

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

**HIGHWAYS & TRANSPORT**

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**REFERENCE:** HTW-15-21

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**PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO 2 NEW COTTAGES, SHAFTESBURY ROAD, MERE**

**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 Shaftesbury Road, Mere 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 part of the highway verge and not in registered ownership. In practice it forms part of the driveway used by Mr. & Mrs. Burt, the owners of the adjacent property, no. 2. The proposed application would be made on their behalf and retain a metre of highway to be used as footway. The site can be seen in the photograph at **Appendix 3**. In 2017, the Council made a similar application to stop-up highway at the next-door property, No. 3, New Cottages. This was granted by the court.

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.
8. Mr. & Mrs. Clowser of 3 New Cottages objected to the proposed application but withdrew their objection following discussions with Mr. & Mrs. Burt. The gas supplier, SGN, had also objected but has since withdrawn its objection.
9. 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.
10. Mere Town Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**. The local member, Councillor George Jeans supports 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 acknowledge the possibility of some reputational risk to the Council of in making this Cabinet Member decision. However, this is mitigated by an appropriate level of consultation. There is also the legal risk of potential challenge. Officers consider that the likelihood of either issue arising is very small and at a manageable level.

### **Financial Implications**

15. Mr. and Mrs. Burt have agreed to meet the legal costs 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 not cause the Council to incur any additional financial liabilities and the stopping-up would reduce future financial liability for maintenance costs for the section of highway concerned.

### **Legal Implications**

16. As highway authority, the Council has a discretionary power, rather than a duty, to make such applications.
17. 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**

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**