

Cambridgeshire County Council

Guidance on Stopping Up or Diversion of the Public Highway

Section 116 Highways Act 1980

Introduction

Where an applicant wishes to acquire part of the public highway for private use, provided that the County Council (as Highway authority) considers the area to no longer be necessary for highway purposes, the highway rights can be extinguished, or 'stopped up', by an Order made by Magistrates' Court. Highway can also be diverted, if a suitable alternative exists or can be made available. In order to do either of these, an application has to be made to the Magistrates' Court by the County Council on behalf of an applicant under Section 116 of the Highways Act 1980. The successful making of such an Order will extinguish the highway rights over the land concerned, and free it from Highway Authority control. At Cambridgeshire County Council, this process is managed by the *Asset Information Searches Team* in the Highways Service.

Should the owner then wish to enclose or develop the land, planning consent may be required, including for the erection of fences over 1 metre in height (if adjacent to the highway). The Local Planning Authority will be able to provide further advice.

Ownership of land

Once the highway rights are extinguished, control over the land reverts to the freehold or leasehold owner of the subsoil. In many cases, this will not be the Highway Authority. 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 developer. It is 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 former highway out to the centre-line 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. Land ownership details can be requested from HM Land Registry.

How will the County Council process a request to stop up part of the highway?

Upon the request of a prospective applicant, the Highways *Asset Information Searches Team* will conduct a highway boundary investigation to establish whether the area desired for stopping up falls within the public highway, and if so, how much of the highway might need to be formally extinguished. The fee for undertaking a highway boundary investigation is shown in the table below. (Applicants who have purchased a highway boundary enquiry within the previous 12 months will not need to pay for this again).

If after this is done an applicant wishes to proceed, the *Asset Information Searches Team* will undertake internal consultations within the Highways Service to ascertain whether an application can be considered. The fee for this is also shown in the table below. If it is revealed that the Highways Service is prepared to consider an application, applicants will be provided with a Consultation Checklist to carry out pre-application checks.

Please note that the application process follows the stages in the flow chart shown below.
For an initial discussion as to whether your proposal can be considered, please contact your local Asset Information Searches Officer, who will advise how you can proceed.

Stage 1: Pre-application consultations – flow chart shown below

We ask applicants to undertake a preliminary consultation phase prior to submitting a formal application. This helps to identify at an early stage whether the proposed stopping up is likely to be accepted by bodies that may have an interest in the area of highway.

As part of these consultations, it is essential that applicants ensure the following:

1. The relevant District, Parish or Town Council does not have an objection to the proposal. **Under section 116 of the Highways Act 1980, these bodies have a legal right to veto the making of an application to stop up the highway.**
2. Any practical matters relating to the land are investigated, for example highway engineering requirements concerning visibility splays which may affect the area available for stopping up. The County Council may, for instance, decide to only allow *part* of the desired area to be stopped up, as some of it may be required for junction visibility or for a future road scheme.
3. Ownership of the land has been established, and that if the applicant does not own the land, they have made any necessary arrangements to acquire it.
4. Consent has been obtained in writing from any party with any other legal interests in the land, for example adjoining landowners, owners of property accessed via the land, and other neighbours in the vicinity who may use that part of the highway.
5. The local County Councillor is consulted and does not object to the proposal.
6. That no statutory undertaker's (utilities provider's) apparatus is sited on the land, or if such apparatus is on the land, that appropriate arrangements are made to ensure access to it (for instance wayleave agreements or diversions of the services).
7. That the land is not going to be affected by any proposed developments in the area. It is advised that applicants consult the relevant District Council 'Local Plan' or development framework to check this.
8. The County Council may request applicants consult additional parties if it is believed to be necessary. All disputes relating to the land in question need to have been resolved prior to the making of an application.

Stage 2: Making an application – flow chart shown below

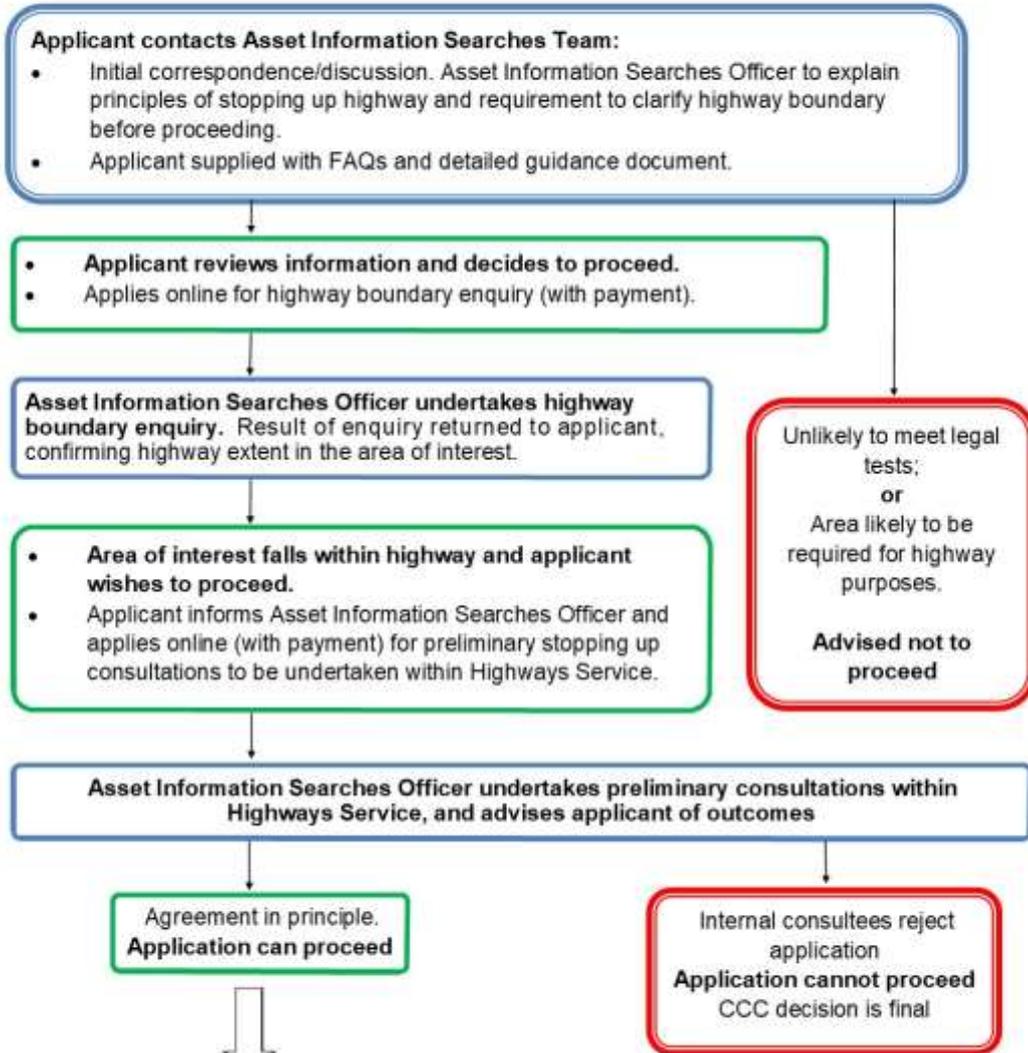
When applicants have satisfactorily completed the above consultations, the responses will be validated by the *Asset Information Searches Team*. When validation is completed, applicants will be supplied with an application form, to be returned along with the Stage 2 Fee (outlined in table below). The formal process of applying to stop up part of the highway now begins: the steps involved in this stage are shown in the flow chart below.

Fees and recovery of costs

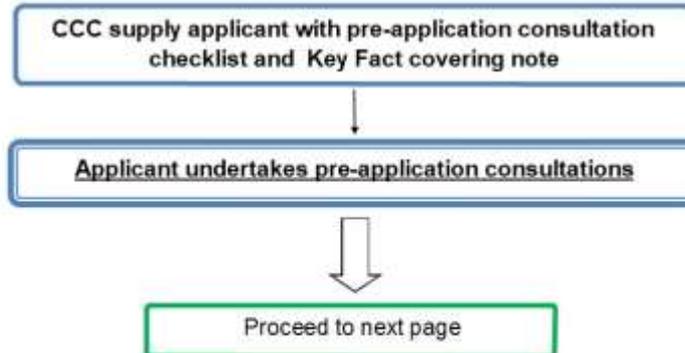
The County Council may recover from the applicant the reasonable administrative costs of advising on and processing applications for orders. Fees for processing an application to stop up part of the highway under section 116 of the Highways Act 1980 are shown in the table below. Please note these fees are non-refundable.

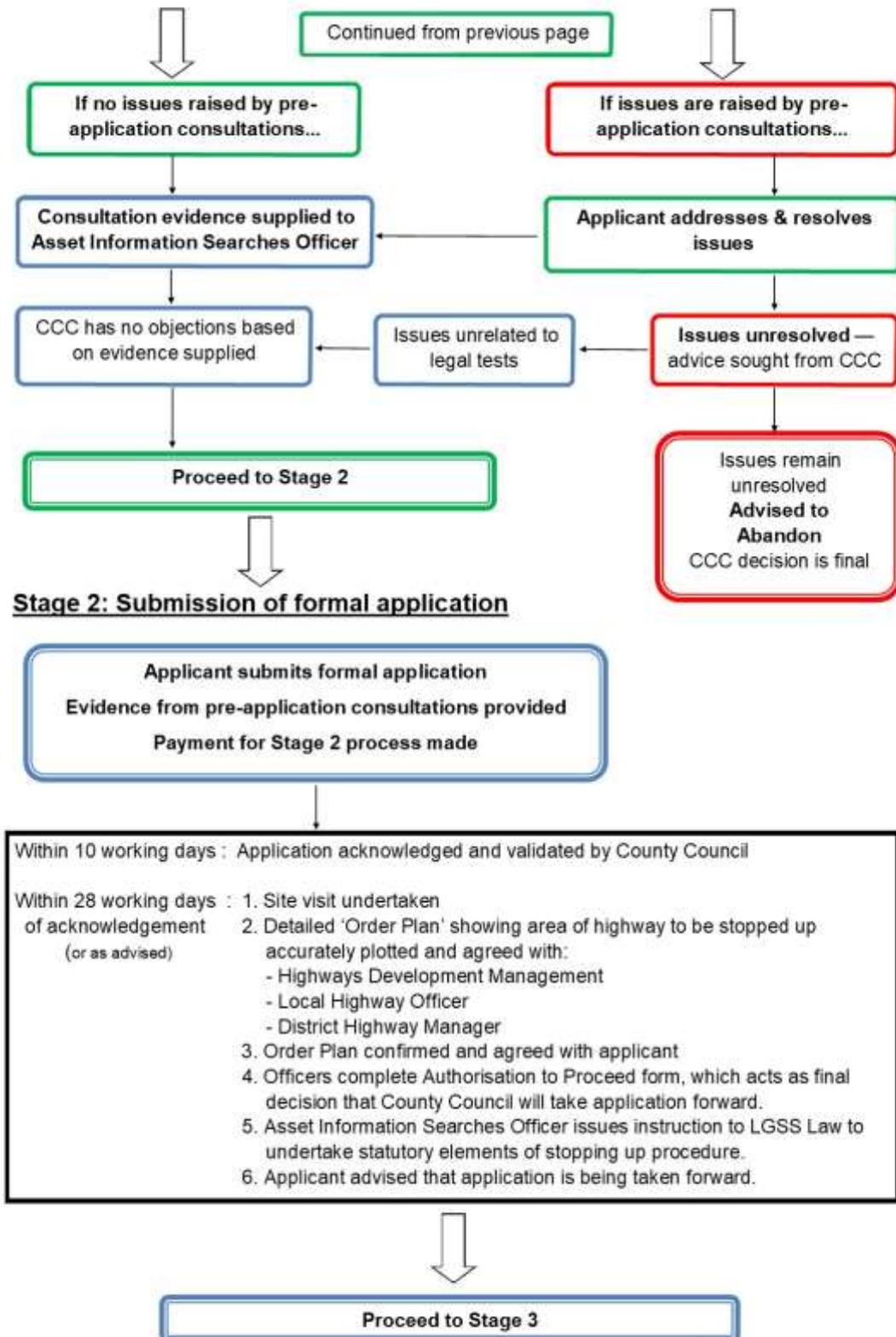
Initial Highway boundary enquiry	£73.20 (inc VAT)	This establishes the extent of the highway in the area desired for stopping up.
County Council preliminary stopping up consultations	£135 (inc VAT)	Asset Information Searches Team carry out consultations within Highway Service to establish that the land to be stopped up is not needed for highway purposes.
Stage 2 Formal Application Fee	£875 (inc VAT)	This fee covers the Asset Information Searches team's administrative costs in processing the case, including amongst other things: site visits, drawing up order plans, obtaining authorization to proceed.
Stage 3 Legal fees	Generally between £2,500 and £5,000	These are the legal costs incurred by the County Council in carrying out statutory consultations and taking the application to Magistrates' Court. Please note these fees will vary depending on the complexity of the application or any objections that arise, and therefore we cannot provide a fixed cost for this element of the work.

Initial enquiry from member of the public: Can I stop up part of the Highway?



Stage 1: Pre-application consultations





Stage 3: Legal process – flow chart shown below

When the administrative work to prepare and approve the application is complete, the *Asset Information Searches Team* will instruct the County Council's legal representatives, LGSS Law, to undertake Stage 3. Stage 3 comprises the legally proscribed part of the stopping up process under section 116 of the Highways Act 1980.

This process can take up to (and sometimes in excess of) 6 months. LGSS Law 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 to enable them to commence.

Stage 3 Fee: Legal fee of £2,500 – £5,000 to cover:

- The administrative costs of processing your application including the court application,
- The cost of inserting Public Notice(s) in the relevant local newspaper(s) concerning the proposed Order and then Notice that the Order has been made.
- Registration on County Council's legal record upon successful completion of the order.
- Formal consultations to be undertaken with all affected parties, including:
 - Parish Council/Town Council and District Council
 - Statutory Undertakers (i.e. water, gas etc)
 - Adjoining land owner(s)
 - Local County Councillor
 - Other relevant departments within Cambridgeshire County Council
 - The Public – by notices on site, in a local newspaper, and in the local library

Note that objections received during Stage 3 consultations will delay the process and may add to the cost whilst they are negotiated by LGSS Law. Where *Asset Information Searches Officers* are required to assist in the resolution of disputes relating to the stopping up, a fee of £53 per officer hour will be charged in addition to the Stage 2 application fee. It is therefore in an applicant's interest to ensure as far as reasonably possible that any likely objections are addressed during pre-application stage. Where objections are not withdrawn, the County Council generally will not proceed with making an application to Court. Should an objection only transpire once the application to Court has been made, additional costs may arise, particularly if the Court decides that a full trial is necessary. The County Council will then decide whether to take the case further or not.

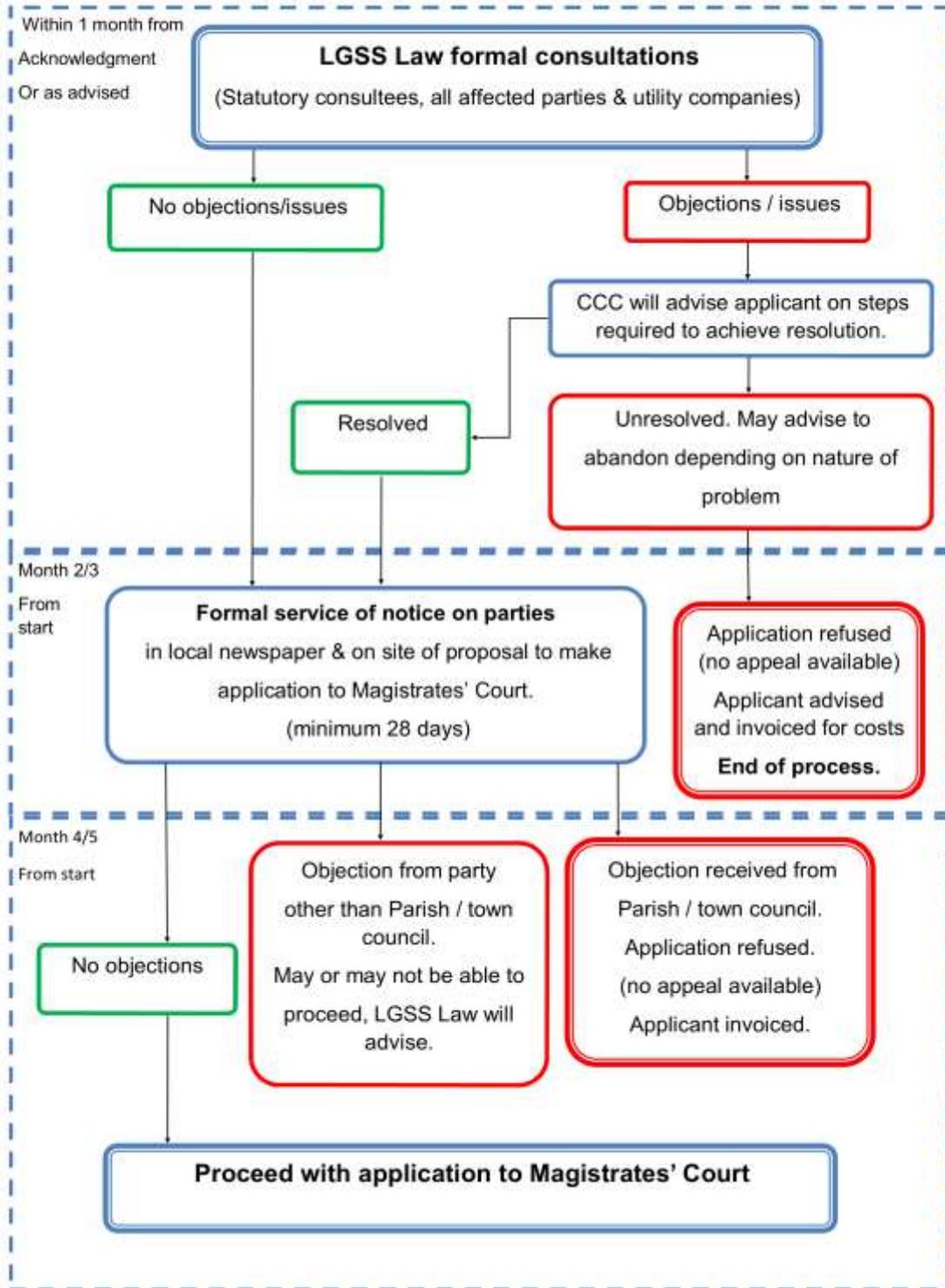
An overview of the stages involved in the legal process is shown in the flow chart below

Further Advice

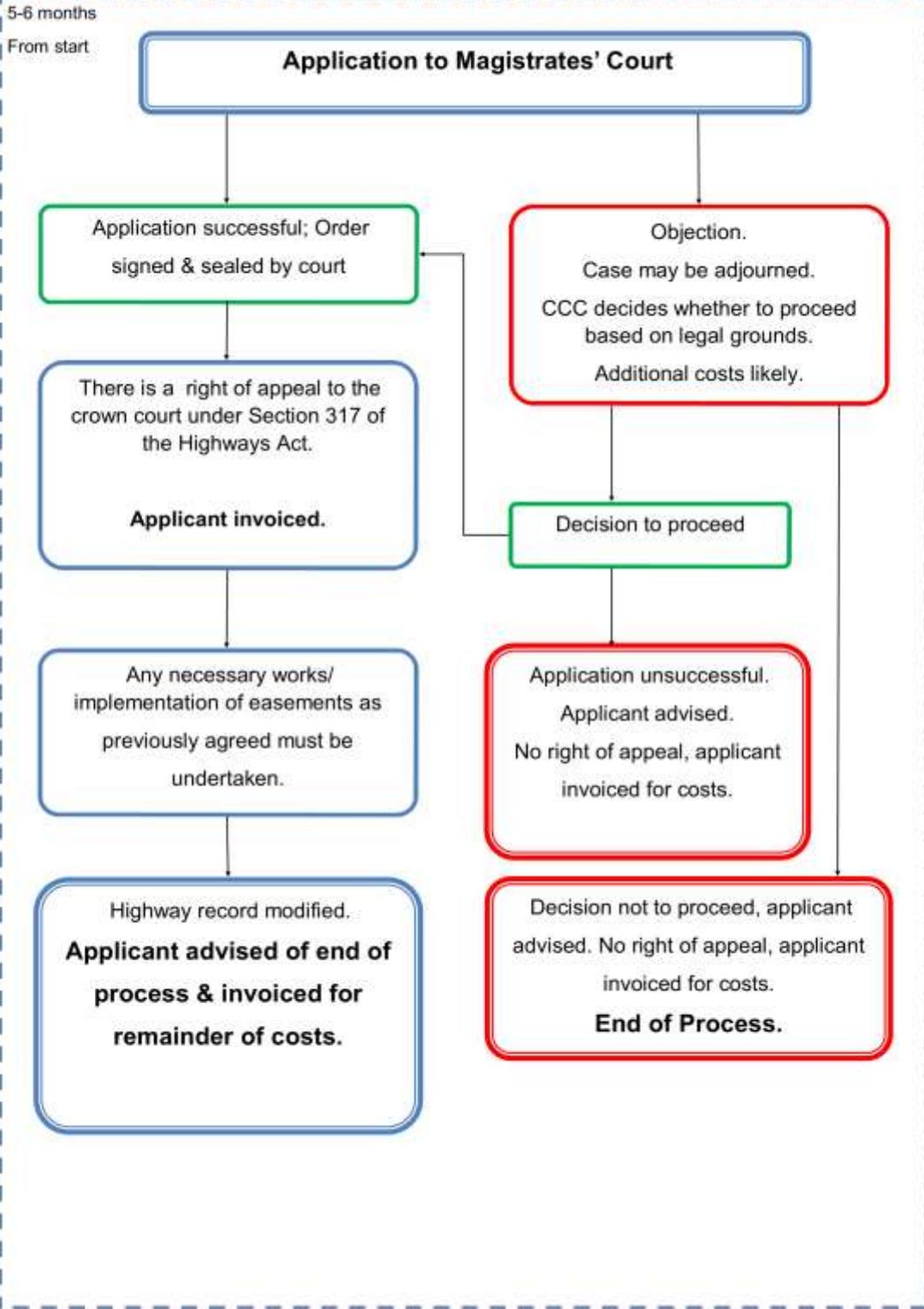
Highways are complex areas of law and applicants are advised that they may wish to take independent legal advice on any or all parts of the process. For further information on the process as administered by Cambridgeshire County Council, please contact your local *Asset Information Searches Officer* by:

- Calling Cambridgeshire County Council on 0345 045 5212
- Emailing your local Asset Information Searches Officer at:
Searches@cambridgeshire.gov.uk
- Asset Information Searches Team, Box No STA2101, Cambridgeshire County Council Highways Depot, Stanton House, Stanton Way, Huntingdon, PE29 6PY.

Stage 3 (part 1): Legal process (inc application to Magistrates Court)



Stage 3 (part 2): Legal Process (Order Making)



Reservations

Although the *Asset Information Searches Team* manages the process of preparing the County Council's application to Magistrates' Court to stop up parts of the highway, the applicant is responsible for first making an application to the County Council to commence a stopping up case. Many actions related to the process are the responsibility of the applicant. This includes pre-application consultations, resolution of disputes related to the stopping up proposal, liaising with statutory undertakers, making any appropriate access arrangements, and paying the relevant fees.

All rights to utility services under, over, in, above, along or across the highway will remain unless alternative arrangements are negotiated with the appropriate body. 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 and the County Council is unable to become involved in the making of such agreements.

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 on the land will retain their rights to 24-hour access.

The County Council may also stop up and reserve other highway rights as it deems appropriate in the interest of the public. Furthermore, the County Council may amend the extent of the area of highway to be extinguished at any time, if internal consultations reveal that part of the area desired for stopping up is required for highway purposes.

Should objections to your application be received, the County Council will inform you and will endeavour to discuss the next steps with you. However this will depend upon the circumstances, for example if there is insufficient time before the court hearing. The County Council reserves the right to withdraw an application if it becomes apparent that it is unlikely to be successful.

The County Council is able to offer advice on the resolution of disputes but remains impartial and cannot become involved in negotiations to resolve private matters.

Fees payable to the County Council for the processing of a stopping up application are due in advance of any works being undertaken and are non-refundable.