

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – MR R TONGE

DEPARTMENT OF RESOURCES

OFFICER CONTACT: Kevin Gale (718023)
email: kevin.gale@wiltshire.gov.uk

REFERENCE: HT – 016-12

**HIGHWAYS ACT 1980 - PROPOSED APPLICATION TO STOP UP HIGHWAY
HIGHFIELD, THE CITY, EDINGTON**

Purpose of Report

1. To ask the Cabinet Member for Highways and Transport to consider whether to consent to a proposal by officers that the Council should make an application to the Magistrates' Court under Section 116 of the Highways Act 1980 for an order to stop up a section of highway at The City, Edington. The highway concerned is shown hatched blue on the plan at **Appendix 1**.

Background

2. In September 2011, the Council was approached by Miss Helen Rowe, who with Mr Kevin Shaw, had recently purchased the property known as Highfield. It had transpired that highway rights ran over part of the property and Miss Rowe and Mr Shaw had, as part of the sale terms, entered into an agreement with the vendors that the latter would contribute up to £5,000 toward the cost of an application to stop up the highway.
3. The highway concerned runs from a point about 50 metres south-east of the junction of The City with the B3098 Westbury Road for approximately 45 metres in a south-easterly direction in front of Highfield. Its width varies between 1.5 and 2.2 metres. The total area is approximately 90 metres² and on the ground it is used as part of a domestic garden.
4. Under Section 116 of the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of highway, as follows:

(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [highway] authority have made an application under this section—

(a) is unnecessary, or
(b) can be diverted so as to make it nearer or more commodious to the public,

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

[sub-section 2 has been repealed]

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to—

(a) if the highway is in a non-metropolitan district, the council of that district; and

(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and

(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and

(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within 2 months from the date of service of the notice by the authority notice is given to the authority by the district council [or Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

5. Edington Parish Council gave consent to the proposed application on 6 December 2011. A copy is attached at **Appendix 2**.

Main Considerations for the Council

6. Case law has clarified that in deciding whether to make an application, the Highway Authority has to consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an order should be made. As well as whether the highway is needed for passing and repassing, issues such as safety, e.g. for visibility splays or potential development access, should also be considered.
7. The central questions to be addressed are: what is the highway function (if any) being performed by that part of the highway which is the subject of the requested application and whether it is unnecessary for that function to be performed by that part or whole of the highway. If the answer is that it is unnecessary for that function to be performed, the other question is: are there any other highway reasons why a stopping up application should not be made?

8. In the present case, the highway rights run over land which, in practice, is used as part of a domestic garden. Officers consider that highway rights over this area are not necessary for the public to pass and repass or for visibility, health and safety, access by a third party or any other highway-related reason.

Conclusion

9. Officers consider that the section of highway concerned is not needed for public use and see no merit in it remaining as highway. They would therefore be willing to proceed with an application if the Cabinet Member decides to give consent.

Environmental Impact of the Proposal

10. None.

Risk Assessment

11. None.

Financial Implications

12. The legal and advertising costs incurred by the Council in preparing for and making an application would be met by the owners, Miss Rowe and Mr Shaw.

Options Considered

13. The Cabinet Member for Highways and Transport may resolve to:
 - (i) Refuse to give consent to the application in which event, reasons should be given for doing so.
 - (ii) Consent to the application.

Proposal

14. It is proposed that the Cabinet Member adopt the option at 13 (ii) above. If the proposal is accepted, the consent form attached at **Appendix 3** should be completed and returned to Legal Services.

Reasons for Proposal

15. Officers consider that this section of highway is unnecessary and there is no public benefit in its retention.

The following unpublished documents have been relied on in the preparation of this Report:

None