

HIGHWAY LAND

ACQUIRING, STOPPING UP, DIVERTING OR DOWNGRADING IN LEICESTERSHIRE

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DOCUMENT PURPOSE

This document provides an overview of the procedures for acquiring, stopping up, diverting and downgrading public highways managed by Leicestershire County Council, with the exception of footpaths, bridleways and byways recorded on the Definitive Map¹.

DISCLAIMER

The contents of this document are purely advisory and provided without warranty. It should not be relied upon as an alternative to advice from your own legal professionals, where appropriate. Furthermore, there is no guarantee that you will successfully be able to acquire highway land by using the advice in this document.

¹ LCC Public Rights of Way

<https://www.leicestershire.gov.uk/leisure-and-community/parks-and-outdoor-activities/where-to-walk-in-leicestershire>

INTRODUCTION

Before beginning any legal process, it is essential to complete a fact-finding exercise to help you decide whether to progress, as doing so can be a costly exercise. Acquiring, stopping up, downgrading or diverting highway land can be complex and we would strongly recommend that you involve a legal practitioner experienced in matters relating to property and highway law.

KEY CONCEPTS

WHAT IS A HIGHWAY?

A highway is an area of land which the public at large have absolute the right to use to “pass and repass without let or hindrance”. This right exists over all types of highway, regardless of its use or appearance.

WHAT TYPES OF HIGHWAY ARE THERE?

At the broadest level, there are only two:

- Highways maintainable at public expense (adopted) – includes public rights of way on the Definitive Map².
- Highways maintainable at private expense (unadopted) – also known as “private streets”.

Anything falling outside of these categories would be regarded as private.

CAN I “ACQUIRE” HIGHWAY?

Yes but not without completing one essential process first. You will still need to acquire the land from the landowner, but before doing that you need to legally convert it from public to private. This is achieved by removing the highway rights from over the land through a legal process known as “extinguishing” or “stopping up” highway rights.

WHO OWNS HIGHWAY?

The **surface** of a highway is vested in the Highway Authority for as long as the land is a highway maintainable at public expense³. Information relating to this is **not** held by HM Land Registry. Ownership of **subsoil** under the highway is retained by the legal owner of the land, who gets full control of the land back if highway rights are stopped up.

WHO MAINTAINS HIGHWAY?

The majority of public highways are maintained by the Highway Authority, which in Leicestershire is the County Council. There are exceptions to this:

- **Trunk roads (including motorways)**: maintainable by Highways England (<https://www.highwaysengland.co.uk>).
- **Unadopted highways (“private streets”)**: some streets have unrecorded rights created through use. These are generally maintainable by the landowner and not the Highway Authority.
- **Local arrangements**: in rare cases, highways maintainable at public expense can be maintained by another authority by agreement. This is most common at administrative boundaries, where maintaining along the legal county boundary line is not practical.

² LCC Public Rights of Way

<https://www.leicestershire.gov.uk/leisure-and-community/parks-and-outdoor-activities/where-to-walk-in-leicestershire>

³ Highways Act 1980, Section 263: <https://www.legislation.gov.uk/ukpga/1980/66/section/263>

WHAT DO I NEED TO DO?

DECIDE WHAT YOU WANT TO DO WITH THE LAND.

Deciding what you want the land for dictates what the most appropriate process is:

- a) **Acquire:** Removing all highway rights and taking full control and ownership of the land for private use.
- b) **Divert:** Moving the highway from its existing line on to an alternative line.
- c) **Downgrade:** Removing highway rights with reservations (e.g. on foot).
- d) **Divert & Downgrade:** A combination of b and c.
- e) **Cultivate:** Plant and maintain trees, shrubs, plants etc. If this is your intention, please ignore the rest of this document and email highwayscustomerservices@leics.gov.uk requesting a “licence to cultivate”.

FIND OUT IF THE LAND IS PUBLIC HIGHWAY.

If the land isn't public highway, then there is no requirement to remove the highway rights. Therefore it is essential to find out what the extent of the public highway is in relation to your area of enquiry.

Only the County Council can provide you with the Highway Authority's formally verified opinion of the public highway extent. An investigation into the highway extent is always completed at the point of enquiry, utilising all of the information at the Council's disposal. The results are supplied on a plan based on Ordnance Survey's most detailed product, MasterMap Topography.

Please visit <https://www.leicestershire.gov.uk/hre> or email hre@leics.gov.uk for further information on obtaining a plan.

FIND OUT IF ANYONE HAS REGISTERED TITLE TO THE LAND.

This is important in determining how you can acquire legal title to the land after stopping up the highway rights. You can find out if anyone has registered their ownership of the land by contacting HM Land Registry, the organisation responsible for registering ownership of land and property in England and Wales⁴. Remember that **HM Land Registry does not hold information on the extent of the highway.**

If the land is “unregistered”, this does not necessarily mean that no one owns the land, nor does it mean that you will not be able to acquire it. If no landowner can be found after exhaustive investigation, there is a legal procedure available to the County Council that can be used to vest ownership of a former highway in either the Council or a third-party, under Section 11 of the Leicestershire Act 1985 (fees apply).

FIND OUT IF PLANNING PERMISSION IS REQUIRED.

Planning permission will usually be required if you intend to change the use of the highway from public to private. However, you should consult with the relevant local planning authority⁵ (district or borough council) to make sure:

- **Blaby District Council:** <https://www.blaby.gov.uk/planning>
- **Charnwood Borough Council:** <https://www.charnwood.gov.uk/planning>
- **Harborough District Council:** <https://www.harborough.gov.uk/planning>
- **Hinckley & Bosworth Borough Council:** <https://www.hinckley-bosworth.gov.uk/planning>
- **Melton Borough Council:** <https://www.melton.gov.uk/planning>
- **North West Leicestershire District Council:** <https://www.nwleics.gov.uk/planning>
- **Oadby & Wigston Borough Council:** <https://www.oadby-wigston.gov.uk/planning>

⁴ HM Land Registry: <https://www.gov.uk/government/organisations/land-registry>

⁵ Not sure which district/borough council? Search by postcode: <https://www.leicestershire.gov.uk/find-your-district-council>

DECIDE WHAT THE BEST LEGAL PROCESS IS FOR YOUR PROPOSAL

The two most commonly used legislative powers which enable the removal (stopping up) of highway rights are shown below. In either case, it is not permissible to make any alterations to the highway until a stopping up order has been made.

TOWN & COUNTRY PLANNING ACT 1990 – SECTION 247

- **Recommended when you want to take full control of the land, removing any public access.**
- Processed and decided by the National Transport Casework Team (part of the Department for Transport) on behalf of the Secretary of State for Transport. Leicestershire County Council is a statutory consultee as the Highway Authority.
- A planning *application* is required to submit a Section 247 application. Planning *permission* is required for an order to be made. Section 247 applications cannot be made with retrospective planning applications.
- Target 13-week turnaround time where there are no objections.
- The only fees involved are those associated with applying for planning permission.
- Stopped up highway rights only effective following actual physical change in accordance with planning permission.

Please visit the Department for Transport's website⁶ or contact the National Transport Casework Team⁷ for further information.

HIGHWAYS ACT 1980 – SECTION 116/117

- **Recommended when you want to stop up highway rights retrospectively, or “downgrade” the level of rights.**
- Once accepted, it is administered by Leicestershire County Council on applicant's behalf.
- Decision and order made by local magistrates' court.
- Planning application/permission is not required in advance of order, but may still be a pre-works requirement.
- Significantly variable turnaround times, invariably longer than Section 247 process.
- All costs recoverable from applicant.
- Stopped up highway rights cease to exist immediately on making of order.

IMPORTANT NOTE: Leicestershire County Council is currently not able to accept applications under Section 116/117, due to an ongoing review of procedures. It is anticipated that this review will be completed in Spring 2021.

If you are unsure which process is most applicable to your proposal, feel free to contact us at hre@leics.gov.uk and we shall be happy to point you in the right direction.

⁶ Stopping up and diversion of highways: <https://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways>

⁷ National Transport Casework Team: nationalcasework@dft.gov.uk

FIND OUT WHETHER YOUR PROPOSAL IS FEASIBLE

WHAT TO LOOK OUT FOR

Objections to your proposal can be raised by almost anybody as you go through the various processes involved, including the Highway Authority, the local planning authority, utility companies, parish/town councils or members of the public. Therefore you should try to **avoid proposals which may result in common reasons for objection**, such as:

- A change in the layout of the highway resulting in the new layout not meeting highway design standards.
- Enclosure of assets or features with amenity value (open areas, grass verges, trees etc.).
- Prohibitive costs involved in the relocation of utility or council assets (street lighting, utility apparatus etc.).
- Irregular highway boundary in comparison with neighbouring properties.
- Reduction in available land for potential future highway improvements.
- Cutting off a highway from the rest of the network as a consequence of the proposal.

INFORMAL ENQUIRIES

Local Planning Authority / Highway Authority

The relevant district/borough council's planning department may be able to provide you with pre-application advice. See Page 3 for contact details. As Leicestershire County Council will be consulted on both the planning application and stopping up application, pre-application advice can also be sought from our Highways Development Management team (hdc@leics.gov.uk).

National Transport Casework Team

The National Transport Casework Team administers the Section 247 process, recommended in almost all cases where planning permission is required. They can advise on the procedures involved in administering Section 247 applications.

- **Address:** Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR
- **Email:** nationalcasework@dft.gov.uk **Phone:** 020 7944 4115

Parish/Town Council or Parish Meeting

Parish/town councils have a right of veto on any formal application affecting unclassified⁸ highway. It is therefore strongly recommended to contact them⁹ with details of your proposal in advance of any formal application to gain support. Note that the following towns are unparished: Coalville, Loughborough, Melton Mowbray, Hinckley, Oadby, Wigston, Market Harborough.

Neighbouring Landowners

If your proposal adjoins or includes another property, they must be party to (or at least do not object to) your proposal.

FORMAL APPLICATIONS

Planning Application

Guidance and forms are available on the Planning Portal website: <https://www.planningportal.co.uk>.

Town & Country Planning Act – Section 247

Please visit the Department for Transport's web page¹⁰ for guidance on stopping up and diversion of highways under S.247.

Highways Act 1980 – Section 116

LCC is currently not able to accept applications under Section 116/117, due to an ongoing review of procedures. It is anticipated that this review will be completed in Spring 2021.

⁸ Please contact hre@leics.gov.uk to find out if the highway you are interested in is unclassified.

⁹ Local council contacts: <https://www.leicestershireandrutlandalc.gov.uk/local-council-contacts.html>

¹⁰ Stopping up and diversion of highways: <https://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways>

DECISION PROCESS & HIGHWAY NEED ASSESSMENTS

If you wish to acquire land for which the County Council has an interest either as landowner or as Highway Authority, it is necessary for the Council to decide whether they consider the land to be necessary for highway purposes. This is completed through a “Highway Need Assessment”, a process involving extensive consultation and resulting in a decision made at the appropriate level.

A “Highway Need Assessment” involves two key stages:

1. **Consultation** – a consultation of all relevant service areas within the Council, the County Councillor, and any other external parties (Section 116 Highways Act 1980 only) that the Council has a statutory obligation to consult or notify.
2. **Decision (Highway Need)** – following the results of the consultation, any objections or comments are reviewed and a formal decision on the need for the highway is made by the appropriate officer of the Council. This is **NOT** the final decision on whether to make an order or declare Council-owned land surplus, which will be made by the appropriate authority at a later stage (see “Subsequent Processes” column in table below), taking this decision into account.

The below table details what triggers an assessment, the decision-making process and subsequent processes that usually follow.

Trigger	Decision Type & Maker	Subsequent Processes	Cost
Formal notice from the National Transport Casework Team (on behalf of the Department for Transport) of an application to stop up highway under Section 247 of the Town & Country Planning Act 1990	Objection or No Objection <i>(to making of order)</i> Made By: Head of Service (Highways and Transport Commissioning)	National Transport Casework Team (Department for Transport) decision	£0
Formal application made directly to the Council to stop up the highway rights under Section 116/117 of the Highways Act 1980 , or to exchange highway with private land for the purpose of straightening boundaries under Section 256 of the Highways Act 1980	Progress or Do Not Progress <i>(with formal magistrates’ court application)</i> Made By: Director (Environment and Transport Department)	Formal notice followed by magistrates’ court hearing, order made / not made in court or adjourned to later hearing.	Under review
Internal request from LCC Estates to consider a section of Council-owned land surplus to requirements and make a surplus declaration , only where it is not required to stop up highway rights.	Accept or Refuse <i>(surplus declaration)</i> Made By: Head of Service (Highways and Transport Commissioning)	Corporate Property Steering Group decision. Conveyance of land.	£100
Direct requests to Leicestershire County Council to formally assess the highway need can be made before any of the above formal procedures commence.	Would Object or Would Not Object <i>(to any request to assess the highway need within 12 months).</i> Made By: Head of Service (Highways and Transport Commissioning)	N/A	£100

Notes:

1. The results of Highway Need Assessments are only valid for **12 months**. Any processes which trigger another Highway Need Assessment after 12 months will be treated as new, and may have a different outcome to the original assessment.
2. The Highway Authority reserves the right to change its decision prior to completion of any formal process. Any change in decision within 12 months will include written justification.

3. Consultation responses made by the Highway Authority in response to a planning application are separate to the Highway Need Assessment, will not include any opinion as to whether the highway is necessary and may have a different decision.

CONTACT INFORMATION

- **Email:** hre@leics.gov.uk
- **Telephone:** 0116 305 7189 (Highway Record Enquiries)
- **Post:** Sorry, we are currently unable to accept any correspondence by post whilst staff are working from home

Coronavirus (COVID-19):

In line with Government guidance for COVID-19, all site visits and face-to-face meetings are cancelled where they are unable to be conducted electronically (Skype, etc.). There is also a likelihood of a delay in providing a response to your query or concern at this time due to the impact of the COVID-19 restrictions. More details on the Council's policy on social distancing and how it will affect services can be found at:

<https://www.leicestershire.gov.uk/coronavirus-covid-19>