

CABINET MEMBER HIGHWAYS AND TRANSPORT – CLLR BRIDGET WAYMAN

HIGHWAYS, TRANSPORT & WASTE

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PROPOSED APPLICATION TO STOP UP HIGHWAY AT CHARLCUTT BARN, CHARLCUTT

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 a section of the highway verge of the C118 road at Charlcutt on the ground that it is 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 should 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 is shown cross-hatched in black on the plan at **Appendix 1**. It can be seen from the photograph at **Appendix 3**, the highway is largely occupied by an outbuilding adjacent to a telegraph pole. The section measures approximately 52 metres long by 5.2 metres wide at its northern end, tapering to 0 metres wide at its southern end. Should this part be stopped up, three metres of verge would remain for highway users as a refuge from passing traffic.
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, the public would no longer have the right to pass and repass along the section of highway concerned and the Council would no longer be responsible for maintaining it.
8. Officers are satisfied that highway rights 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. Bremhill 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 regarding risk in relation to the proposed application.

Financial Implications

15. Mr Harrop and Miss Van Hoegaerden agreed to meet the legal cost of an application. Even if one does not proceed, they 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 highway verge and would have to consider whether it would be appropriate to take enforcement action in respect of the outbuilding, which is encroaching onto the highway verge.

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 section of highway can be stopped up as it unnecessary for public use.

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