

## **EXTINGUISHMENT OF HIGHWAY RIGHTS**

1. **What is an extinguishment?**

An extinguishment of highway rights, carried out under Section 116 of the Highways Act 1980, is a legal procedure to remove the public highway status from a piece of land. This procedure involves an application to a Magistrates Court for an extinguishment Order. There are prescribed preliminary consultation procedures and opportunities for objection. In particular, Parish Council's have an absolute right to veto an extinguishment.

2. **In what circumstances is it considered?**

An extinguishment can only be carried out if the land is considered to be "unnecessary" for public use as part of the highway.

3. **What is public highway?**

The definition of public highway is a "way over which all members of the public have a right to pass and repass". There are various types of public highway - the most common are footpaths, bridleways and full vehicular use highways.

Generally, the public highway extends over the whole width of a road, footway, verge and other land up to the boundaries of adjoining properties and fields.

4. **What if highway land is enclosed and "claimed" after so many years?**

It is not possible to "claim" land that forms part of the public highway. Once public highway comes into being it remains highway forever, even if it is not available for public use. The only way highway rights can be removed is by a formal legal procedure such as an extinguishment of highway rights.

It is unlawful to enclose or obstruct any part of the public highway without statutory authority. In such circumstances it may be necessary for the County Council to take action.

5. **What is the cost of an extinguishment?**

The basic charge for the County Council's legal services are £1,500 plus advertising costs, and the sum of £1,000 as a contribution to the costs incurred by the Highways Department in the administration and processing of the application. I would make you aware that Magistrates Courts have now introduced a charge for presiding over applications made for an Extinguishment Order. The charge levied will be dependant upon which court the application is made to. I would also advise you that if a hearing is contested there will be a further fee levied payable to the court. Should the application not proceed to a Court hearing for any reason there would be a minimum abortive fee of £500 plus any advertising costs incurred.

There may be other associated costs such as the cost of arrangements regarding any Statutory Undertakers equipment on the land. Planning permission or the purchase of the land may also be necessary before the applicant can use the land, on which highway rights are extinguished, for private purposes, These associated issues are outlined on page 2.

6. **What if there is any Statutory Undertakers equipment in the land (telegraph poles, underground cables, manhole covers etc.)**

If there is any Statutory Undertakers equipment within the area of highway to be extinguished it is necessary for the applicant to liaise with the Company regarding the removal/diversion of the equipment. It may be possible to enter into an agreement for equipment to be left in place, however, this may mean that certain restrictions have to be placed on the land, for example restrictions on building.

7. **Is Planning Permission necessary?**

Planning permission may be necessary for formal “change of use” of the land from highway to garden/other purposes, or for the erection of any fences/walls at a height greater than 1.0 metres above the natural ground level. In all cases the applicant should seek advice regarding the necessity for planning permission from the local Borough or District Council’s planning department.

8. **Is it necessary to buy the land?**

The assumption at law is that, unless there is evidence to the contrary, (e.g. a registered or verified owner), the land beneath the surface of the highway (the “sub soil”) falls within the ownership of the adjoining landowner. If this were the case, ownership of the land would usually revert to the adjoining landowner upon a successful extinguishment of highway rights.

9. **Registration of Title to the Land**

Extinguishment of highway rights does not result in the title for the land passing to the applicant.

In almost all instances the Highway authority do not own the sub-soil beneath the highway. As part of the extinguishment process steps will be taken to establish if there is an identifiable owner. If there is, the upon extinguishment of the highway rights, the ownership of the land will revert to the owner and it will be for the applicant to arrange the purchase of the land in question.

If we are unable to verify an owner, the upon extinguishment the ownership of the land reverts to the unidentified owner. The adjoining landowner may decide to enclose the land which may create difficulties with the sale. Applicants are advise to seek independent advice from their solicitor.

Title to the land which is subject of the extinguishment can be secured by the County Council making an Application under Section 11 of the Leicestershire Act to the County Court for an Order. This is a separate process to the extinguishment application and details can be provided on request.

10. **What is the timescale for an extinguishment?**

An extinguishment is a lengthy and potentially complicated legal procedure taking approximately a minimum of six to twelve months depending upon the nature of the application and the County Council’s current staff resources.

11. **Why does it take so long**

A technical appraisal is carried out to determine whether the land is considered to be surplus to requirements and unnecessary for public use (either now or in the future). The Highways Act 1980 requires that consultations are carried out with certain bodies including the adjoining owners and occupiers, Statutory Undertakers, the District or Borough Council and the Parish Council.

Once all the consultations have been carried out and providing there are no objections, it is a statutory requirement that the proposal is advertised in the London Gazette and the local newspaper. Notices are erected on site and a Magistrates Court hearing is arranged.

12. **What happens at the Magistrates Court**

The application is presented to Local Magistrates at a Court hearing. Providing there are no objections and the Court is satisfied with the application, an Order will be made giving effect to an extinguishment of highway rights. At this point the land will either revert to the adjoining landowner or to the actual owner of the land.

It is not normally necessary for the applicant to attend Magistrates Court.