

13 Removing Highway Rights



1. Introduction

The definition of a 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 ranging from footpaths and bridleways to highways that have full vehicular use.

The Local Authority has highway rights throughout the adopted highway network within the County. However, it is worth noting that in most cases it does not own the subsoil over which the highway runs, but highway has precedent over land ownership.



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. Ditches are not normally included within the publicly maintainable highway.

Removing highway rights is a complex and lengthy process requiring statutory consultation and sometimes a Magistrates Court hearing to determine the outcome of the request.

Changing the status of the highway or prohibiting vehicular use via a TRO amendment might be a more practical way of achieving the desired result. Creating a ‘no through road’ or retaining rights for pedestrians and cyclists/horse riders only for example, may be all that is necessary to reduce the volume of vehicles along a section of road while still allowing access by non-motorised traffic.

2. Typical Problems

‘We want to stop traffic from using this route’

‘Traffic is dangerous. The road should be ‘stopped up’

3. Things to Consider

It is unlawful to enclose or obstruct any part of the public highway without statutory authority.

The only way highway rights can be removed is by a formal legal procedure such as an extinguishment of highway rights, sometimes known as a ‘stopping up’ order.

It is important to remember that there must be a fully justifiable reason for the removal of highway rights. All applications must therefore be considered carefully. This is underlined in Section 130 of the Highways Act 1980 which states 'It is the duty of the Highway Authority to assert and protect the rights of the public to the use and enjoyment of any highway'.

Verges are considered to be an integral part of the highway network and as such the Highway Authority have a duty to protect them for future highway use. It is extremely rare that highway rights will be removed from a verge.

Essex County Council maintains that land should always be retained where:

- It may be required for a future improvement scheme i.e. footways/cycleways/casualty reduction measures.
- For safety reasons particularly for horse riders and pedestrians on narrow rural roads.
- It provides an important link between public rights of way.
- It is immediately adjacent to the carriageway.
- It has an amenity value.
- Visibility reasons.
- There is a special local reason as determined by an Officer.
- Where the removal would result in an irregular and inconsistent highway boundary.

Planning permission may be necessary for formal "change of use" of the land from highway to other purposes, or for the erection of any fences/walls at a height greater than one metre above the natural ground level.

An application must be made to the Secretary of State for Transport under Section 247 of the Town and Country Planning Act 1990 to request a 'stopping up' Order to remove highway rights in order to facilitate a development.

If there are strong objections to stopping up the land with valid highway reasons or objections to the land sale i.e. the land is needed for future schemes, then the request will be refused. If changes to highway have already occurred and it has been enclosed, an application must be made to a magistrates court under S116 Highway Act 1980

If there are utilities within the existing highway then the Utility Companies may object. New arrangements will have to be made for retaining the utility apparatus in land transferred to a new landowner.

The complete removal of highway rights may not be necessary to achieve the required outcome. Traffic Regulation Orders can be used to restrict certain types of road users

4. Typical Measures

A stopping up order is often requested when new roads are created due to a new development that makes the old road redundant. It can also be used to remove the highway rights and allow the land to be used for other purposes.

In many cases the removal of highway rights is not necessary and the same result can be achieved by changing the use of the route.

5. Scheme Investigation

Once a request has been validated and if the scheme is prioritised then the designer will:

- **Work with the land owner** who will take responsibility for the land once the highway rights have been removed.
- **Liase with the Utility Companies** to identify any apparatus that may either require wayleaves or easements or need to be relocated
- **Prepare the consultation material** and undertake the consultation process
- **Prepare the evidence** pack for the Magistrates Court if necessary

6. Costs and Timescales

Part of the Essex County Council contract with Ringway Jacobs is a target cost and not typically a fixed price contract. The contract also allows for a direct delivery method for small highway improvement schemes on a fixed cost basis.

An explanation of the process can be found in Appendix 1.

The costs and timescales for typical schemes can be found on the following hyperlink

7. Glossary of Terms

AVL	Automatic Vehicle Location (similar to RTPI)
CMA	Cabinet Member Action
CMB	Cabinet Member Briefing
EA	Environment Agency
ECC	Essex County Council
EH	Essex Highways
LHP	Local Highways Panel
NEPP	North Essex Parking Partnership
PP	Parking Partnership
RTPI	Real Time Passenger Information
S106	Section 106 (Money provided by a Developer to County Council to implement infrastructure as an obligation of the planning permission)
S278	Section 278 (Infrastructure required to be implemented by the Developer as an obligation of the planning permission)
SERP	Safer Essex Roads Partnership
SID	Speed Indicating Device
SEPP	South Essex Parking Partnership
SLO	Speed Limit Order
SSSI	Site of Special Scientific Interest
TRO	Traffic Regulation Order
TSRGD	Traffic Signs Regulations and General Directions
VAS	Vehicle Activated Sign