

Individual Cabinet member Delegated Decision

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – CLLR. PHILIP WHITEHEAD

OFFICER CONTACT: Kevin Gale tel. 01225 718023 Email: kevin.gale@wiltshire.gov.uk

REFERENCE: HT-26-16

PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO 3 NEW COTTAGES, SHAFTESBURY ROAD, MERE

Purpose of Report

To ask the Cabinet Member for Highways and Transport to consider whether the Council should grant a request from Mrs Beck of 3 New Cottages to apply to the magistrates' court for an order stopping up highway adjacent to the property known as 3 New Cottages, Shaftesbury Road, Mere on the ground that the highway is unnecessary for public use or any other highway-related purpose. The area concerned is shown cross-hatched on the plan at **Appendix 1**.

Consultation

On 5 July 2016, Mere Town Council consented to the application being made and completed a consent form which is shown at **Appendix 2**.

The local member, Cllr George Jeans (Mere), has been consulted and made no objection.

Options Considered

The Cabinet Member may resolve to:

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

Reason for Decision

Officers consider that the highway concerned is unnecessary for public use or any other highway-related reason and accordingly the Council should apply to the court for a stopping-up order.

DECISION MADE

I consider that the proposed application should be made and therefore approve adoption of the course of action outlined in paragraph 17(ii) of the report.

This decision was published on 4 October 2016 and will come into force on 12 October 2016.

The following supporting documents are attached:

Appendix 1 Plan showing the proposed application

Appendix 2 Photograph of the area

Appendix 3 Consent form from Mere Town Council

The following supporting documents are available from the officer named above: n/a

Date4 October 2016.....

.....signed.....

Cllr Philip Whitehead
Cabinet Member for Highways and Transport

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HIGHWAYS AND TRANSPORT

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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 adjacent to 3 New Cottages, Shaftesbury Road, Mere.

Relevance to the Council's Business Plan

- 2 Working with the local community to provide a highway network fit for purpose.

Main Considerations for the Council

- 3 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. In the case of an application to stop up highway, the highway authority should be satisfied that the area concerned must be unnecessary for public use or any other highway-related purpose.
- 4 If the proposed application meets the criteria described above, the authority should consider whether there are reasons why an application should not be made.

Background

5. The area concerned is shown cross-hatched on the plan at **Appendix 1**. On the ground it forms part of a domestic garden and measures 20 metres long by 4.85 metres wide. It does not have a registered owner. The current proposal differs from a previous one in that it provides for the reservation of a metre's width of verge which would remain between the carriageway and the adjacent hedge. This would reflect the available width on the ground, as can be seen in the photograph at **Appendix 2**.
6. Under Section 116 of the Highways Act 1980, 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 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.*

(4) An application under this section may be made, and an order under it may provide, for the stopping up or diversion of a highway for the purposes of all traffic, or subject to the reservation of a footpath, bridleway or restricted byway.

(5) An application under this section may include two or more highways which are connected with each other.

7. Officers are satisfied that the highway shown cross-hatched on the plan at **Appendix 1** is unnecessary for public use or other highway-related purpose and that there is no other reason why the application should not be made. They are therefore willing, subject to the Cabinet Member's consent, to make the proposed application.
8. On 5 July 2016, Mere Town Council consented to the proposed application. A copy of the consent is shown at **Appendix 3**.

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 proposal.

Equalities Impact of the Proposals

12. There is no impact to the proposal.

Risk Assessment

13. There would be no material risk to the Council in applying for the stopping up of this section of highway.

Financial Implications

14. The Council has been requested to make an application by Mrs Beck of 3 New Cottages. She has agreed to meet the legal costs of an application. Should the highway be stopped up, the Council will no longer be responsible for maintaining it.

Legal Implications

15. The application for a diversion under s.116 of the Highways Act is a power of and not a duty for, the Council.
16. If the Magistrates are minded not to make the Order, Wiltshire Council will continue to have a legal responsibility for the maintenance of the highway verge.

Options Considered

17. 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.

Reason for Proposal

18. Officers are satisfied that the sections of highway can be diverted so as to make them nearer or more commodious to the public.

Proposal

19. It is recommended 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