application.

1. NAME AND ADDRESS OF INTERESTED PARTY

Name: _____

Postal Address: _____

_____ Postcode: _____

Telephone No: _____

Email address: _____

2. NAME AND ADDRESS OF AGENT(S)

Name: _____

Postal Address: _____

_____ Postcode: _____

Telephone No: _____

Email address: _____

3. PARTICULARS OF HIGHWAY TO BE STOPPED UP

a) Name of highway _____

b) Parish of _____

c) Maximum length of section to be stopped up in metres _____

d) Maximum width of section to be stopped up in metres _____

e) Description of length to be stopped up by reference to terminal points on plan to accompany this form

- (f) Is the existing route freely available to the public? If NOT, please give reasons:

4. **REASON/S WHY THE HIGHWAY IS DEEMED TO BE UNNECESSARY FOR PUBLIC USE**

5. **PARTICULARS OF OWNERSHIP**

- a) Your interest in the land over which the section of public highway passes

- b) If you are not the freehold owner of the land over which the section of the public highway passes, please tick to confirm that a copy of the correspondence informing the owner of the proposal is enclosed.

- c) Does the section of highway proposed to be stopped up form part of the sole or principle means of access to property?

- d) If the section of highway proposed to be stopped up does form part of the sole or principle means of access to property, please tick to confirm that written consent from anyone with an interest in that property is enclosed.

6. ACCOMPANYING DOCUMENTS AND CONSENT

Please tick boxes as appropriate

- a) A plan made to a readily recognisable scale not less than 1:1,250 with the full extent of highway to be stopped up edged in red is attached.
- b) Written confirmation from the town/parish council that they do not object to the proposed stopping up of the highway (if outside Bath) is attached.
- c) A cheque made payable to 'Bath & North East Somerset Council' for the sum of £2,977 is attached.
- d) An undertaking to cover the cost of all unforeseen legal as is necessary beyond the Magistrate's Court hearing in accordance with the Authority's current Legal Fees and Charges Schedule.
- e) Proof of title to the land if the land is registered (the Land Registry Official Copy dated within 28 days of submission of the request) is attached.
- f) Consent is granted for the applicant's name and postal address to be made publicly available.

7. DECLARATION

I apply for the stopping up of the highway described above.

I understand that no authority for the stopping up of a public highway is conferred until an order is made by a Magistrate.

I agree to pay the Authority's charges for processing the stopping up.

I declare that to the best of my knowledge and belief all the particulars given are true and accurate.

Signed Date

Name

On completion, this form and the required documents should be returned to:
Highways Maintenance and Drainage: PROW, Bath & North East Somerset Council, Lewis House, Manvers Street, Bath, BA1 1JG.