

## CABINET MEMBER HIGHWAYS AND TRANSPORT – COUNCILLOR BRIDGET WAYMAN

### HIGHWAYS, TRANSPORT & WASTE

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REFERENCE: HTW-25-18

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## PROPOSED APPLICATION TO STOP UP PART OF BROOK LANE, WESTBURY

### 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 the highway known as Brook Lane on the ground that it is unnecessary for public use.

### Relevance to the Council's Business Plan

- 2 Improving the road infrastructure and ensuring everyone can participate and engage in their community and decisions which will affect their local areas.

### 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 must 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 over the area shown cross-hatched on the attached plan at **Appendix 1** for a distance of 248 metres and with a width ranging from zero to 12.9 metres. The average width is 8.3 metres and the total area is 2059 metres<sup>2</sup>. The road has a metalled surface but is largely overgrown. It has become disused since the construction of Stephenson Road, which links the same points.
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. As referred to in (5), above, the section of road is no longer in use since Stephenson Road was provided. Officers consider that a stopping-up order would have no adverse impact on the highway network in the area. They are therefore willing, subject to the consent of the Cabinet Member, to make the proposed application.
9. Westbury Town 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. Prospect Land 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. Accordingly, officers are satisfied that the application would have no negative financial impact upon the Council.

### **Legal Implications**

16. As highway authority, the Council has a discretionary power, rather than a duty, to make such applications.
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 full length 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 section of highway can be stopped up as it is unnecessary for public use.

### **Proposal**

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

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**The following unpublished documents have been relied on in the preparation of this Report: n/a**

