

COUNCILLOR: MR. RICHARD TONGE

APPENDIX A 0

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT

NEIGHBOURHOOD SERVICES

CONTACT: Kevin Gale, Law & Governance. Tel. 01225 71(8023)

E-mail: kevin.gale@wiltshire.gov.uk

REFERENCE: HT- 039-12

PROPOSED APPLICATION TO STOP UP NORTH BRADLEY FOOTPATH 1

Purpose of Report

1. To ask the Cabinet Member for Highways and Transport to consider whether to consent to a proposal by officers to apply to the magistrates' court for an order stopping up North Bradley Footpath 1 on the ground that it is unnecessary for public use.

Background

2. The plan at **Appendix 1** shows the location of the highway concerned, running from A-B. The proposal seeks to stop up highway rights, essentially the legal right of the public to pass and repass on this route. The path runs from its junction with Axe and Cleaver Lane, about 87 metres west of its junction with Woodmarsh, leading in a north easterly direction for approximately 121 metres to its junction with Woodmarsh. The Definitive Map and Statement of rights of way does not specify a minimum width. A representation of an aerial view of the site is shown at **Appendix 3**, with the footpath marked in purple.

3. Under Section 116 of the Highways Act 1980 ("the Act") , 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[sub-section 2 has been repealed]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.

4. The land over which Footpath 1 runs is owned by Doric Developments, which has leased it to Trowbridge Town Council. In turn the town council leases it to Trowbridge Town Football Club. The club, which is run on a not-for-profit basis, has asked Wiltshire Council to make an application to stop up the footpath. Throughout 2011 and since, the club's premises have been affected by numerous incidents of crime and anti-social behaviour including vandalism to buildings, dugouts and stands. This has cost the club in excess of £4,000 in repair or replacement costs and is threatening its viability. Dog walkers using the site often fail to clean up after their pets. Although the club tries to keep the pitch clean, there have been unpleasant incidents of young football players sliding through excrement which has been left behind. Consequently, the club is concerned at the risk to its players, visitors and staff of infection (*Toxocariasis*) which can lead to blindness in some cases.
5. Under section 17 of the Crime and Disorder Act 1998, the Council has a duty to "exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area". Officers consider that making this application would be consistent with that duty and accordingly it is supported by the Council's Safer Communities Team.
6. In April and May 2012, the Council published details of the proposed application on its website and invited the public to express their views. A copy of the document and the responses are shown at **Appendix 4**. Of the 78 responses, there were two objections. One was anonymous and the other has come from a Mr Oliver of 3 Woodmarsh, North Bradley.
7. An email of 16 April 2012 from the local member, Mr Francis Morland, is shown at **Appendix 6**. Mr Morland states that he is not opposed to the stopping up of this length of footpath. However, he would prefer the Council to achieve the same result by using an alternative statutory power so that objections were referred to the

Secretary of State and considered at a public inquiry rather than by a magistrates' court. He also proposes that the application should be conditional on the formal dedication of and addition to the relevant Definitive Map and Statement as a footpath of at least 2 metres in width of the existing way directly linking Boundary Walk to Bradley Road. These locations are shown on the plan at **Appendix 7**.

8. In response, officers would point out that the Council has the discretion to make an application under section 116 of the Highways Act 1980 and consider it appropriate to do so in this case. If the application were made, anyone objecting would have the opportunity to make representations to the magistrates either in person or in writing. As regards the proposal for a link between Boundary Walk and Bradley Road, it is understood that this is now available for use.

Main Considerations for the Council

9. 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.
10. The central questions to be addressed are: what is the highway function 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?

Objections to the application

11. As can be seen from the consultation responses at **Appendix 4**, one comment submitted by an anonymous respondent, states that "this footpath has existed for many years and we should not close it simply because a modern day hobby has been superimposed on it".
12. The other objection is from a Mr Peter Oliver of 3 Woodmarsh, North Bradley. It is the last of the responses shown and states that "*I would like to record the fact I am against the closure of the path across woodmarsh playing field. The footballers have closed access across most of the field . .the footpath is the only path left.*" An email from Mr Oliver is shown at **Appendix 5**. In it he states that :

" Yes I do wish to object to the footpath closure,my wife and I regularly use the foot path reason 1 to keep the path open 2 it is the only footpath left because the footballers wish to exclude all North Bradley residents from crossing the field using the excuses dogs fouling the field, broken glass, graffiti and so it goes on. Not so long ago there where six pathways across the field the footballers claim the footpaths

were not a right of way as the land was and is privately owned. My wife and I have lived in North Bradley for more than 28 years the land has always been privately owned, but we have never been challenged or told to get off the land children have used the playing field crossing to go to school or collage even this has been stopped that is unless we all pay a fee to cross the land how mean is that yes I do object to the fencing off of the field, and proposed flood lights and the parking on the main through fare of North Bradley owned ”

13. In response, officers note that Mr Oliver refers to six pathways but provides no evidence to clarify or support this. Some members of the public roam freely across the pitch and do not keep to the footpath. However, Footpath 1 is the only legal route, recorded in the Definitive Map and Statement of rights of way, which crosses the area of the pitch. Officers do not consider that anyone needs to use the footpath, including anyone going to school or college.

14. If the footpath were stopped up, anyone wishing to go from points A to B would have to walk approximately 60 metres further than at present. However, both points would remain accessible and the alternative route along Axe and Cleaver Lane and Woodmarsh has a firmer surface. Officers consider that highway rights over the area concerned 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.

Environmental Impact of the Proposal

15. None

Equalities Impact of the Proposal

16. None

Risk Assessment

17. None

Financial Implications

18. The legal and advertising costs incurred in making an application to stop up the highway have been borne by the Council's Department of Health and Public Wellbeing. If the Cabinet Member gives consent, the department would continue to fund the application. In the event of an adjournment of the hearing or an appeal against an order made by the court, Trowbridge Town Football Club would be asked

to contribute towards the costs. This is consistent with the Council's power to charge for such costs under section 117 of the Highways Act 1980.

Options Considered

19. 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

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

Reasons for Proposal

21. Officers are satisfied that the section of highway is unnecessary and in the circumstances it would be appropriate for the Council to apply to stop it up.

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

None