

CABINET MEMBER HIGHWAYS AND TRANSPORT – CLLR BRIDGET WAYMAN

HIGHWAYS, TRANSPORT & WASTE

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REFERENCE: HTW-14-19

PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO THE SANCTUARY, DARK LANE NORTH, STEEPLE ASHTON

Purpose of Report

- 1 To ask the Cabinet Member to consider whether the Council should apply to the magistrates' court for an Order stopping up highway rights over part the highway at Dark Lane North, Steeple Ashton on the ground that it is unnecessary for public use.

Relevance to the Council's Business Plan

- 2 As part of the Council's drive for stronger communities, people in Wiltshire are encouraged to take action on what is best for their own communities. The proposal also feeds in to the aim of being an innovative and effective council as part of its focus on generating income by adopting a more commercial approach in what we do.

Main Considerations for the Council

- 3 Case law has clarified that in deciding whether to make an application to stop up highway (including highway rights for varying categories of user), the Highway Authority should consider all the factors which would be relevant to the consideration by a Magistrates' Court as to 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 be considered.
- 4 The central question to be addressed is: what is the function performed by the relevant part (or right) of the highway and whether it is unnecessary for that function to be performed by that part or the whole of the highway. If it is unnecessary, it must also be considered whether there are any other reasons why a stopping-up application should not be made.

Background

5. The plan at **Appendix 1** shows the area of land concerned as cross-hatched in black. Its width extends from 3 to 6 metres in width, with a length of 18 metres. Officers understand that this section of highway is a cul-de-sac and only serves land owned by Mr. Angel, who is requesting the Council to make the proposed application. It is not considered to be necessary for public use or any other highway-related reason.

6. Under the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of highway. Section 116 (1)-(4) provides 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 has 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 two months of 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.

7. Should the application be made and granted, the public would no longer have the right to pass and repass along the area of highway concerned and the Council would no longer be responsible for maintaining it.
8. Steeple Ashton Parish Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**.

Safeguarding Considerations

9. There are no relevant safeguarding considerations.

Public Health Implications

10. There are no relevant public health implications.

Environmental Impact of the Proposals

11. There is no negative environmental impact to the proposals.

Equalities Impact of the Proposals

12. There is no negative equalities impact to the proposals.

Risk Assessment

13. Officers have no concerns regarding risk in relation to the proposed application.

Financial Implications

14. Mr. Angel has agreed to meet the legal costs of an application. Even if one does not proceed, he will still be liable for preparatory costs. Accordingly, officers are satisfied that the application would have no negative financial impact upon the Council.

Legal Implications

15. As highway authority, the Council has a discretionary power, rather than a duty, to make such applications.
16. If the Magistrates are minded not to make the Order, Wiltshire Council will still be liable to maintain the full extent of the existing highway.

Options Considered

17. The Cabinet Member for Highways, Transport & Waste 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.

Reason for Proposal

18. Officers are satisfied that the section of highway can be stopped up as it is unnecessary for public use.

Proposal

19. It is proposed that the Cabinet Member adopt the option at 17(ii) above.

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

Appendix 1 Plan showing the section of highway concerned;

Appendix 2 Consent of Steeple Ashton Parish Council;
