

**CABINET MEMBER HIGHWAYS AND TRANSPORT
CLLR BRIDGET WAYMAN**

HIGHWAYS, TRANSPORT & WASTE

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REFERENCE: HTW-04-19

**PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO THE CASTLE,
BROOKWATER, DONHEAD ST. ANDREW**

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 rights over two sections of highway adjacent to The Castle, Brookwater on the ground that it is unnecessary for public use.

Relevance to the Council's Business Plan

- 2 As part of the Council's drive for stronger communities, people in Wiltshire are encouraged to take action on what is best for their own communities. It also feeds in to the aim of being an innovative and effective council as part of its focus on generating income by adopting a more commercial approach in what we do.

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 attached plan shows the two parcels of land concerned. Parcel 1 is behind a wall and has not been used or needed as highway for some years.

Parcel 2 shows an unnecessarily excessive width of the highway. The area which is proposed to be stopped up would still allow enough of the highway adjoining the metalled road surface to remain for use by passengers getting on and off the bus which stops on the adjacent A30.

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.

7. Should the application be made and granted, the public would no longer have the right to pass and repass along the highway concerned and the Council would no longer be responsible for maintaining it.
8. Donhead St. Andrew Parish Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**.

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 proposals.

Equalities Impact of the Proposals

12. The proposed retention of part of the highway would benefit bus passengers in this rural location, a considerable proportion of whom will be elderly.

Risk Assessment

13. Officers have no concerns regarding risk in relation to the proposed application.

Financial Implications

14. Mr. and Mrs. Hay have 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

15. As highway authority, The Council has a discretionary power, rather than a duty, to make such applications.
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 full extent of the existing highway.

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 stopped up as they are unnecessary for public use.

Proposal

19. It is proposed 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