

STOPPING UP ORDERS UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

Guidance for applicants

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Introduction

This document is designed to provide applicants with an explanation of the requirements and procedures for the stopping up of highways under the Town and Country Planning Act 1990 (“the Act”).

These notes have no legal standing. For more information regarding the stopping up of highways please contact, Orders Branch. The address can be found at the end of this guidance.

How to decide which Order you require under the Act

a) Section 247

Orders under Section 247 of the Act authorise the extinguishment (stopping up) of any highway in order to enable development to be carried out in accordance with a valid and relevant planning permission.

The Order can also provide for the provision of new/improved highways as long as these also form part of the planning permission.

For a stopping up Order to be processed under Section 247 or 248 you must first obtain planning permission. This is unless you meet the criteria set out in Section 253 of the Act. For more information regarding Section 253 go to page 6.

Any highway being stopped up must be part of a development and fall within the planning permission boundary or be a condition of the planning permission.

b) Section 257

If your planning permission requires only the stopping up of footpaths, bridleways or restricted byways (which cannot be used for vehicular access) then you should apply to the local authority for an Order under section 257 of the Act.

Further details can be found in Annex A, paragraph 17 of Welsh Office Circular 5/93 on "Public Rights of Way".

c) Section 248

Applications should be submitted under this section if it is necessary to stop up a highway as a result of the creation of a new highway, as part of a development.

It can also provide for the provision of new/improved highways as long as these also form part of the planning permission.

d) Section 249

When a **local authority** makes a resolution to improve the amenity of part of their area by extinguishing vehicular rights and creating a pedestrianised area within their county or county borough, they must apply to the Welsh Government for an Order under section 249 of the Act. Applications can be made on behalf of a local authority by a third party (agent) but a resolution must be in existence.

Timescale for processing your application

Once the details of an application have been agreed, it should hopefully take about 4 - 5 months to make an Order providing there are no objections.

If objections are received and cannot be resolved, it will normally be necessary to hold a public local inquiry. In such cases, the period before a decision is taken will be considerably longer, possibly 12 months or more.

Please see page 5 regarding ways you may be able to reduce the time it takes to process your application.

Before you begin

Please note that you cannot stop up or divert a highway until the notice announcing that the Welsh Government has made an order is published. Not only is it an offence to obstruct or interfere with a highway before this is done, but it may also make it impossible for the Welsh Government to make the Order. Applicants should also note that on publication of the notice announcing the making of the Order there then follows a 6-week High Court Challenge period. Any work commenced during this period is at the applicant's own risk, as such a challenge may result in work having to be stopped/highways reinstated.

1 The procedures

The procedures for the processing of your application under sections 247, 248 or 249 can be found in section 252 of the Act and they are:

Consultation Stage

Once the details of your application have been agreed with Orders Branch, the draft Order and public notice will be produced. The documents both contain details of your proposal and the notice also gives members of the public 28 days to lodge an objection regarding the loss of the public right of way.

Both the Order and notice will be sent to those who may be affected or have an interest in the proposed stopping up. These include utility companies, statutory undertakers and your local authority.

As part of the stopping up process we will request that the applicant arranges the posting of copies of the notice at prominent positions at each end of the highway(s) etc to be stopped up. We will also ask for the notices to be maintained during the 28-day objection period.

A copy of the notice will be published in at least one local newspaper and in the London Gazette.

Copies of the Order will be made available at a local office (e.g. the local authority, a local library or other public building) and at the Welsh Government for public inspection.

Objections

It is for the applicant to resolve any objections to the proposed Order. We therefore copy them to you so that you are able to negotiate with the objectors with a view to resolving them.

We always encourage applicants and objectors to negotiate an agreement. When objections cannot be resolved, it will *normally* be necessary for a public inquiry to be held. It is *sometimes* possible to dispense with this (where there are *no statutory objectors* such as utility companies, statutory undertakers and local authorities) and the Minister for Economy, Science and Transport (“the Minister”) is satisfied that in the special circumstances of the case the holding of such an inquiry can be dispensed with e.g. where the same issues were fully considered in a planning appeal or where the objections are clearly irrelevant.

Making an Order

The Stopping up Order will only be made when the criteria below have been met:

- any objections have been withdrawn and a copy of each of the letters of withdrawal has been received by Orders Branch; or
- a public inquiry (or in certain circumstances an exchange of written representations) has taken place and the decision letter states the Order will be made.

Once this has been done, the Order will be authorised and a public notice will be produced. The notice will state that the Order has been made and provides aggrieved parties with six weeks to challenge the making of the Order in the high court. The Order is only valid for as long as the planning permission stated in the Order is valid. Responsibility for the highway remains with the highway authority until the development takes place and the stopping up order is implemented.

The developer should not stop up the affected areas until the notice announcing that the Welsh Government has made the Order is published.

Public Inquiry

If a Public Inquiry is necessary then this will be arranged by the Planning Inspectorate (PINS). PINS will contact all interested parties with details of the Inquiry and deal with all correspondence from the announcement of the Inquiry until the submission of the Inspector's report.

Once the Inquiry has taken place, the Inspector will make his/her recommendations to the Minister taking into account the evidence provided before and during the inquiry.

We would expect to receive the Inspector's report within three months of the Inquiry. Once this has been received the Minister will make his decision, taking into consideration the Inspector's recommendations.

Copies of the decision will be sent to the applicant, the objectors and other interested parties. The aggrieved party will be provided with guidance regarding their right to challenge the decision in the High Court.

Reducing the time it takes to process your application

Listed below are ways in which you may be able to reduce the time it takes to process your application.

- If you have not already done so for the application/grant of planning permission you should contact the utility companies in the area of the proposed stopping up before submitting the application form.
- Ensure that the application form has been completed in full.
- Check that the measurements provided in your application form are identical to the highways proposed to be stopped up on the plan.
- If other rights of way are to be stopped up as well as highway then we will need a separate description for each of them. They will also need to be shown on the plan.
- Details of any new highways or areas to be improved as part of the planning permission are required.
- Where applicable, ensure each objector sends a withdrawal letter to Orders Branch as soon as an agreement has been reached.

2 The application form & enclosures

Please ensure that the application form is completed in full. Omissions may result in a delay to your application.

As well as your name and address (and your agent's if you are using one) it would be helpful if you can include a daytime telephone number. Please also

ensure that the name and address of the person to whom the notices should be sent for posting on the highway(s) is clearly identified.

Please note that it is **not** acceptable when completing section C of the application form to put "Please see the enclosed plan". A detailed description of each highway must be given. The lengths and widths provided must be taken from their widest point.

Planning Permission & Plans

Sections 247 and 248

We will require a copy of the relevant planning permission before we are able to process applications under sections 247 and 248. Where outline planning permission has been granted, we will generally require evidence of the approval of reserved matters before proceeding with the application. A copy of the approved plans, in particular the *approved site boundary plan* (but not elevation plans) will also be needed.

Section 253

The only reason we would be able to begin processing an application under sections 247 and 248 before full planning permission has been obtained is if you meet the criteria set out in Section 253 of the Act. Section 253 applies where:

- the developer is a local authority or a statutory undertaker (utility company); or
- the planning permission is subject to a planning appeal or has been called in by the Welsh Ministers.

The Order cannot be made until planning permission has been granted for the development and it has been received by Orders Branch.

Section 249

We will require a copy of the relevant council resolution before we are able to process applications under sections 249. A copy of the approved plans will also be needed.

Proposed order plan

Please ensure the proposed Order plans provided meet the guidance criteria on the back of the application form. In addition, please note the following:

- the plan needs to be based on an Ordnance Survey drawing. Although we recommend that the plan is preferably A4 or A3 and drawn to 1/1250 scale, we will accept other size plans and scales as long as they meet the rest of the criteria mentioned;

- the plan will need to show all the existing highways clearly labelled and be marked to show the details of stopping up;
- the location of the highways has to be easy for members of the public to identify. It is therefore important that enough of the surrounding area is shown on the plan and any landmarks identified;
- it is essential that the measurements shown on the plan match the measurements given on the application form;
- if new highways are to be provided or existing ones are to be improved as *part of your planning permission* then they will also need to be shown.

We will let you know if we require you to make any alterations.

Highway layout plan

A copy of the existing highway layout taken from an up-to-date Ordnance Survey map scale 1:1250 or 1:500 will be required.

Approved site boundary plan

It is important that an approved site boundary plan is submitted with the application under sections 247 and 248. The plan will need to show the approved site boundary in red and the highway to be stopped-up in blue.

This is to indicate whether the affected highways are within or outside the planning permission boundary.

Other enclosures

Section 106 planning obligation (if applicable)

Where appropriate, we will require a copy of any relevant planning obligation entered into under section 106 of the Town and Country Planning Act 1990.

Section 253 relevant documents (if applicable)

If you meet the criteria for Section 253 of the Act then the relevant documents will need to be submitted.

Copies of correspondence with utility companies and statutory undertakers

We recommend that you contact the utility companies and statutory undertakers within the area of the proposed stopping up before submitting your application.

It is a requirement that they are contacted as part of the process and that any objections are forwarded to you. The Order will not be made until we receive a written withdrawal of each objection, therefore it will save time if you contact them first and begin any negotiations straight away.

A list of the most common statutory undertakers can be found on the second page of your application form or you could contact the local authority in the affected area to ensure you haven't missed any.

Copies of correspondence with the highway authority

Although you will have successfully acquired permission for your development, this does not automatically mean that you have approval from the highway authority and there is the possibility that they could object to your application.

Please enclose copies of correspondence with the highway authority *including their approval to the proposal*.

3 Any questions?

If you have any questions in relation to any part of your application form or while your order is being processed then please contact us at Orders Branch, Transport, Welsh Government, Cathays Park, Cardiff CF10 3NQ.