

CABINET MEMBER HIGHWAYS AND TRANSPORT – CLLR BRIDGET WAYMAN

HIGHWAYS, TRANSPORT & WASTE

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REFERENCE: HTW-18-17

PROPOSED APPLICATION TO STOP UP PART OF MUD LANE, PURTON

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 public vehicular rights for mechanically-propelled vehicles over part of Mud Lane on the ground that such rights over that part are unnecessary for public use.

Relevance to the Council's Business Plan

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

Main Considerations for the Council

- 3 Case law has clarified that in deciding whether to make an application to stop up highway (including highway rights for varying categories of user), 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.
- 4 The central question to be addressed is: what is the function performed by the relevant part (or right) of the highway and whether it is unnecessary for that function to be performed by that part or the whole of the highway. If it is unnecessary, it must also be considered whether there are any other reasons why a stopping-up application should not be made.

Background

5. The section of highway runs between points A-C as shown on the plan at **Appendix 1**. In terms of public vehicular traffic, this section only serves - and terminates at - Restrop Farm, which is owned and occupied by Mr Moseley, who has made the request for the Council to consider making an application. Mr Moseley seeks to deter public vehicular use of the lane beyond the first 75 yards (68.6 metres). This would still enable his neighbours to access their properties from the first part of the lane. Should a stopping-up Order be made, Mr Moseley has agreed to provide new signage to inform the public of the restriction. The overlays on the photograph at **Appendix 3** indicate where the signs would be placed.

6. Under the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of highway. Section 116 (1)-(4) provides 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.*
7. Should the application be made and granted, a restricted byway would be reserved over the section concerned. Consequently, the public would still have the right to use the highway on foot, bicycle, horseback and by horse and carriage. Officers have noted Councillor Lay's concerns regarding maintenance but would advise that the Council would still be responsible for maintaining the highway to a standard appropriate for its status.
8. Officers are satisfied that highway rights for mechanically-propelled vehicles over the section concerned are unnecessary for public use or any other highway-related purpose. They are therefore willing, subject to the consent of the Cabinet Member, to make the proposed application.
9. Purton Parish Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**.

Safeguarding Considerations

10. There are no relevant safeguarding considerations.

Public Health Implications

11. There are no relevant public health implications.

Environmental Impact of the Proposals

12. There is no negative environmental impact to the proposals.

Equalities Impact of the Proposals

13. None.

Risk Assessment

14. Officers have no concerns with regard to risk in relation to the proposed application.

Financial Implications

15. Mr Richard Moseley of Restrop Farm has agreed to meet the legal cost of an application. Even if one does not proceed, he will still be liable for preparatory costs. Accordingly, officers are satisfied that the application would have no negative financial impact upon the Council.

Legal Implications

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

Options Considered

18. 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

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

Proposal

20. It is proposed that the Cabinet Member adopt the option at 18(ii) above.

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