

**CABINET MEMBER FOR HIGHWAYS, TRANSPORT AND WASTE
COUNCILLOR BRIDGET WAYMAN**

HIGHWAYS & TRANSPORT

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REFERENCE: HTW-09-20

**PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO 168
LITTLEWORTH LANE, WHITLEY**

Purpose of Report

- 1 To ask the Cabinet Member to consider whether the Council should grant a request to apply to the magistrates' court for an Order stopping up part of the highway at Littleworth Lane, Whitley on the ground that it is unnecessary for public use or any other highway-related purpose.

Relevance to the Council's Business Plan

- 2 As part of the Council's drive for strong 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 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 function is 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 area of land concerned is not in registered ownership; the adjacent property, no. 168, is owned by Mrs. Pearce. Officers understand that the area concerned has been enclosed by a hedge for around 40 years, if no longer. The hedge can be seen in the photograph at **Appendix 3**. There are no records of any complaints from the occupiers of neighbouring properties (or anyone else) that the hedge is causing an obstruction. If a stopping-up order were made, the maintenance of the area of land

would be the responsibility of the landowner, whose identity is not currently known to the Highway Authority.

6. Under 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. In practice, the hedge has been on the land for many years.
8. Officers consider that the section of highway is unnecessary for public use or any other highway-related reason. They are therefore willing, subject to the consent of the Cabinet Member, to make the proposed application.

9. On 13 July 2020, the Council's Legal Unit received a letter from Mr. Chivers, objecting to the proposed application. This is shown at **Appendix 4**. The letter refers to a footpath and his use of it for 60 years. Later the same day, a reply was sent, informing Mr. Chivers that the land in question was not a footpath and that it had not been available for use for at least around 40 years. No response to this letter has been received.
10. Melksham Without Parish Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**. The local member, Councillor Phil Alford has been consulted and has no objection to the proposal.

Safeguarding Considerations

11. There are no relevant safeguarding considerations.

Public Health Implications

12. There are no relevant public health implications.

Environmental Impact of the Proposal

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

Equalities Impact of the Proposal

14. Neither the officers nor interested parties have raised any equality impacts of the proposal.

Risk Assessment

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

Financial Implications

16. Mrs. Sharon Pearce has agreed to meet the legal costs of an application. Even if one does not proceed, she 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

17. As highway authority, the Council has a discretionary power, rather than a duty, to make such applications.
18. If an application is not made or if one is made and the Magistrates are minded not to make the Order, Wiltshire Council will continue to have a legal responsibility for the maintenance of the highway concerned.

Options Considered

19. The Cabinet Member for Highways, Transport and Waste may resolve to:

- (i) Refuse to give consent to the application in which event, reasons should for doing so.
- (ii) Consent to the application.

Reason for Proposal

20. Officers are satisfied that the section of highway can be stopped up as it is unnecessary for public use.

Proposal

21. It is proposed that the Cabinet Member adopt the option at 19(ii) above.

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