EXTINGUISHMENT OF HIGHWAY RIGHTS
GUIDANCE NOTES FOR APPLICANTS

Please note: The presumption is against the extinguishment of highway rights, unless there is a strong case in favour.

1. An extinguishment of highway rights may be requested under Section 116 of the Highways Act 1980, if a planning application is not involved. It is carried out by Hampshire County Council ("the Council") as detailed below.

2. The S116 extinguishment process is laid down in statute, with specified notice periods for consultation, and is reliant on court availability. As such the process is likely to take a minimum of six months, but can take significantly longer if difficulties are encountered. Although the Council will present the case, the final decision is made by the magistrates who will independently consider the evidence. As such the outcome cannot be guaranteed.

3. The Council has a duty to ensure that any application will not adversely affect the public rights to the enjoyment of the highway and will not compromise highway safety or any future highway requirements, namely

   1. Are there highway safety implications, such as the highway to be extinguished being required for sight lines, or for any users to step off the carriageway to avoid on coming traffic?
   2. Is the land required for any future highway improvement scheme?
   3. Could extinguishment and disposal of the land change the character of the street scene?
   4. Could extinguishment and disposal of the land result in a loss of amenity or environmental value?
   5. Could extinguishment and disposal of the land result in a gain to the applicant to the detriment of local residents: for example, to secure private parking on land currently used for ‘public’ parking?
   6. Is the land owned by the applicant or by a third party or the current (or predecessor*) highway authority? If so has owner agreed to the transfer of title?
   7. Would the proposed extinguishment remove the highway frontage for a third party?
   8. Would an extinguishment result in a more consistent or a less consistent highway boundary?
   9. Would other legislation be more appropriate, i.e. a Prohibition of Driving Order or a Gating Order?
  10. Would a cultivation licence be more appropriate?
  11. If the extinguishment is intended to formalise an existing encroachment, would there be a public interest in requiring the encroachment to be removed?
  12. Where areas of publicly maintainable highway are included in proposed development would the 'stopping up' of such areas under Section 247 of the TCPA be more appropriate?

*Please note section 6 (b) The Local Authorities (England) (Property etc.) Order 1973 vests any land acquired or held by a former highway authority in the current highway authority
The Council reserves the right to reject any application which conflicts with this duty.

4. The extinguishment process removes the public’s right to pass and repass over the land concerned, but it does not transfer title. Once the highway rights are extinguished, the land reverts to the freehold owner of the subsoil. In many cases this will not be the Council. For example, on residential estates the land is likely to belong to the original developer. Where the owner of the subsoil is known the applicant will need to negotiate the transfer of the land. It is the responsibility of the applicant to make all the necessary enquiries into land ownership and arrange for the subsequent transfer of title. Where the Council owns the subsoil the applicant will need to separately negotiate with the Council regarding the purchase of the land. It would be prudent to agree any costs involved with the transfer prior to the extinguishment procedures being commenced.

5. If the Council has not previously done so it will carry out a ‘status enquiry’, with a standard charge of £51.85, providing a plan to confirm that the land concerned is subject to highway rights. The applicant will be asked to annotate the plan to identify the extent of highway they would like to have extinguished.

6. The extinguishment process involves a considerable cost for officer time, court fees and advertising, which shall be borne by the applicant. Currently, the cost is £3,685 payable in two instalments: (Stage 1 - £1,100, followed by Stage 2 - £2,585, both of which are non-refundable. This includes a £226 court cost. However, if the initial hearing is contested and a second hearing is required, an additional court cost may by required.

7. The first payment of £1,100 (Stage 1) covers the cost of the initial consultations. These include:

   i) Parish Council
   ii) District Council
   iii) Statutory Undertakers (i.e. water, gas etc)
   iv) Local County Councillor
   v) Other Council Departments such as Rights of Way, Ecology, Estates, etc.

Any objections at this stage must be resolved before the process can continue. The Council cannot act as referee or arbiter between the applicant and the objector and the applicant must liaise directly with the objector. In the case of the statutory undertakers, such as gas, water and electricity, this may mean agreeing an easement/wayleave for any of their equipment within the land concerned for which the statutory undertaker may charge a fee. The Council will need the withdrawal of any objection in writing before the extinguishment can proceed. If this is not received within 180 days, it may be necessary to repeat the original consultation and the Council reserves the right to require a further £1,100 fee before proceeding.

8. When the initial consultations (Stage 1) are complete, the applicant shall be asked for the balance of the application fee - £2,583. This covers the cost of advertising the application in the newspapers, consultations with local residents, posting of notices, court fee and the Council’s legal costs.

Whilst every effort is made to resolve any objections prior to the court date it must be noted that objectors are entitled to attend court without giving any advance warning.
All fees are non-refundable.

9. The Council may still exercise its right to enter onto the land at any time for the purpose of cleansing or maintaining the highway drainage in accordance with their powers under Section 100 of the Highways Act 1980.

Highways Asset Information Team (HAIT)
Hampshire County Council
Economy, Transport & Environment Department
Capital House
48-52 Andover Road
Winchester
SO23 7BH

Please note
If a planning application is involved, an extinguishment of highway rights may be requested under Section 247 of the Town and Country Planning Act 1991, through the normal planning process. Applicants should consult with the local planning authority prior to this extinguishment procedure being commenced.

http://www.planningportal.gov.uk/permission/responsibilities/beforeyoustart/otherpermissions/stoppingup

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