

Individual Cabinet member Delegated Decision

**CABINET MEMBER FOR HIGHWAYS, TRANSPORT & WASTE –
CLLR. BRIDGET WAYMAN**

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REFERENCE: HT-03-18

PROPOSED APPLICATION TO STOP UP PART OF LANGLEY BURRELL FOOTPATH 22

Purpose of Report

To ask the Cabinet Member for Highways and Transport to consider whether the Council should grant a request from Wavin Ltd to apply to the magistrates' court for an order stopping up part of Langley Burrell Footpath 22 on the ground that is unnecessary for public use. The section of highway concerned is shown between the points A-B on the plan at **Appendix 1**.

Consultation

On 22 October 2017, Langley Burrell Parish Council consented to the application being made and a copy of the signed consent form is shown at **Appendix 2**.

The local member, Councillor Howard Greenman (Kington), supports the proposed application.

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 section of footpath concerned can be stopped up as it is unnecessary for public use and the Council can 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 in accordance with the officer's recommendation set out in the attached report. If you would like to make any representations to me on this issue please do so by 6 February 2018 _____

The following supporting documents are attached:

Appendix 1 Plan showing the section of highway concerned;

Appendix 2 Consent of Langley Burrell Parish Council;

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

Date30/01/18.....

.....signed.....

Cllr Bridget Wayman
Cabinet Member for Highways, Transport & Waste

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HIGHWAYS, TRANSPORT & WASTE

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PROPOSED APPLICATION TO STOP UP PART OF LANGLEY BURRELL FOOTPATH 22

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 part of Footpath 22 on the ground that it is unnecessary for public use.

Relevance to the Council's Business Plan

- 2 The proposed application, if granted, would assist in enabling development to improve the local economy.

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 legal route of this section of footpath runs between points A-B as shown on the plan at **Appendix 1**. Wavin Ltd is developing the site under a planning permission and has accordingly constructed landscaping bunds of 4 metres in height. One of these bunds obstructs the legal route of the footpath. However, to facilitate Wavin's works, a temporary closure order is in place. This closure order has been renewed and is due to expire on 29 May 2018 at the latest, or sooner if the works are completed before then.
6. Langley Burrell Parish Council does not wish the legal route of the footpath to be reinstated as this would necessitate removing part of the landscaping bund. They had hoped it would be possible to divert the footpath over land at the eastern end of Wavin's boundary. However, it has not possible to secure the consent of the neighbouring landowner, which would have been necessary to create a new section of footpath.

7. The Council does have the power, under Section 26 of the Highways Act 1980, to provide a lawful means of creating a new public right of way. However, in the present case, officers consider that it would be excessive and reasonable to exercise the power as it would impose the creation of a section of public footpath upon an unwilling landowner who is not in any way responsible for the issue the Council is trying to resolve. In addition the exercise of the power would trigger an entitlement to compensation and the Rights of Way and Countryside Team has no budget for this.
8. 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.*
9. Officers are satisfied that the section of footpath is unnecessary for public use or any other highway-related purpose. There are alternative routes nearby and the proposed stopping-up would not cause significant inconvenience to the public to the public. Officers are therefore willing, subject to the consent of the Cabinet Member, to make the proposed application.
10. Langley Burrell Parish Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**.

11. If the proposed application is made, the decision on whether to make the stopping-up Order is for the magistrates' court. The court will consider any objections received and only make the Order if it is satisfied that the highway concerned is unnecessary for public use.

Safeguarding Considerations

12. There are no relevant safeguarding considerations.

Public Health Implications

13. There are no relevant public health implications.

Environmental Impact of the Proposals

14. There is no negative environmental impact to the proposal.

Equalities Impact of the Proposals

15. None.

Risk Assessment

16. There does not appear to be a material risk to the Council in applying for this stopping-up Order.

Financial Implications

17. Wavin Ltd has agreed to meet the legal cost of an application. Even if one does not proceed, they will still be liable for preparatory costs.

Legal Implications

18. The application for a stopping-up Order under s.116 of the Highways Act is a power of the Council as highway authority and not a duty.
19. 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 footpath. The Council would also have to review whether it would be necessary to take enforcement action to require removal of the bund and therefore effectively negate part of the planning permission.

Options Considered

20. 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

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

Proposal

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

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

n/a