

Highway diversion, creation and stopping up orders

Sections 247 and 257 of the Town & Country Planning Act 1990



Guidance Notes

January 2020

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1. Purpose

These guidance notes provide advice on the procedures for the stopping-up and diversion of highways pursuant to section 247 and 257 of the Town and Country Planning Act 1990. This is of relevance to developers, their agents, transport and town planning consultants, legal advisors, government departments and local authorities. These notes incorporate 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. An important point to remember; it is a criminal offence to obstruct or otherwise interfere with the highway or any public rights of way (PROW) without the authority to do so. Orders cannot be made retrospectively.

1.1 Identification of Highways

A developer should physically inspect the site at an early stage, preferably prior to submission of a planning application, and identify all possible highway routes crossing the site on a plan. This exercise should cover both vehicular and pedestrian routes, whether formal or informal (desire lines, etc) and complete relevant section of the planning application form.

A developer should then forward a copy of that plan to:

**Transportation and Connectivity
Highways Information
Inclusive Growth Directorate
Birmingham City Council
1 Lancaster Circus
Lancaster Circus Queensway
Birmingham
B2 2JE
Telephone: 0121 464 6846**

This requirement is to obtain a view on which of the routes are shown on the Highway Register are/or maintained by the Council.

Note:

The Highway Register will only identify routes already known to be highway.

Where routes are identified as highway, whether publicly or privately maintainable, and they are affected by development, then a statutory order, usually under the terms of the Town and Country Planning Act 1990, will be required to stop up or divert the highways. Other routes, although not shown on the Highway Register, may have become highway through long usage under the provisions contained in Section 31, Highways Act 1980.

A developer must weigh up and consider whether a deemed dedication is likely to have occurred. Legal advice from his solicitor may be required on this point.

1.2 Planning Process

In preparing a planning application for submission, a developer should assess the impact of his proposed development on all the highways/routes across the site as discussed in 1.1. The planning application should preferably contain a statement of the impact on highways, and where, for example, a diversion is appropriate it should be included within the design of the development.

A developer is advised to notify the Local Planning Authority of any paths not shown on the Highway Register and whether he considers there may be highways under Section 31, Highways Act 1980.

It is a developer's responsibility to consider fully whether there is a need to pursue a stopping-up application for highways/footpaths affected by development. Failure to address this issue at the time of the submission of a planning application may cause considerable delays at a later date.

Where the developer has indicated the presence of possible highways, where Section 31 of the Highways Act 1980, might apply, the Local Planning Authority may include a resolution to authorise the stopping up/diversion of highway under Section 247 or 257 of the Town and Country Planning Act 1990.

The inclusion of this resolution is to prevent a further loss of time at a later stage should the developer decide he needs to proceed with the stopping-up/diversion of the affected highway.

Local Planning Authorities must publicise any planning application which affects highway, right of way to which Part iii of the Wildlife and Countryside Act 1981 applies (i.e a way which is, or ought to be, shown on a definitive map).²

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

²Article 8 of the Town and Country planning (general development procedure) Order 1995.

2. Legislation

2.1 Definitions

Highway:

Highway is defined in common law as a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right and not on sufferance or by licence. Highways may be classified as follows:

- “all -purpose highway” means one which may be used by all classes of traffic, including all motor vehicles, vehicles drawn by animals, pedal cycles and animals being ridden, led or driven;
- “carriageway” means a way forming all, or part of, a highway (other than a cycle track) over which the public have a right of way for the passage of vehicles;
- “footpath” means a highway over which the public have a right of way on foot only, not being a footway;
- “footway” means a way over which the public have a right of way on foot only (commonly called the pavement).
- “bridleway” means a highway over which the public have rights of way on foot, bicycle and on horseback, or when leading horses, with or without a right to drive any sort of animal along the highway. There is no other right of way on a bridleway.
- “Cycletrack” means a way constituting or comprised in a highway, over which the public have a right of way on pedal cycles, with or without a right of way on foot. There is no other right of way on a cycle track.

2.2 Section 247 Town and Country Planning Act 1990

This section states that the Secretary of State may, by order, authorise the stopping-up or diversion of any highway if he is satisfied that it is necessary to do so to enable development³ to be carried out in accordance with planning permission granted under Part III of the above Act, or to be carried out by a government department.

This section is used for the stopping-up of all purpose highways, ie those used by vehicles. However footpaths can also be stopped up and diverted pursuant to the above Act.

When a planning application involving a stopping up order is recommended for approval it will incorporate the following:-

“That no objection be raised to the stopping-up of (name of highway, if any) and that the Department for Transport (DFT) be requested to make an Order in accordance with the provisions of Section 247 of the Town and Country Planning Act 1990”.

The planning application should also contain a plan identifying the area(s) of highway to be stopped up, diverted, provided or improved and annotated in accordance with Form TCPA 247.

The officers report should also address briefly the effect of the road closure/diversion and give details of any objections to the closure/diversion raised during consultations.

2.3 Section 257 Town and Country Planning Act 1990

In the case of footpaths and bridleways this section empowers a Local Planning Authority to make a stopping-up or diversion order (at a cost to the developer) if it is satisfied that it is necessary to do so for the purpose described in Section 247.

When a planning application involving a footpath closure/diversion is recommended for approval it will incorporate the following:-

“That the Director of Legal Services be authorised to make an Order in accordance with the provisions of Section 257 of the Town and Country Planning Act 1990”.

The officers report should also address briefly the effect of the footpath closure/diversion and give details of any objections to the closure/diversion raised during consultations.

The planning application should also contain a plan identifying the footpath(s) to be stopped up or diverted. In the case of a diversion the diverted route should also be shown.

Note:

The views of the Highway Authority must be sought, at an early stage and before an application is made.

³“subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development”, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or making of any material change in use of any buildings or other land”.

3. Procedure - Section 247 Orders

Form TCPA 247 (stopping-up and diversion of highways) will normally be completed and forwarded to the Department for Transport (DfT) by the Planning Department for City Council applications. In the case of private development the developers would usually be expected to make the application. Where a highway is to be stopped up/diverted, the application should specify the alternative routes available or to be provided.

When considering the application the Secretary of State must be able to understand the effect of the development on the highway. The Secretary of State can also include within an Order directions for the provision or improvement of any other highway. The developer will normally be required to pay the cost of such work. He must also know that the Highway Authority have been fully consulted on the proposed stopping-up or diversion.

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 a stopping up application. As once a draft Order has been published, any changes to the area(s) to be stopped up may require 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 Order. Applicants will need to provide this office with a copy of the planning decision notice before the Order can be made.

The following items should be submitted with the application:-

- Copy of planning permission decision notice.
- or
- Copy of the planning application and any highway authority correspondence.
- One set of the site layout plan(s) as approved by the above planning permission.
- or
- ONE set of the site layout plan(s) proposal as submitted with the planning application.
 - One plan indicating the site boundary edged red and the existing highway boundary within the approved site edged blue.
 - Two copies of an existing highway layout plan showing the highway to be stopped up or diverted, including any new highways to be maintained at the public expense or any improvements.
 - One unmarked copy of the stopping up plan.
 - One copy of any Compulsory Purchase Order (if applicable).

3.1 Consultation - Process

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 (see diagram page 4). The publication of the draft Order notice in at least one local newspaper and in the London Gazette triggers the 28 day consultation period in which

interested parties can lodge objections regarding the loss of the highway/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).

It is the responsibility of the applicant/developer or developing department to ensure that the notices are posted/maintained during both objection periods. The notices should be displayed/maintained in a prominent position at each end of the area of highway/footpath to be "stopped-up".

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

3.2 Objections

Objections to the proposed Order will be copied to the applicant/developer or developing department. It is their responsibility to negotiate with the objector(s) with a view to resolving the issues raised. If objections cannot be resolved then under section 252(4) of the Town and Country Planning Act 1990, the Secretary of State has the authority to cause a local inquiry. However, under section 252(5) of the 1990 Act, if he is satisfied that there are special circumstances which make the holding of an inquiry unnecessary (and that the outstanding objections are not Utility Companies), then he has the discretion to dispense with that inquiry and can issue a decision based on the information that he has on file.

3.3 Making an Order

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

- The planning permission decision notice has been received and
- All objections have been withdrawn formally, or
- If written representations have been considered, or
- 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.

3.4 Timescales

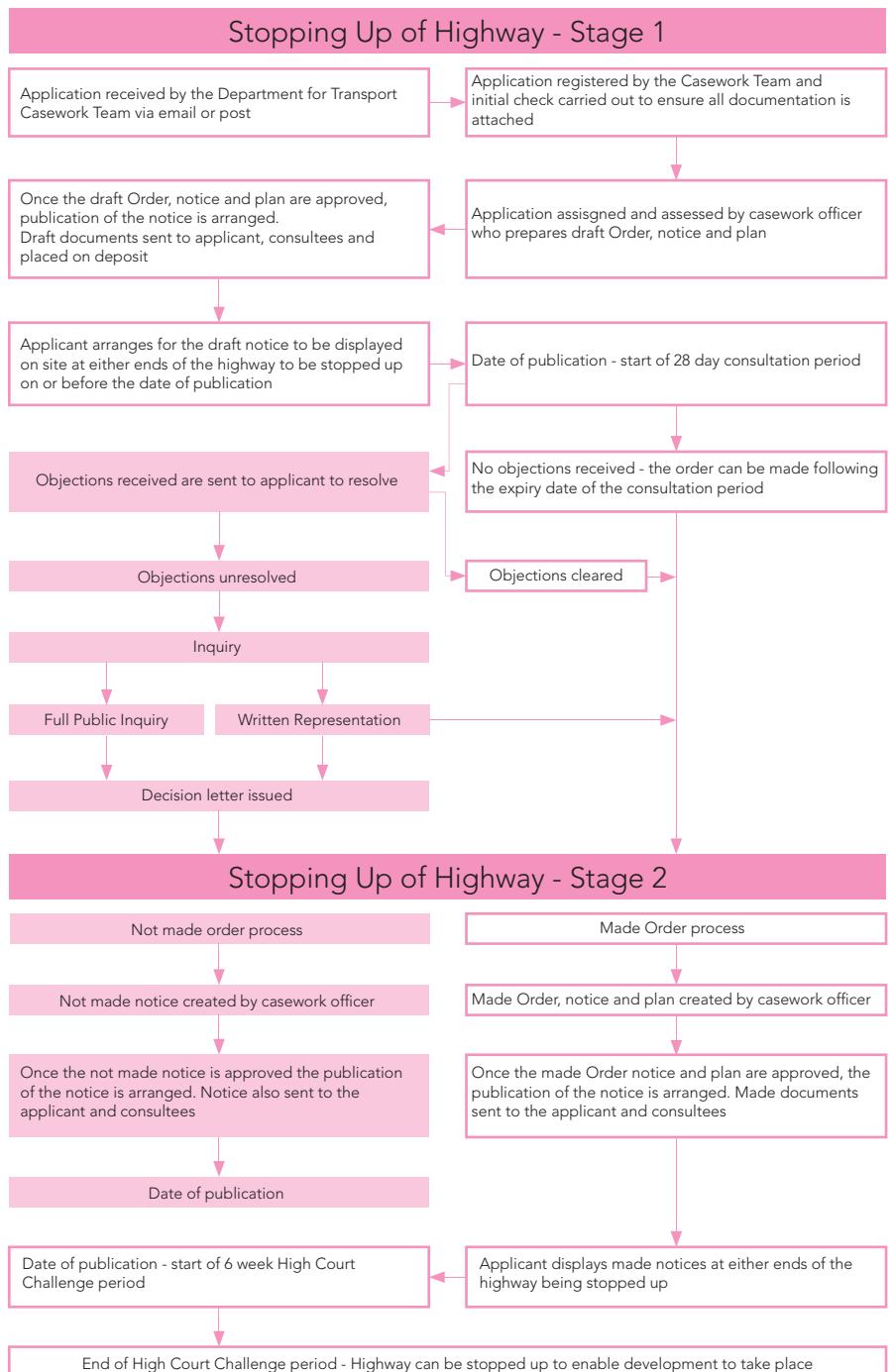
The Department aims to process Orders where there are no objections within 13 weeks from receipt of all necessary information. However it should be noted that certain factors will impact on this timescale:

- 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.

3.5 Costs

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



4. Procedure - Section 257 Orders

The procedure is the same as a Section 247 order (as described in steps 3.1 to 3.3, however, the Local Authority will carry out the process (costs of which will be charged to the applicant/developer) including consultation with the utility companies.

In the case of Diversion Orders, the Order will not come into effect (ie the existing path may not be removed or obstructed) until:-

1. The design/specification of the proposed path has been checked and approved by BCC Transportation Private Developments Team.
2. The diverted route is in place and notification has been received by the Legal Services Department that the route has been inspected and meets the requirements of the Transportation Private Developments Team.

Once the above have been complied with, the Local Authority will take steps to bring the Diversion Order into effect.

4.1 Costs

The Local Planning Authority may recover costs from a developer requesting the Authority to make an Order, as outlined in "The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996".

These Regulations state that:

"Authorities may charge for the administrative costs incurred in the making of an Order. The amount which may be charged must not exceed the costs actually incurred and, in the case of opposed Orders, a charge may be made only for the administrative costs incurred up to the point where the Order is submitted to the Secretary of State for determination and, where such Orders are subsequently confirmed, in advertising that confirmation."

Birmingham City Council will normally expect you (the developer) to pay for the full cost of an Order, which on average amounts to approximately £10,000. However if you are applying for more than one path the costs will be greater.

The costs are split into two payments, the first payment is payable once the order is Made and advertised, the second is payable upon Confirmation of the Order. Developers will be invoiced direct by Birmingham City Council's Finance & Legal Department.

These costs include the administration of the order as well as two newspaper adverts which are required by the legislation.

In the case of diversion orders there will be additional costs as discussed in points 1 and 2. These are currently set by Birmingham City Council's Transportation and Connectivity Private Developments Team. Developers will be invoiced direct by Transportation and Connectivity.

Written confirmation from the developer (including Council Departments) that such costs will be met, is required prior to an Order being made.

4.2 Timescales

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:

- 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.

4.3 Scope

Orders pursuant to Section 257 can only be made in advance of development being carried out. These Orders cannot be sought retrospectively.

5. Contacts and further advice

Birmingham City Council

Mahroof Malik
Lead Rights of Way Officer
Transportation and Connectivity
Highways Information
Inclusive Growth Directorate
Birmingham City Council
1 Lancaster Circus
Lancaster Circus Queensway
Birmingham
B2 2JE
Telephone:
0121 464 6846
Email:
mahroof.malik@birmingham.gov.uk

Sharon Nembhard
Private Developments Officer
Infrastructure Delivery,
Transportation and Connectivity
Inclusive Growth Directorate
Birmingham City Council
1 Lancaster Circus
Lancaster Circus Queensway
Birmingham
B4 7DQ
Telephone:
0121 675 8734
Email:
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0121 303 7954
Email:
john.richardson@birmingham.gov.uk

Tarndip Singh Sidhu
Senior Solicitor
Legal and Finance Department
Finance and Governance
Birmingham City Council
10 Woodcock Street
Birmingham
B7 4BL
Telephone:
0121 303 3188
Email:
tarndip.sidhu@birmingham.gov.uk

Department for Transport

Neil Crass
National Transport Casework Team
Department for Transport
Tyneside House,
Skinnerburn Road,
Newcastle Business Park,
Newcastle upon Tyne,
NE4 7AR
Telephone:
020 7944 4162
020 7944 4115 (general number)
Email:
nationalcasework@dft.gsi.gov.uk

6. Consultation

The following statutory undertakers (utility companies) and services are consulted in all cases by either Birmingham City Council or the Department for Transport.

Gas - National Grid UK

email requests only
plantprotection@uk.ngrid.com

Electric - National Grid UK

email requests only
plantprotection@uk.ngrid.com

Electric - Western Power Distribution, Wayleaves

Pegasus Business Park, Herald Way,
East Midlands Airport,
Castle Donnington
Tel: 02476 195721
email:
wpdwayleavesmidlands@westernpower.co.uk

Water - Severn Trent Water (Sewerage) Asset Protection

Regis Road
Tettanhall
Wolverhampton WV6 8RU
Tel: 01902 793871
email:
new.connections@severntrent.co.uk

Water - Severn Trent Water (Clear Water) Asset Protection

Miscellaneous Income,
PO Box 5311,
Coventry,
CV3 9FL
email:
new.connections@severntrent.co.uk

Communications - British Telecommunications Plc Openreach

Repayments Alterations
PP2.35E Midland ATE
60 Station Street
Birmingham
B5 4AL
Tel: 0121 230 4243
email:
networkalts.birmingham@openreach.co.uk

Communications - Virgin Media

National Plant Enquiries
Scimitar park
Courtauld Road
Basildon Essex
SS13 1ND
email:
plant.enquiries.team@virginmedia.co.uk

Communications - Easynet Telecom (BSkyB)

NRSWA Department
Network Infrastructure & Planning
BSKYB Telecommunications Services Ltd
70 Buckingham Avenue
Slough
SL1 4PN
Tel: +44 (0) 207 032 3234/250
email:
nrswa@bskyb.com

Communications - Cable & Wireless (Vodafone Ltd)

email requests only
osm.enquiries@atkinsglobal.com

Police - West Midlands Police

Lloyd House
Colmore Circus
Queensway
Birmingham
B4 6NQ

Fire - West Midlands Fire Service

Chief Fire Officer
Fire Service HQ
99 Vauxhall Road
Birmingham
B7 4HW

Ambulance - West Midlands

Ambulance Service
Regional Ambulance Headquarters
Millennium Point
Waterfront Business Park,
Waterfront Way
Brieley Hill
West Midlands
DY5 1LX

Birmingham City Council Roads and Footpaths

Mahroof Malik
Lead Rights of Way Officer
Transportation and Connectivity
Highways Information
Inclusive Growth Directorate
Birmingham City Council
1 Lancaster Circus
Lancaster Circus Queensway
Birmingham
B2 2JE
Telephone:
0121 464 6846
Email:
mahroof.malik@birmingham.gov.uk

Street Lights, Highway Drainage and Street Furniture

Kamyar Tavassoli
Infrastructure Manager
Street Services Division
Highways
Inclusive growth Directorate
Birmingham City Council
1 Lancaster Circus
Lancaster Circus Queensway
B4 7DQ
Tel: 0121 303 7346

Private Developments

Sharon Nembhard
Private Developments Officer
Infrastructure Delivery,
Transportation and Connectivity
Inclusive Growth Directorate
Birmingham City Council
1 Lancaster Circus
Lancaster Circus Queensway
Birmingham
B4 7DQ
Telephone:
0121 675 8734
Email:
sharon.nembhard@birmingham.gov.uk

The Ramblers

Mr M Bird
Footpaths Secretary
Warwickshire Area
Ramblers' Association
16 Melford Hall Road
Solihull
West Midlands
B91 2ES
email:
michael.b43@o2.co.uk

Depending upon the location of the development, the following may not always be consulted:

Water Supplies (Sutton Coldfield Area)

South Staffordshire Water Works Company
Green Lane
Walsall
West Midlands
WS2 7PD

River and Water Courses

Environment Agency
550 Streetsbrook Road
Birmingham
B91 1QT

7. Revisions

August 1995

(4) Procedure. Wording of recommendations as advised by BCC Legal Services.

July 1996

(8) Contacts and Consultation List.

November 1996: Revised Regulations for recovery of costs.

May 1998

(4) Procedure - Section 257.

November 1998

Contacts and Consultation List.

November 2000

Costs and general revisions (4).

June 2003

Revised contacts.

October 2004

Consultation List.

January 2005

GOWM change of address & contact numbers.

July 2006

GOWM changed name to Department for Communities and Local Government (DCLG).

April 2008

Department for Communities and Local Government (DCLG) - reviewed casework, three new centralised Teams - Revised contacts.

Dec 2008

Statutory Undertakers List.

June 2009

Statutory Undertakers List.

September 2009

Statutory Undertakers List.

May 2010

Contacts.

March 2011

Department for Transport revised contact and address.

November 2011

Revised wording of notes. Updated contact/utilities/services names and addresses.

January 2012

Revised wording in accordance with BCC Street Services Division comments.

March 2013

DFT change of address and statutory undertakers address changes.

June 2013

Procedural changes brought about by the Growth and Infrastructure Act 2013.

February 2017

Revised contacts and URLs. Costs in relation to S257 Orders.

May 2017

Revised contacts and wording in accordance with Infrastructure Delivery, Transportation and Connectivity comments.

August 2019

Costs updated.

January 2020

Contacts/addresses updated

