



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 on average between 6 and 12 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. Therefore, during the internal consultation the following criteria are considered to determine whether the area of highway is unnecessary for highway purposes:
 - 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 (including tackling climate change such as tree planting and provision of drainage or other assets)?
 - 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 negative impact or loss of amenity to the wider community due to loss of green areas and environmental value?
 - 4a) Could extinguishment and disposal of the land negatively impact the future climate through a loss of opportunity for planting highway trees or rewilding verges?
 - 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.

In light of Hampshire County Council's declaration of a climate emergency, it is increasingly likely that extinguishment applications will be rejected on the basis of loss of environmental value and / or loss of opportunity for planting highway trees and rewilding verges.

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 County 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 County 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. The applicant will need to pay an initial application fee. This will cover confirmation that the land is subject to highway rights, the drawing up of an extinguishment plan and preliminary internal consultation with the local Highway Manager and other interested/relevant County Council departments. If the application is supported at this stage, the applicant will be required to confirm approval of an extinguishment plan before approval is sought from the Assistant Director (Highways, Engineering and Transport), which is the final stage of the internal consultation.
6. Please note, the County Council reserves the right to amend or reject the application at any stage of the internal consultation. Should an application be amended by the County Council, the applicant will be advised of the revision and must decide whether or not to resume the extinguishment application on the basis of the amendment.
7. 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 payable in two instalments both of which are non-refundable. The second instalment includes the court cost. However, if the initial hearing is contested and a second hearing is required, the applicant will be required to pay the further court fees.
8. The first payment (Stage 1) covers the cost of the external consultations. These include:
 - i) Parish Council
 - ii) District Council
 - iii) Statutory Undertakers (i.e. water, gas etc)
 - iv) Local County Councillor

Any objections at this stage must be resolved before the process can continue. The County 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 County 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 request an additional payment of the first instalment before proceeding.

9. When the external consultations (Stage 1) are complete, the applicant shall be asked for the second instalment. This covers the cost of advertising the application in the newspapers, serving Notice on adjoining local residents/landowners, posting of notices, court fee and the Council's legal costs (Stage 2).

Whilst every effort is made to address any comments resolve any objections prior to the court date it must be noted that any person is entitled to attend court without giving any advance warning.

All fees are non-refundable.

Please note that in the event the court receives an objection to the s.116 application which requires the court to list the application for a contested hearing, the applicant for the removal of highway rights will be responsible for any additional legal costs incurred by the County Council in presenting the S.116 application to the court.

10. 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
Universal Services
Trafalgar House
Trafalgar Street
Winchester
SO23 9DH**

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 1990, 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>

This Guidance Note is produced by the HAIT of the Universal Services Directorate, Hampshire County Council. It is intended to provide a summary of the procedures and does not comprise a definitive explanation of the law. You should not take action relying solely upon this Guidance Note. Whilst staff in the HAIT will be pleased to discuss any matter arising from this Guidance Note, this is not a substitute for taking your own independent legal advice.