Summary of procedure

Where areas of public highway are considered by the County Council, as Highway Authority, to be unnecessary for highway purposes, the highway rights can be extinguished or ‘stopped up’ by an Order made by Magistrates. They can also be diverted, provided 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 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.

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

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 may be 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.

Recovery of fees and costs

The County Council may recover from the applicant the reasonable administrative costs of advising on and processing applications for orders. Fees for s116 Highways Act 1980 applications are as follows:

Stage 1: No fee
Stage 2: Non-refundable fee of £1098 (inc VAT) for advice, drafting of plan & travelling expenses at 45p/mile (+ VAT), payable upon submission of the application.
Stage 3: Legal fee of £2,500 – 4,500 (no VAT) plus officer time at £61/hr as required;
• 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.
• The registration on County Council’s legal record upon successful completion of the order.

Note that any objections received during consultation will delay the process and may add to the cost whilst they are negotiated. It is therefore in an applicant’s interest to try and ensure as far as reasonably possible that any likely objections are addressed prior to submission of an application. Where there are objections the 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 over the £4,500 quoted may arise, particularly if the Court decides that a full trial is necessary. The County Council will then decide whether it is willing to take the case further or not.
Procedure

Stage 1: Pre-application procedure
Applicants are advised that prior to making a diversion or stopping up application, it is essential that:

- Any disputes concerning anything relating to the land in question have been resolved
- Any practical matters relating to land, for example highway engineering requirements concerning visibility splays
- Consent has been obtained in writing from any party with any other legal interest in the land, for example access rights, or other landowners
- Thought also needs to be given to ensure connectivity between other highways which may be of a lesser status. For example, should a certain width be retained for pedestrians or cyclists along the route of a vehicular highway which it is proposed to stop up, or of an alternative route nearby?

To assist with this, and in order to identify at an early stage whether the proposal is likely to be accepted by the public, applicants must undertake written consultation with the prescribed bodies (list attached), before submitting their application. It is also advisable to consult neighbours in the area, and the local County Councillor. In particular, it should be observed that town and parish councils have a right of veto to s116 Highways Act 1980 applications. Any concerns raised should be addressed by the applicant as far as reasonably possible. All responses received should be attached to the application form, together with evidence of efforts to resolve any objections.

For an initial discussion as to whether your proposal can be considered, please contact your local Asset Information Searches Officer, who will:

- Identify the status and extent of highway you are interested in
- May direct you to discuss your proposal with your Local Infrastructure & Streets Officer (who deals with the practical management of the highway, or Rights of Way Officer if public rights of way are involved) or Highway Development Management Engineer if you have not done so already

Stage 2: Submission of application
Applications may be submitted, with application fee, once the pre-application details outlined above have been undertaken. Consultations undertaken together with responses received and evidence of attempts to resolve concerns must be attached to the application form. We will then:

- Acknowledge your application, check it and advise you if we can accept it or not.
- Prepare a plan showing the area of highway to be stopped up, which will be agreed with you. This will be used for the legal Order, so it is important that it is correct.
- Local Infrastructure & Streets Officer will undertake a desk-top survey of services that may be present under the highway concerned.
- Arrange to meet on site with you and the Local Infrastructure & Streets Officer or other officers as appropriate to discuss your proposal.

The fee for providing this advice is £1098 (inc VAT), which must be paid whether or not the applicant decides to proceed with the application following the results of Stage 2.

Stage 3: Legal process
The application will then be submitted to the County Council's LGSS Law & Governance team to undertake the legal process, including application the Magistrates' Court. This process takes approximately 6 months. LGSS 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.

Formal consultations are undertaken with all affected parties, including:

• Parish Council/Town Council
• 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 notice on site and in the local library notified by advertisements

Reservations

All rights to any 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.

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 to their apparatus.

The Council may also stop up and reserve other highway rights as it deems appropriate in the interest of the public.

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 time is too tight before the court hearing. The County Council reserves the right to withdraw applications if it becomes apparent that it is unlikely to be successful.

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 0455212
• Emailing your local Asset Information Searches Officer at: Searches@cambridgeshire.gov.uk

Applications should be sent to:
Assets & Commissioning, Box No. SH1313
Cambridgeshire County Council
Shire Hall, Castle Street, Cambridge, CB3 0AP
List of Statutory Consultees

<table>
<thead>
<tr>
<th>The relevant Parish or Town Council (you will need to find out the address)</th>
<th>The relevant District Council (as below):</th>
</tr>
</thead>
</table>
| All **owners and occupiers** of all lands adjoining the highway to be stopped up (including any other parties whose legal interests may be affected (e.g. right of access)) | **Cambridge City:**  
Head of Legal Services  
Cambridge City Council  
The Guildhall  
CAMBRIDGE  
CB1 0SA |
| Any **statutory undertakers** having apparatus under, in, upon, over, along, or across the highway | **East Cambridgeshire:**  
Lucy Flintham  
Planning Administration Team  
East Cambridgeshire District Council  
The Grange, Nutholt Lane  
ELY  
CB7 4PL |
| **The relevant County Councillor** (advisable) | **Fenland:**  
Head of Legal Services  
Fenland District Council  
Fenland Hall  
County Road  
MARCH  
PE15 8NQ |
| **Neighbours in the vicinity** (advisable) | **Huntingdonshire:**  
Head of Administration  
FAO Mike Barber  
Huntingdonshire District Council  
Pathfinder House, St Mary’s Street  
HUNTINGDON  
PE29 3TN |
| **Highway Development Management**  
Please consult Cambridgeshire County Council’s Highway Development Management to check how your proposal will impact on highway engineering/safety considerations. Please email [sue.reynolds@cambridgeshire.gov.uk](mailto:sue.reynolds@cambridgeshire.gov.uk) | **South Cambridgeshire:**  
If possible send electronically to:  
[democratic.services@scambs.gov.uk](mailto:democratic.services@scambs.gov.uk)  
FAO Ian Senior, Democratic Services Officer  
South Cambridgeshire District Council  
South Cambridgeshire Hall, Cambourne Business Park  
CAMBOURNE  
CB23 6EA |
Stage 1: Pre-application preparations

Contact Asset Information Searches Officer:
Initial advise to identify status & extent of highway
Discuss practical issues

Agreed in principle

Unlikely to meet legal tests.
Advised not to proceed

Applicant undertakes pre-application consultations

No issues raised

Issues raised

Applicant considers & resolves issues

Issues resolved

Issues unresolved—advise sought from CCC

Application submitted to CCC

Issues unrelated to legal tests

Advised to abandon

Stage 2: Submission of application—£1098 fee (inc VAT)

Within 10 working days: Application acknowledged and checked
Within 28 working days:
1. Plan of highway extent drafted & agreed with applicant.
or as advised
2. Services identified.
3. Meeting with Local Infrastructure & Streets Officer/Asset Information Officer/Rights of Way Officer.
4. Officers to complete Authorisation to Proceed form.
5. Decision made if County Council will take application forward & application informed.