

## Individual Cabinet member Delegated Decision

COUNCILLOR: Cllr PHILIP WHITEHEAD

CABINET MEMBER FOR HIGHWAYS & TRANSPORT

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REFERENCE: HT-27-15

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### PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO PORTASH, CHILMARK

#### Purpose of Report

To ask the Cabinet Member for Highways & Transport to consider whether the Council should apply to the magistrates' court for an order stopping up part of the highway at the above location on the ground that it is unnecessary for public use. The area of land concerned is shown hatched black on the plan at **Appendix 1**.

#### Consultation

On 11 November 2015, Chilmark Parish Council consented to the application being made and completed a consent form which is shown at **Appendix 2**.

The local member, Mrs. Bridget Wayman, has been informed of the request to stop up highway but has made no comment.

#### Options Considered

The Cabinet Member for Highways & Transport may resolve to:

- (i) Give consent to the application.
- (ii) Refuse to give consent to the application in which event, reasons should be given for doing so.

#### Reason for Decision

Officers consider that the part of the highway concerned can be stopped up on the ground that it is unnecessary for public use or any other highway-related reason and the Council should accordingly apply to the court for an Order.

**INTENTION TO MAKE DECISION**

Following consultation with officers I give notice that I intend to make the decision as set out in paragraph 15 (ii) of the attached report. If you would like to make any representations to me on this issue please do so by 1 december 2015

**The following supporting documents are attached:**

Appendix 1 - Area plan

Appendix 2 - Consent of Chilmark Parish Council of 11 November 2015

**The following supporting documents are available from the officer named above:** None

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Mr. P. Whitehead  
Cabinet Member for Highways & Transport

Date .....

**CABINET MEMBER FOR HIGHWAYS & TRANSPORT – MR P WHITEHEAD**

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**REFERENCE:** HT -27-15

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**PROPOSED APPLICATION TO STOP UP PART OF THE HIGHWAY ADJACENT TO PORTASH, CHILMARK**

**Purpose of Report**

1. To ask the Cabinet Member for Highways and Transport to consider whether to consent to a request to apply to the magistrates' court for an order stopping up part of the highway adjacent to Portash, Chilmark ("the highway concerned").

**Background**

2. The plan at **Appendix 1** shows the location of the highway concerned hatched black. The proposal seeks to stop up highway rights, essentially the legal right of the public to pass and repass over land forming part of the highway verge.
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.*

According to s. 328 of the Act, a “highway” means the whole or a part of a highway and such an application may therefore include part of a highway, as in the present case.

4. In this case, the Area Highway Engineer considers that it would be appropriate to make an application to stop up the highway as it is not necessary for public use or any other highway-related reason.
5. The application would be made on behalf of Mr and Mrs Guthrie, who own Portash, the adjacent property. If granted it would allow for the provision of car parking space.
6. Chilmark Parish Council was not willing to give consent to the original proposal but instead proposed an amendment wherein the first 1.25 metres of the land recorded as verge was reserved as highway to provide a refuge for users when a vehicle approaches. The parish council’s consent to this revised proposal, dated 11 November 2015, is shown at **Appendix 2**.

### **Main Considerations for the Council**

7. 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.
8. 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?
9. Officers consider that highway rights over the area concerned are not necessary for the public to pass and repass or visibility, health and safety, access by a third party or any other highway-related reason.

### **Objections to the application**

10. At the time of writing, there have been no objections to the proposal.

### **Environmental Impact of the Proposal**

11. None

### **Equalities Impact of the Proposal**

12. None

### **Risk Assessment**

13. None

### **Financial Implications**

14. The legal and advertising costs incurred in making an application to the magistrates' court stop up the highway are being – and would continue to be - met by Mr and Mrs Guthrie.

### **Options Considered**

15. The Cabinet Member for Highways, Streetscene and Broadband may resolve to:

- (i) Refuse to give consent to the proposed application in which event, reasons should be given for doing so.
- (ii) Consent to the application.

### **Proposal**

16. It is proposed that the Cabinet Member adopt the option at 15 (ii) above.

## **Reasons for Proposal**

17. 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.

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

None

Appendix 1 - Map  
Appendix 2 - Parish council consent