

**By:** David Beaver, Head of Network Management  
**To:** Nick Chard, Cabinet Member for Environment, Highways and Waste  
**Subject:** Stopping Up The Highway – Stopping Up Order (Section 116 of the Highways Act 1980)  
**Classification:** Unrestricted

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**Summary:** This report proposes the introduction of a new policy on the management of stopping up orders under Section 116(1)(a) of the Highways Act 1980

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## 1. Introduction

1.1 The proposed policy sets out how Kent Highway Services will comply with the requirements of the Highways Act in relation to applications where the highway is unnecessary, in a manner which is functional, effective, transparent and does not expose the Council to financial risk. The policy covers financial matters and the processes involved in managing an application, including declaring the highway unnecessary and land ownership matters.

## 2. Views of the Highways Advisory Board

2.1 At its meeting on 5 May 2009 the Highways Advisory Board supported the proposal for recommendation to the Cabinet Member for Environment, Highways and Waste as set out in paragraph 3.1 below.

## 3. Recommendation

3.1 The CABINET MEMBER is requested to AGREE –


That Kent Highway Services introduce a new policy on how the Council carry out the management of stopping up the highway (Stopping Up Order) under Section 116(1)(a) of the Highways Act 1980.

### Background Documents:

Policy for Stopping Up Order (under Section 116(1)(a) of the Highways Act 1980)

Section 116 of the Highways Act 1980.

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APPENDIX A

## STOPPING UP THE HIGHWAY

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### POLICY FOR STOPPING UP ORDERS (UNDER SECTION 116(1)(a) OF THE HIGHWAYS ACT)

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## **1. INTRODUCTION**

- 1.1 A publically maintained highway is created by a process known as adoption. In the past highways were created by usage. Once a highway is created, it is protected by law and exists in perpetuity. At times, an existing highway needs to be removed so that the underlying land can be used for other purposes such as development or where the highway is no longer required when a more effective alternative has been created. This policy considers only those cases where the highway is considered unnecessary. The process for removing highway rights from a piece of land is known as "Stopping Up the Highway".
- 1.2 Section 116 of the Highways Act 1980 sets out the process by which this can be achieved. It requires an application to the local magistrates' court where the Council must show that the highway is unnecessary. In addition it requires that district and parish councils, who have an effective right to veto an application, are notified, as are adjoining land owners and occupiers, and also statutory undertakers. If the highway is a classified road, the Secretary of State must also be notified. Notices must be placed in the press and on site. It should be noted that the process laid down in the Act only allows for objections to be made when the application is heard at the magistrates' court..

## **2. FINANCIAL MATTERS**

- 2.1 Throughout the life of a stopping up order application there will be several KHS staff involved in the delivery and management of the process from start to end. In addition there will be external costs associated with the notification and advertising of the proposed stopping up order. The staff time and external costs can financially burden the Council to the value of £3000 or more. Under Section 117 of the Highways Act 1980 any Council involved with processing stopping up orders are entitled to recover its reasonable costs.
- 2.2 Therefore the Council will exercise these powers under Section 117 to ensure that the processing of a stopping up order will be cost neutral to Kent Highway Services by recharging all their reasonable costs to the applicant whether this is an internal (ie. KCC) or external customer.
- 2.3 External customers shall make payments in advance to prevent the Council being exposed to any financial risk. Should an external customer be unwilling to make such payments, their request would not be progressed. As described in paragraph 3.1 the likely cost of an application is currently in the region of £3,000. However, the total cost could be higher or lower depending upon the complexity or ease at which the stopping up order is obtained.
- 2.4 Upon receipt of an application the Council will request an initial payment of £1,000 with the application and then a second payment of £2,000 once the highway has been declared unnecessary. These sums are subject to continual review and may be revised by the Network Performance Manager from time to time. Additional payments may be requested from the applicant at any time should it appear that there are insufficient funds for the application to proceed without exposing the Council to financial risk.
- 2.5 Throughout the processing of an application, the costs incurred by the Council shall be continually monitored.
- 2.6 Payments shall be made within 14 days of request. If a payment is not received within 14 days then work on the application will cease until such time as payment is

received. Any consequential or additional costs incurred by any delay caused by non-payment upon request are the sole responsibility of the applicant. If payment is not received within 56 days of request the application will be closed and any unspent funds refunded to the applicant as soon as practicable.

- 2.7 The applicant may, at any time, ask that the application be terminated and any funds unspent and uncommitted at that time will be refunded as soon as practicable.
- 2.8 Upon the successful completion of the application, any funds unspent and uncommitted will be refunded to the applicant as soon as practicable.
- 2.9 The applicant shall be charged for all officer time involved in processing the application, including mileage and travelling costs, and for all costs incurred. Travelling time and mileage shall, in all cases, be measured from Invicta House, Maidstone, Kent. Mileage shall be charged at the current casual user rate for mileage below the threshold. Kent Highway Services officer time shall be charged at the external charge out rate appropriate to the top of the grade for the post involved. Officer time in other services (e.g. KCC legal department) shall be charged at the rate determined by that service.

### **3. PROCESS, GENERAL**

- 3.1 When an application is received for a stopping up order, if the KCC Lead Officer believes that it is unlikely to be successful, the applicant shall be informed immediately, full payment shall be returned to the applicant and the file closed.
- 3.2 A stopping up order is granted under Section 116 of the Highways Act 1980 if it appears to a magistrates' court, after a view, if the court thinks fit, that a highway is unnecessary; and if the requirements of the Act as set out in Section 16 and Schedule 12 have been complied with in full.
- 3.3 The applicant shall be regularly informed of progress and where problems occur; the applicant shall be informed promptly of the problem and its likely consequences.
- 3.4 All notices and correspondence sent in pursuance of a requirement of the Act will be sent first class, recorded delivery. Other correspondence may also be sent first class, recorded delivery if this is considered appropriate.

### **4. PROCESS, IN DETAIL**

- 4.1 Once a request for a stopping up order is received an application form will be sent along with a request for the initial payment of £1000, or other such sum as may be determined from time to time.
- 4.2 Upon the initial payment being made, the following investigations will be undertaken:
- Obtain highway boundary plan from the KCC Highway Definition Team, and;
  - Obtain all necessary land ownership details from Land Registry, and;
  - Consult internally with Kent Highway Services to determine if the highway is unnecessary or necessary.
- 4.3 Subject to a satisfactory outcome above, the following will be notified of the intention to seek a stopping up order:
- District council
  - Parish council (if there is one)
  - Owners of adjoining land
  - Occupiers of adjoining land
  - All statutory undertakers likely to be affected.

- Local Member for the Division
  - The Secretary of State if the highway is a classified road.
- 4.4 KHS lead officer will write a report summarising the request and responses received will be prepared for consideration by the Network Performance Manager under existing delegated powers. If the request is considered contentious, or if the local Member opposes the application, the request will be referred to the next appropriate meeting of the Highways Advisory Board or Joint Transport Board.
- 4.5 Subject to the highway being declared unnecessary, but before proceeding with the application, the future ownership of the underlying land must be resolved. KHS will write to the applicant with a progress report and request clarification of future land ownership unless already resolved. The policy on land ownership is;
- If the underlying land is owned by Kent County Council, the applicant will be required to successfully negotiate for the purchase of that land if the stopping up order is granted prior to the application proceeding.
  - If the underlying land is owned by a third party, the applicant will be required to indemnify the Council against any and all claims and costs should the applicant fail to secure title to the land in future before the application shall proceed.
  - If the underlying land is owned by the applicant the application shall proceed.
- 4.6 KHS lead officer will write to the applicant and request a further payment of £2000, or other such sum as may be determined from time to time, before progressing further with the application.
- 4.7 KHS lead officer will make contact with the appropriate local magistrates' court and book a date for the application to be heard.
- 4.8 KHS lead officer will notify the following of the court date,
- District council
  - Parish council (if there is one)
  - Owners of adjoining land
  - Occupiers of adjoining land
  - All statutory undertakers likely to be affected.
  - Local Member for the Division
  - The Secretary of State if the highway is a classified road.
- 4.9 KHS lead officer will prepare and submit a progress report for the applicant and advise of the court date.
- 4.10 KHS lead officer will prepare and place newspaper advertisements in the London Gazette and two local newspapers.
- 4.11 KHS lead officer will prepare erect and maintain notices on site.
- 4.12 KHS lead officer will prepare documents for the application of the stopping up order to KCC Legal Department at least 14 days prior to court date and then submit a copy of the documents to the magistrates' court at least 7 days prior to the court date.
- 4.13 KCC Lead Officer and a KCC legal representative will attend the magistrates' court to present the application and give witness as required.
- 4.14 Subject to the success of the court hearing a legal stopping up order will be issued and the applicant will be advised in writing of the outcome of the application.