

WESTBURY LEIGH: PRIVATE MEANS OF ACCESS TO SITE
OFF NEW LINK ROAD - PROPOSED STOPPING UP,
HIGHWAYS ACT 1980

Purpose of Report

1. To recommend use of highway powers to stop up two private means of access to land at Westbury Leigh, and provide alternative access.

Background

2. Planning permission was granted in 1998 to Persimmon Homes for the development of land at Westbury Leigh for housing. The development is approximately half way towards completion. A network of new distributor and access roads has been built as part of the development to provide relief for Westbury Leigh village, and to enable diversion of the A3098 onto the new roads. The permitted road network is subject to the provisions of a Section 106 Agreement with the County Council. Much of this network, including the A3098 diversion, was completed in October 2002, and opened for general traffic use. The roads are currently public highways, maintained at the expense of the developer until adoption is secured.
3. In part the new roads cross land attached to the former tannery works, where significant land pollution had been identified. The road causing the obstruction, linking roundabouts J2 and J12, and shown on the plan at **Appendix 1**, had to be constructed above prevailing ground levels to avoid disturbance of the contaminated land.
4. A parcel of land, identified on the plan at **Appendix 1**, which was not acquired by Persimmon Homes, previously gained vehicular access from Westbury Leigh over a private right of way coincident with the line of Footpath 26. The footpath route is intact and usable, although a minor diversion is proposed to avoid the need to negotiate a roadside safety barrier. This route forks at one point to provide two rights of way to the site. These are also shown on the plan. The parcel of land is currently owned by The Romsey Management Company Limited, and supports a derelict former industrial building.
5. The planning application (W.00.0187) for the roads network in the vicinity did not make provision for the private means of access. The assumption, on the parts of both the Local Planning and Highway Authorities, would have been that they were not required. Further detailed applications for minor roads serving the general area could cater for alternative access arrangements.

6. In making the public road, Persimmon Homes did not accommodate these two rights of way into their final designs. The rights of way have been obstructed and made partially unusable as a result of the need to provide the new public road on embankment over the contaminated land. An alternative access is available to the land, but the landowner does not have any legal right to use this route which is over land owned by Persimmon Homes. The landowner has now contacted both Persimmon Homes and the County Council, threatening legal action in relation to the obstruction and effective loss of the private means of access. It is understood that Persimmon Homes had been in dialogue with The Romsey Management Company Limited about provision of access to the land, but the matter was not resolved and an alternative route was not agreed at the time of road construction. This was a matter of negotiation between private companies in which the County Council was not involved.
7. Persimmon Homes, in seeking to address and rectify the problem, have discussed the matter with the County Council, and been advised that the reinstatement of the private means of access would not be in the public interest, as their use by vehicular traffic would be prejudicial to road safety, and the accesses would probably not be used in accordance with extant rights because of the changed circumstances of the new road layout in the vicinity.
8. A remedy for the County Council lies in Section 124 of the 1980 Highways Act, which allows a highway authority to stop up private means of access to a highway where it is likely to cause danger to, or interfere unreasonably with, traffic on the highway. This Section of the Act is usually used where there is unlikely to be an agreement reached in relation to an alternative access. Section 127 is available in circumstances where matters can be resolved by agreement. Section 126 of the Act provides for the payment of compensation (damages in relation to depreciation and disturbance in enjoyment of the land) where Section 124 is used. Whilst compensation is provided for in the Act, it is likely that the County Council could negotiate with Persimmon Homes and The Romsey Management Company Limited to negate the Council's exposure, through both the grant of a new right of access across Persimmon's land, and payment for the works to be undertaken to provide a new access. The gain for Persimmon Homes would lie in avoiding the need to make physical provision for access along the original routes, which would be an expensive process involving the re-routing of safety fences, provision of retaining walls and road construction.

Main Considerations for the Council

9. Section 124 allows for the stopping up of private access to the highway. In this case the authority would seek to secure the means (through negotiation with Persimmon Homes) to provide another reasonably convenient means of access to the premises affected. An Order made under this Section would, in the event of objections, be confirmed or otherwise by the Minister. Objection from the landowner can reasonably be anticipated.

10. An Order made under Section 124 will not necessarily put the Council beyond litigation from The Romsey Management Company Limited. The motives of the Company in seeking to have its original private means of access restored are not known, but do not appear to relate to safety or convenience. However, any legal action by the company can be a matter to be dealt with separately from the making of an Order. The issue of compensation is one that the Council would seek to negotiate with Persimmon Homes. It is understood that their advice is that compensation is not likely to be an overriding concern. Indeed, it is difficult to see how there would be any detriment to the premises if a new access were to be provided from a more convenient and safe location.
11. The real issue for the County Council lies in deciding whether it should take a pragmatic approach in relation to the problem by taking action at this stage. If Persimmon were put in a position of having to replace the original routes to give access to the site it would, on the one hand, be an expensive and very disruptive exercise, and, on the other, a fruitless gesture if the highway authority were to then determine to use its powers, after the event, to close the accesses.
12. No meaningful discussions have been held with The Romsey Management Company Limited to try to secure a tripartite solution to the problem. If this were possible, then the rights of way could be stopped up by agreement, using the provisions of Section 127 of the Highways Act 1980.

Environmental Impact of the Proposal

13. The reinstatement by Persimmon Homes of the access routes to serve the site would be locally damaging to an area that is currently landscaped, and partly used as a local public footpath. It would be an unsustainable use of materials to provide accesses which, by virtue of their layout, would be unlikely to be used for the purposes intended.

Risk Assessment

14. The Council could be at some risk of litigation by The Romsey Management Company Limited. If the option to pursue an Order is taken, then the Company might regard such action as prejudicing its ability to secure a financial advantage from Persimmon Homes. This should not be regarded by the County Council as a determining factor in deciding its approach, as the promotion of an Order should be taken on considerations associated with danger to, or unreasonable interference with, traffic on the highway. It is suggested that the option not to pursue stopping up could result in the original means of access being established and misused.

Financial Implications

15. If the recommended option for action is taken, it is likely that the Council's costs associated with the provision of alternative access and compensation could be transferred to Persimmon Homes, but this would be subject to further discussion. The outcome of potential litigation is uncertain. The Section 106 planning agreement with the developer embodies an indemnity clause (clause 24.2) that provides for the developer to bear responsibilities for costs arising from compensation claims etc arising in connection with the highway works. It would appear, therefore, that the County Council is not exposed to costs in relation to this matter, and that no budgetary adjustments need be considered.

Options Considered

16. Take no immediate action, but leave Persimmon Homes to sort out the dispute with The Romsey Management Company Limited, and argue that the highway authority should not be involved in what it regards as a private matter. Then, only if necessary, to resolve problems, by stopping up the access after completion of works by Persimmon Homes. This option **is not** recommended.
17. Take action by initiating an Order before Persimmon undertake works, exercising precautionary principles at a site where traffic danger can be foreseen, whilst opportunities exist to negotiate an alternative access with Persimmon Homes and avoid potential works and compensation costs. This option **is** recommended.
18. In both options the Council's position in relation to litigation is uncertain.

Reasons for Recommendation

19. The reasons for pursuing a Section 124 Order at this stage are embodied in the foregoing sections of the report.

Recommendation

20. That:-
 - (i) Discussions be held with The Romsey Management Company Limited and Persimmon Homes to try to secure their agreement to stop up the means of access to premises owned by The Romsey Management Company Limited, from the road shown on the drawing at **Appendix 1**, between J2 and J12, under the provisions of Section 127 of the Highways Act 1980.
 - (ii) In the event the issue seems unlikely to be resolved by agreement, an Order be promoted, under the provisions of Section 124 of the Highways Act 1980, and negotiations be entered into with Persimmon Homes to make provision for and meet all costs associated with the making of the Order and the provision of an alternative means of access.

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

None