

## Highway Stopping Up Procedure

Initially the party requesting the stopping up (or their legal representatives) have to contact the relevant ERYC department with an undertaking for £2,000 before the procedure can progress. Once this is received then the following events occur.

1. ERYC consult with the Parish Council who have 2 months to respond, if objections are raised they have to be resolved before stage 2 can be started. The consent of the Parish Council must be obtained before the application can proceed. At this stage this is merely an indication of the views of the Parish Council which will assist in reaching a decision whether or not to proceed with the application to the Magistrates Court. A more formal letter is required to be sent to the Parish Council once the legal procedure has begun and the proposals have been advertised in the Local Press and the London Gazette. The Parish Council have 2 months from the date of the notice in which to consent or object to the application. If they object then the application cannot proceed.
2. ERYC consult with the utility companies, affected/adjacent residents and area highways engineer, they have 28 days to respond and if objections are received they have to be resolved before step 3 can be started.
3. Order has to go before a Director at ERYC for delegated matters approval, this normally only takes couple of days unless matter is contentious, in which case may have to go to Planning Committee.
4. Once steps 1 to 3 have been completed an advert must be placed for 28 days in the London Gazette, a local paper and by means of a poster on the site in question.
5. After step 4 is complete a Magistrates Court make the order, If there are no objections the order is made and the highway ceases to be a highway from that moment. The application will be made at the Magistrates Court and there is no guarantee that it will be successful i.e. if any objections are received then these should try to be resolved before the application is determined, otherwise, the application will be decided by the Magistrates taking into account the objections.

The cost of the procedure is approximately £2,000 pounds if there are no objections raised and everything proceeds smoothly. However it will be greater if objections are raised.

The timescale of step 1 can be reduced by means of a rapid response from the parish council, however stage 2 is likely to be fixed due to the involvement of utility companies and step 4 is fixed legally. The timescale of Step 5 is indeterminate. If all goes well, and with favourable responses from steps 1-3 the shortest reasonable time from application to completion is in the order of 3 months, however if there are objections the process can extend to in excess of 6 months.

It is possible to start the stopping up procedure at any time and cancel it prior to the order being confirmed by the magistrate, however, costs incurred up to that point would need to be paid.

As part of the legal procedure pursuant to Section 116 of the Highways Act 1980 the Council is required to write to the owners and adjoining owners of the land to be stopped up. The Council can only write to the owners/adjoining owners that it has knowledge of by making reasonable enquiries/searches etc. Details maybe forthcoming when the application proceeds and notices are placed on site and advertised in a local newspaper and the London Gazette. There is no guarantee of this information being obtained. If it is not obtained then it is for the Council to submit to the Court when making the application that all reasonable checks have been made to find this information. If the owner of the land to be stopped up is unknown then the owners of the land adjoining the highway to be stopped up are presumed in law to own the subsoil of the highway up to the middle part of the road 'usque ad medium filum viae'. This is a rebuttable presumption of law, which may be displaced by actual evidence of ownership of the soil of the land to be stopped up.