

STOPPING UP ORDERS UNDER PART X OF THE TOWN AND COUNTRY PLANNING ACT 1990

This guidance has been prepared to assist those involved in the process of seeking Stopping Up Orders to be authorised by the Secretary of State. It is of relevance to developers, their agents, transport and town planning consultants, legal advisors, government departments and local authorities.

The guidance incorporates the procedural changes brought about by the Growth and Infrastructure Act, 2013¹ that enable applications for stopping up Orders to be submitted in advance of planning permission being granted.

The changes create a more expeditious stopping up process and give greater choice as to when an application is made by those wishing to seek the stopping up of highway land.

This leaflet gives general information about the process. For more detailed information regarding the stopping-up or advice on a specific application, please contact the National Transport Casework Team. Our details can be found on page 4.

Orders made by the Secretary of State for Transport under the Town and Country Planning Act

Section 247

Orders under section 247 will authorise the removal (“stopping-up”) and/or the diversion of any highway, in order to enable development to be carried out in accordance with a valid and relevant planning permission.

The Order can also provide for the provision of new/improved highways as long as these also form part of the planning permission.

Section 248

Where planning permission has been granted to construct or improve a ‘main’ highway and another highway crosses or enters that route, Orders under this section will authorise the stopping up or diversion of the ‘other’ highway if it will be affected by the construction or improvement of the main highway.

The Order can also provide for the provision of new/improved highways as long as these also form part of the planning permission.

¹Growth and Infrastructure Act 2013, Chapter 27, Part 11, amending Section 253 of the Town and Country Act: ‘Procedure in anticipation of planning permission’.

Applications

When applying in advance of planning permission, it will be necessary to enclose a copy of the planning application along with any associated highway and site layout plans (it is not necessary to provide elevation plans).

To ensure that applications are dealt with expeditiously, it is in the applicant's interest to have had discussions with the planning authority and the highway authority prior to submitting stopping up applications. This is because once a draft Order has been published, any changes to the area(s) to be stopped up may mean restarting the process thus diminishing the benefit of making an early application.

Additionally, any post planning permission amendments to development schemes that increase/alter the area(s) of highway land to be stopped up may require a new Stopping Up Order

Applications without planning permission will be processed up to the making of the final Order. Applicants will need to provide this office with a copy of the planning decision notice before the Order can be made.

In all cases, it should be noted that you cannot stop up or divert a highway until the notice announcing the Secretary of State has made an Order has been published. Not only is it an offence to do so, but it may make it impossible for the Secretary of State to make the Order.

The Secretary of State does not have the power to stop up highways retrospectively.

The application form for these Orders along with specific guidance notes can be found on the Department for Transport website at

<https://www.gov.uk/legislation-administered-by-the-department-for-transport>

Consultation Stage

Once the details of an application have been agreed with this office, the draft Order and public notice will be produced containing details of the proposal.

The publication of the draft Order notice in at least one local newspaper and in the London Gazette starts a 28-day period in which interested parties can lodge an objection regarding the loss of the public right of way.

Copies of the Order must also be made available at a local public office for inspection and can also be obtained from the National Transport Casework Team.

Both the draft Order and notice will be sent to those who may be affected or have an interest in the proposed “stopping-up”. These include utility companies and your local authority (statutory consultees).

The applicant must display and maintain a copy of the notice in a prominent position at each end of the area of highway/footpath to be “stopped-up” during the 28-day consultation period.

NB. Failure to comply with these requirements will result in a delay to the Order being made.

Objections

If any objections are made to the proposed Order, they will be copied to the applicant. It is their responsibility to negotiate with the objectors with a view to resolving the issues raised. When objections cannot be resolved, the Secretary of State may require a public inquiry to be held to fully consider the objections prior to making a decision. In some circumstances, the Secretary of State may be able to dispense with a public inquiry if sufficient information is obtained from the applicant and objectors – this cannot be considered if objections remain from statutory consultees.

NB. Applications without planning permission can only be progressed to this stage.

Making an Order

The Stopping Up Order will only be made when the following criteria have been met:

- a) The planning permission decision notice has been received and
- b) All objections have been withdrawn formally, or
- c) If written representations have been considered, or
- d) An inquiry has been held, and the inspector’s report and recommendations have been considered.

Once the above criteria have been met a decision will be made on whether the Order should be finalised. The decision will be notified to the applicant and interested parties. Additionally a notice regarding the decision will be published in the same manner as the draft Order. Once the Order is published, it is subject to a six week period within which challenges to the validity of that Order can be made in the High Court.

The Order would cease to have effect if the planning permission expires or the development could not be implemented.

Timescale for processing Order applications

The Department aims to process Orders where there are no objections within 13 weeks from receipt of all necessary information.

However it should be noted that certain factors will impact on this timescale eg.

- Whether planning permission has been granted at the time the stopping up application is submitted;
- Whether objections are made to the draft Order;
- Whether changes are made to the area(s) to be stopped up following the draft Order publication;
- Whether a written representations period or a public inquiry is required to consider any objections – this will considerably extend the time before a decision can be made.

There are currently no fees involved in this process for highways outside of London borough Authorities.

Further details can be obtained from:-

National Transport Casework Team
Department for Transport
Tyneside House
Skinnerburn Road
Newcastle Business Park
Newcastle upon Tyne
NE4 7AR

Email:- nationalcasework@dft.gsi.gov.uk

Telephone: 0207 944 4262 or 0207 944 4272

Website:- <https://www.gov.uk/legislation-administered-by-the-department-for-transport>

N. B. These comments are given informally and without prejudice to the Secretary of State for Transport's consideration of individual applications submitted. Further information may need to be supplied. Any guidance included is not to be taken as official interpretation of the relevant legislation. Such interpretation is a matter for the Courts.