

REGULATORY COMMITTEE

10th SEPTEMBER 2003

DEVIZES - DEVELOPMENT OF LAND OFF BRICKLEY LANE
HIGHWAYS ACT 1980, SECTION 116 - STOPPING UP OF HIGHWAY

Purpose of Report

1. To propose action to remedy a problem caused by the building of a garage on highway land, through use of Section 117 of the Highways Act 1980.

Background

2. Development of a housing site is currently progressing on land off Brickley Lane, Devizes. Through an apparent misunderstanding on the part of the developer in relation to the site boundary, a garage unit has been built partly on highway. The location of the building, and the extent of the public highway is identified on the plan at **Appendix 1**.
3. The developer has approached the County Council to request that the highway land be stopped up in order that the property might be sold on without hindrance.

Main Considerations for the Council

4. Section 116 of the Highways Act, 1980, can be used to stop up highway if a Magistrates Court thinks fit, on the grounds, inter alia, of it being unnecessary. The main consideration for the County Council, therefore, is whether the highway upon which the building has been constructed is unnecessary and, if so, whether it is prepared to make application to the Magistrates Court for it to be stopped up.
5. The highway land in question is the former verge of Brickley Lane. The former carriageway is to be used as footpath cycle track, but will also serve limited frontage development. The plan indicates the relative amount of highway affected and required to be stopped up (hatched black) compared with the proposed highway arrangement (shown outlined black), which generally represents the current highway land. It is reasonable to accept that the affected highway is unnecessary insofar as it serves no foreseeable useful function.
6. An application to the Magistrates Court for a Stopping Up Order would involve staff costs. These would be associated with the technical, legal and administrative requirements to satisfy the Magistrates considering the application. There could also be costs associated with the requirements of statutory undertakers who might have plant in the vicinity, which requires relocation. It would be reasonable, as a pre-requisite to taking any action, to require a written undertaking from the developer to meet all the Council's costs associated with the exercise. In the absence of such an undertaking the Council should decline to act.

Environmental Impact of the Proposal

7. No negative environmental impact has been identified.

Risk Assessment

8. There is no risk to the Council, subject to costs being underwritten.

Financial Implications

9. All costs would be borne by a third party. No budgetary provision needs to be considered.

Options Considered

10. In this type of situation, where an error has occurred in relation to correct land boundary identification and/or an error has been made in setting out the works, a pragmatic position usually needs to be adopted. The option exists for the Council to require the removal of the building from the highway. Given the circumstances such a stance would be unjustifiable. Alternatively, the Council can consider the necessity to retain the highway; in this case it is suggested that the area of highway is not necessary for the intended highway function, and there seems no reason to refuse the developer's request.

Reasons for Recommendation

11. The proposal seeks to remedy a problem that has occurred, and to mitigate the potential future implications of the mistake made by the developer.

Recommendation

12. That:-
- (i) An Order be sought under the provisions of Section 116 of the Highways Act 1980 in relation to the highway land shown hatched on the plan at **Appendix 1**.
 - (ii) As a pre-requisite to the commencement of such proceedings the Director of Environmental Services shall be satisfied that a written undertaking has been received from the developer confirming that all the Council's costs associated with the application, the making of the Order, and any necessary physical works by the highway or statutory service authorities will be met.

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

None