

Cornwall Council Website: Stopping up and diversion of highways

<https://www.cornwall.gov.uk/transport-parking-and-streets/roads-highways-and-pavements/highway-and-infrastructure-adoptions/stopping-up-and-diversion-of-highways/>

On occasion it may be possible to stop up or divert a public highway. This can happen when either:

- the road is no longer required as a public highway, or
- where there is a proposal for an alternative route

This removes the highway rights that exist on the land, and control of the land goes back to the owner.

The stopping up process may take between 12 and 24 months to complete

What is a highway?

A highway is an area over which the public have the right to pass or repass.

The term highway includes:

- roads
- carriageways
- footpaths
- footways
- bridleways
- cycle tracks
- and may include any verges or landscaped areas associated with them.

A highway may be:

- adopted and maintained at the public expense or
- unadopted and privately maintained.

We hold a list of publicly maintained highways. Please submit highway enquiry requests to [Local Land Charges](#).

We do not currently hold a list of privately maintained highways.

Who owns the highway?

Often we do not own the land beneath the highway.

The land may form part of the adjacent lands title, be under third party ownership or there may be no owner.

If you are applying to stop up a highway, you are responsible for:

- checking who owns the land, and
- what rights you will have to pass over or use the land

You are also advised to take independent legal advice in this respect.

How do I apply for a highway to be stopped up?

Stopping up/diversion of the highway requires an order under either:

- the Highways Act 1980, or
- where the land is part of a planning application, the Town and Country Planning Act 1990

Highways Act 1980, Section 116

The Highway Authority can make an application to the magistrates court to stop up or divert a highway where:

- is unnecessary, or
- a proposed diversion makes the new route nearer or more commodious to the public

The application may be for

- the complete removal of highway rights, or
- the downgrading of a route to a footpath or bridleway

Only the relevant Highway Authority can make an application to the court.

Highways Act 1980, Section 117

The Highway Authority can make an application to the court on behalf of another person. The application will still need to meet the tests set out in section 116.

You must pay all reasonable costs incurred in making the application.

- [Application Form - Stopping Up \(pdf\)](#)
- [Application Form - Stopping Up \(Word\)](#)

Highways Act 1980, Section 118 and Section 119

Allows for the stopping up and diversion of footpaths and bridleways. This allows decisions by a Highway Authority rather than a magistrates court. They do not apply to roads.

Town and Country Planning Act 1990

To stop up/divert a highway for planning purposes the Secretary of State will make the decision. The stopping up/diversion will not apply until the order is in place. It is an offence under the act to stop up an area before the order is in place.

The Secretary of State does not have the power to stop up highways retrospectively. In these cases the application would be under the Highways Act 1980. The stopping up/diversion would then need to meet the tests under the Highways Act. If the application was unsuccessful the area would need to return to highway. This would be the responsibility of the applicant along with all costs.

Town and Country Planning Act, Section 247

Allows for the stopping up and/or diversion of any highway required

- to enable a development with a valid and relevant planning permission
- to provide new/improved highway which forms part of the planning permission.

Town and Country Planning Act, Section 248

Allows for the stopping up/diversion of highways where a planning permission is in place for

- the construction or improvement of a main highway, and
- it crosses or enters the existing highway.

Differences between the Town and Country Planning Act and the Highways Act

Applications must be through the most appropriate route. Whilst the process is similar there are distinct differences between the legislation. Depending on the route taken this may affect the outcome of the application.

Questions	Town and Country Planning Act 1990	Highways Act 1980
Who can apply for the order?	Anyone	Highway Authority
How much will the application cost?	DfT Website Currently no charge (Aug 2014)	CC cost schedule 2 stage Payment required
When can I apply for an order?	When a valid planning permission requires the highway to be stopped up/diverted	Where the highway authority agree that the highway is <ul style="list-style-type: none"> • unnecessary or • the diversion is nearer or more commodious for the public
What role does the highway authority play?	The highway authority is a consultee to the Secretary of State	The Highway authority is the applicant to the court
Consultees?	Those affected by the order and/or who may have an interest in the proposed stopping up/diversion	Those affected by the order and/or who may have an interest in the proposed stopping up/diversion. The town or parish council
Who makes the order?	Secretary of State	Magistrates Court
What happens if any objections are not resolved?	Public inquiry held. The planning inspector makes the decision on whether to make the order	Unclassified road applications need the consent of the town/parish council. For other objections the highway authority will decide whether to proceed. Where an application proceeds to the court, the court will decide whether to make the order

The stopping up/diversion process

The Department for Transport deals with Town and Country Planning Act applications. Further information on the process is on the [DfT Website](#).

Cornwall Council deals with Highways Act applications. We are the relevant Highway Authority for all roads in Cornwall.

Our Countryside Access team deal with [stopping up/diversion of public footpaths, bridleways](#).

For all other highways please contact strategicdevelopment@cornwall.gov.uk.

Before we will consider the request you must submit an application.

- [Application Form - Stopping Up \(pdf\)](#)
- [Application Form - Stopping Up \(Word\)](#)

We will then determine whether the area meets the criteria set out in section 116.

If accepted, you must pay all costs in connection with the application. You must also meet all the costs of the highway alterations including the

- construction of any new roads and/or
- diversion of any highway apparatus and/or
- diversion of statutory undertakers' plant and/or
- the costs of any wayleaves/easements required as a consequence of the order

We will prepare the necessary plans and undertake an informal consultation.

Consultees in the process include

- Town/Parish council
- Statutory undertakers i.e. gas, water
- Owners and occupiers of all adjoining land affected by the proposed order
- Local county councillor
- Interest groups
- Other council departments

Stopping up of an unclassified road requires approval from the town/parish council. Where this consent is withheld the application will not proceed. It is advisable to contact the town/parish council before making an application.

For objections received by other consultees, we may

- negotiate with any objector to try and resolve any issues arising
- amend the area to be stopped up/diverted
- amend the application to reserve rights for pedestrians, horses or cycles
- reject the application.

Following the conclusion of the informal consultation we will update the applicant

If we decide to make an application to the court

- our legal team will serve notice of the intention to make an application to the court
- we will place site notices at either end of the affected highway and
- we will place an advert in the local and national newspapers

Please note we may receive further objections at this point. Any objectors can attend court.

The court will make a decision on whether to grant the order. If granted, the order applies on the day of the court hearing.

Implementation of orders

When an order is in place it may either allow for the stopping up/diversion to come into effect

- from the date stated in the order or,
- on completion of all improvement works (Town and Country Planning Act)

Any required improvement works must be undertaken at your cost.

You must

- submit plans for approval, and
- enter into any agreements/licences to work on the highway.

The land will remain highway until the completion, and approval, of all works. Until this time you must not interfere with, or close off, the area.