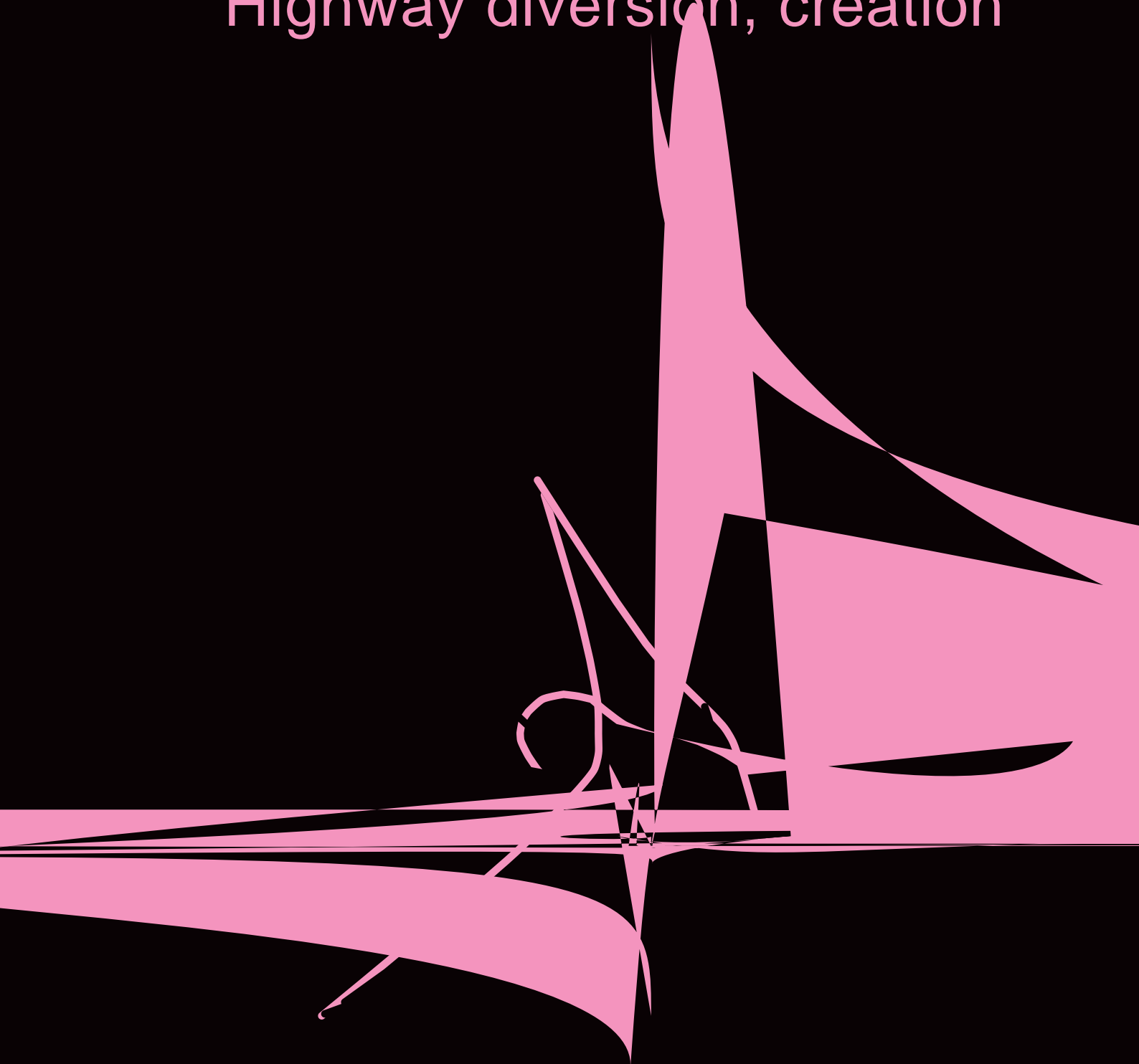


Highway diversion, creation



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7. Revisions			9

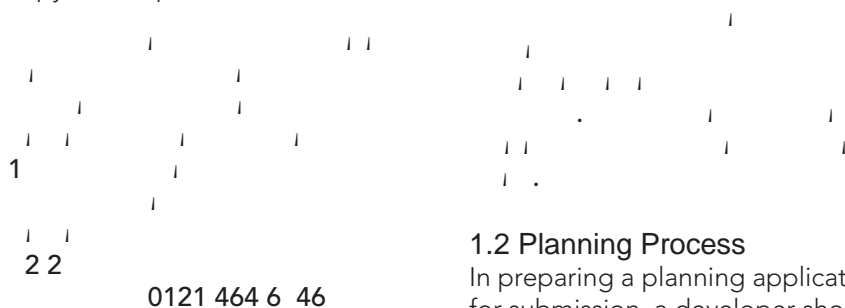
1. Purpose

These guidance notes provide advice on the procedures for the stopping-up and diversion of highways pursuant to section 247 and 257 of the Town and Country Planning Act 1990. This is of relevance to developers, their agents, transport and town planning consultants, legal advisors, government departments and local authorities. These notes incorporate the procedural changes brought about by the Growth and Infrastructure Act, 2013¹ that enable applications for stopping up Orders to be submitted in advance of planning permission being granted. An important point to remember; it is a criminal offence to obstruct or otherwise interfere with the highway or any public rights of way (PROW) without the authority to do so. Orders cannot be made retrospectively.

1.1 Identification of Highways

A developer should physically inspect the site at an early stage, preferably prior to submission of a planning application, and identify all possible highway routes crossing the site on a plan. This exercise should cover both vehicular and pedestrian routes, whether formal or informal (desire lines, etc) and complete relevant section of the planning application form.

A developer should then forward a copy of that plan to:



This requirement is to obtain a view on which of the routes are shown on the Highway Register are/or maintained by the Council.



Where routes are identified as highway, whether publicly or privately maintainable, and they are affected by development, then a statutory order, usually under the terms of the Town and Country Planning Act 1990, will be required to stop up or divert the highways. Other routes, although not shown on the Highway Register, may have become highway through long usage under the provisions contained in Section 31, Highways Act 1980.

1.2 Planning Process

In preparing a planning application for submission, a developer should assess the impact of his proposed development on all the highways/routes across the site as discussed in 1.1. The planning application should preferably contain a statement of the impact on highways, and where, for example, a diversion is appropriate it should be included within the design of the development.

A developer is advised to notify the Local Planning Authority of any paths not shown on the Highway Register and whether he considers there may be highways under Section 31, Highways Act 1980.

It is a developer's responsibility to consider fully whether there is a need to pursue a stopping-up application for highways/footpaths affected by development. Failure to address this issue at the time of the submission of a planning application may cause considerable delays at a later date.

Where the developer has indicated the presence of possible highways, where Section 31 of the Highways Act 1980, might apply, the Local Planning Authority may include a resolution to authorise the stopping up/diversion of highway under Section 247 or 257 of the Town and Country Planning Act 1990.

The inclusion of this resolution is to prevent a further loss of time at a later stage should the developer decide he needs to proceed with the stopping-up/diversion of the affected highway.

Local Planning Authorities must publicise any planning application which affects highway, right of way to which Part iii of the Wildlife and Countryside Act 1981 applies (i.e a way which is, or ought to be, shown on a definitive map).²

¹Growth and Infrastructure Act 2013, Chapter 27, Part 11, amending Section 253 of the Town and Country Planning Act: 'Procedure in anticipation of planning permission'.

²Article 8 of the Town and Country planning (general development procedure) Order 1995.

2.1 Definitions

Highway is defined in common law as a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right and not on sufferance or by licence. Highways



interested parties can lodge objections regarding the loss of the highway/public right of way.

Copies of the Order must also be made available at a local public office for inspection and can also

3.3 Making an Order

The Stopping Up Order will only be made when the following criteria have been met:

- The planning permission decision notice has been received and
- All objections have been withdrawn formally, or
- If written representations have been considered, or
- An inquiry has been held, and the inspector's report and recommendations have been considered.

Once the above criteria have been met a decision will be made on whether the Order should be finalised. The decision will be notified to the applicant and interested parties. Additionally a notice regarding the decision will be published in the same manner as the draft Order. Once the Order is published, it is subject to a six week period within which challenges to the validity of that Order can be made in the High Court. The Order would cease to have effect if the planning permission expires or the development could not be implemented.

3.4 Timescales

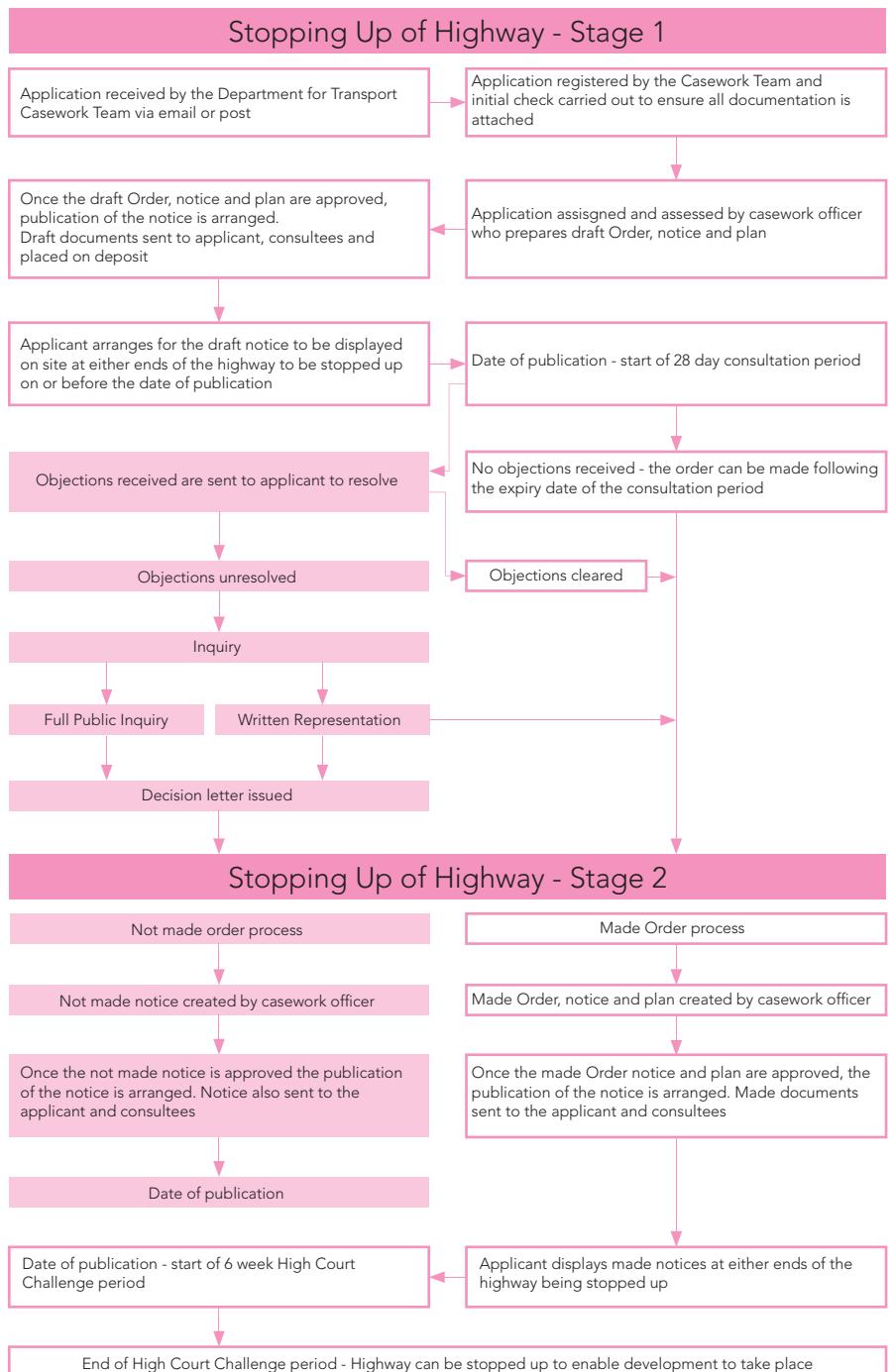
The Department aims to process Orders where there are no objections within 13 weeks from receipt of all necessary information. However it should be noted that certain factors will impact on this timescale:

- Whether planning permission has been granted at the time the stopping up application is submitted;
- Whether objections are made to the draft Order;
- Whether changes are made to the area(s) to be stopped up following the draft Order publication;

- Whether a written representations period or a public inquiry is required to consider any objections – this will considerably extend the time before a decision can be made.

3.5 Costs

There are currently no fees involved in this process for highways outside of London borough Authorities.



4. Procedure - Section 257 Orders

The procedure is the same as a Section 247 order (as described in steps 3.1 to 3.3, however, the Local Authority will carry out the process (costs of which will be charged to the applicant/developer) including consultation with the utility companies.

In the case of Diversion Orders, the Order will not come into effect (ie the existing path may not be removed or obstructed) until:-

1. The design/specification of the proposed path has been checked and approved by BCC Transportation Private Developments Team.
2. The diverted route is in place and notification has been received by the Legal Services Department that the route has been inspected and meets the requirements of the Transportation Private Developments Team.

Once the above have been complied with, the Local Authority will take steps to bring the Diversion Order into effect.

4.1 Costs

The Local Planning Authority may recover costs from a developer requesting the Authority to make an Order, as outlined in "The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996".

These Regulations state that:

✓ *A ho i iē ma cha fo he*

Birmingham City Council will normally expect you (the developer) to pay for the full cost of an Order, which on average amounts to approximately £10,000. However if you are applying for more than one path the costs will be greater.

The costs are split into two payments, the first payment is payable once the order is Made and advertised, the second is payable upon Confirmation of the Order. Developers will be invoiced direct by Birmingham City Council's Finance & Legal Department.

These costs include the administration of the order as well as two newspaper adverts which are required by the legislation.

In the case of diversion orders there will be additional costs as discussed in points 1 and 2. These are currently set by Birmingham City Council's Transportation and Connectivity Private Developments Team. Developers will be invoiced direct by Transportation and Connectivity.

Written confirmation from the developer (including Council Departments) that such costs will be met, is required prior to an Order being made.

4.2 Timescales

The Department aims to process Orders where there are no objections within 13 weeks from receipt of all necessary information.

However it should be noted that certain factors will impact on this timescale:

5. Contacts and further advice

Birmingham City Council
 Mahroof Malik
 Lead Rights of Way Officer
 Transportation and Connectivity
 Highways Information
 Inclusive Growth Directorate
 Birmingham City Council
 1 Lancaster Circus
 Lancaster Circus Queensway
 Birmingham
 B2 2JE
 Telephone:
 0121 464 6846
 Email:
 mahroof.malik@birmingham.gov.uk

Sharon Nembhard
 Private Developments Officer
 Infrastructure Delivery,
 Transportation and Connectivity
 Inclusive Growth Directorate
 Birmingham City Council
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 Lancaster Circus Queensway
 Birmingham
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 tarndip.sidhu@birmingham.gov.uk

Department for Transport
 Neil Crass
 National Transport Casework Team
 Department for Transport
 Tyneside House,
 Skinnerburn Road,
 Newcastle Business Park,
 Newcastle upon Tyne,
 NE4 7AR
 Telephone:
 020 7944 4162
 020 7944 4115 (general number)
 Email:
 nationalcasework@dft.gsi.gov.uk

6. Consultation

National Plant Enquiries
Scimitar park
Courtauld Road
Basildon Essex
SS13 1ND
email:
[plant.enquiries.team@virginmedia.
co.uk](mailto:plant.enquiries.team@virginmedia.co.uk)

The Ramblers

Mr M Bird
Footpaths Secretary
Warwickshire Area
Ramblers' Association
16 Melford Hall Road
Solihull
West Midlands
B91 2ES
email:
michael.b43@o2.co.uk

Depending upon the location of
the development, the following
may not always be consulted:

**Water Supplies (Sutton
Coldfield Area)**

Green Lane
Walsall
West Midlands
WS2 7PD

River and Water Courses

550 Streetsbrook Road
Birmingham
B91 1QT

9 7. Revisions

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