

# Public Highways

a guide



This document is a brief guide to Highway Status matters covering some frequently asked questions.

It is not a definitive legal document and professional advice should be sought for any detailed queries regarding Highway Law.

## What is a Highway?

These days we have a habit of referring to any road or street as a highway, but in legal terms a Highway or Public Highway is defined as,

***‘a way over which members of the public have a right to pass and repass, either on foot or dependent on suitability, in a vehicle motorised or otherwise’***

Although most Highways are roads or streets - footpaths, verges and public spaces can also be classified as Public Highway.

The Highway Authority (Bolton Council) maintain a register of streets (The Highway Register) showing the extent and status of Public Highway. A map of this is available on the council's website,

[bolton.gov.uk/highwayregister](http://bolton.gov.uk/highwayregister)

For legal purposes, this map is the definitive record of Highways in the Borough of Bolton as required by The Highways Act 1980 Sec.36(6).

## Adopted and Unadopted Highway

A Highway is classed as **‘Adopted’** when it is maintained at public expense. The Highway Authority is responsible for its maintenance and upkeep.

A Highway is classed as **‘Unadopted’** when it is NOT maintained at public expense. The public's rights to pass and repass are unchanged but the maintenance and upkeep are the responsibility of the landowner (in many cases the owners of properties fronting an unadopted street own the road up to the centre line).

## Highways and Land Ownership

These are two different matters. Although a large amount of Public Highway sits on land owned by the local authority, not all does. A Highway that sits on or crosses a piece of privately owned land is still a Public Highway with all the associated public access rights.

If a landowner was to block access to or across a Public Highway on their land, for example by fencing or gating the Highway, the Highway Authority is bound to take legal action to reinstate those access rights.

If you own the land beneath a Highway you are free to deal with that how you like - provided that you do not interfere with the public's right to use the Highway. Any works that may interrupt use of the Highway would need Highways Authority consent.

Any pipes and cable lying beneath the Highway are installed as a result of statutory rights to be

## **Buying Land that is or that contains Highway**

Many prospective buyers of land that contains Highway believe that once they own the land, they own that Highway and can do with it as they wish. This is not correct.

The key legal principle to understand when considering the purchase of Highway land, is that its status as Public Highway is distinct and separate to ownership of the land. A Highway is a public right of way over land. It is not concerned with the freehold ownership of the land itself.

If a landowner obstructs a right to pass by other users, a criminal offence of “obstruction of the highway” is committed.

When considering to buy land that is or that contains Highway you should ensure that you understand these rights.

In some cases, when it is deemed that the Highway is no longer necessary, it can be possible to extinguish the public highway rights. This is known in law as ‘stopping up the highway’.

It is a discretionary decision of the Highway Authority as to whether the Highway is now unnecessary. There must be no detriment to other residents, pedestrians or road users for a stopping up to be considered. If the Public Highway serves any ongoing benefit to members of the public, the Highway Authority would object to any stopping up request.

## **Stopping up a Highway**

We strongly recommend you first ask the Highway Authority whether they would object to any stopping up application.

You should make a planning application to the local planning authority for a material change of use of the land. If planning permission is granted, then you may apply to the Department for Transport for an order stopping up the Highway under section 247 of the Town and Country Planning Act 1990.

You must be the freehold owner of the land in question.

As part of the process, the Department for Transport will contact the Highway Authority for their views. They will also advertise the application to local residents and utility providers, inviting any objections or comments.

The Highway must NOT be closed or blocked by the applicant before a stopping up order is granted. Doing so may negatively affect the outcome of the application and bring enforcement/legal action by the Highway Authority.

For more information see,

[www.gov.uk/government/publications/stopping-up-and-diversion-of-highways](http://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways)

## **Further information**

web: [bolton.gov.uk/highwayregister](http://bolton.gov.uk/highwayregister)

email: [highway.search@bolton.gov.uk](mailto:highway.search@bolton.gov.uk)