

**CABINET MEMBER FOR TRANSPORT, WASTE, STREET SCENE & FLOODING –
COUNCILLOR MARK McCLELLAND**

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REFERENCE: HTW-12-22

**PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO THE QUEEN'S
HEAD, 23 ST. MARTIN'S, MARLBOROUGH**

Purpose of Report

1 To ask the Cabinet Member to consider whether the Council should grant a request from Mr. Philip Mickelborough to apply to the magistrates' court for an Order stopping up part of the highway at St. Martin's, Marlborough 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 into 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, potential development access or refuges for pedestrians, 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 in the registered ownership of Mr. Mickelborough. He has stated that he wishes - in effect - to slightly reduce the width of the footway. This would make it further from the front of the former public house and enable him to

protect the property from damp. It would also protect pedestrians when the property's 'coach' doors are opened.

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. Marlborough Town Council has consented to the proposed application and a copy of its consent is shown at **Appendix 2**. The local members, Councillors Jane Davies and Caroline Thomas, have no objection.
8. 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. The area has been inspected regularly and Mr. Martin Cook, the Area Highway Engineer, is not aware that any defects in the footway have been reported or repaired in this location.
9. As the Area Highway Engineer for the Marlborough area, Mr. Cook is responsible for the Council's assessment of the request for a stopping-up application, prior to determination by the Cabinet Member. He has visited the site and is satisfied that, should the proposed application be made and granted, the remaining width of footway would be sufficient for the public. Mr. Cook considers that the section of highway is unnecessary for public use or any other highway-related

reason. Accordingly, he supports the proposal for the Council to make the proposed application.

Safeguarding Considerations

10. There are no relevant safeguarding considerations.

Public Health Implications

11. There are no relevant public health implications.

Environmental Impact of the Proposal

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

Equalities Impact of the Proposal

13. Officers consider that there is no equalities impact of the proposal.

Risk Assessment

14. Officers do not consider there would be any significant risk if the proposal were to be adopted.

Financial Implications

15. Mr. Philip Mickelborough has agreed to meet the legal costs of an application. Whether or not one proceeds, he will still be liable for preparatory costs. Accordingly, officers are satisfied that there will not be a negative financial impact upon the Council. Other financial implications are mainly associated with risk liabilities and if the stopping-up order is made, the liability transfers to Mr. Mickelborough and therefore reduces any financial implication associated with risk liabilities.

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 would continue to have a legal responsibility for the maintenance of the highway concerned.

Options Considered

18. The Cabinet Member for Transport, Waste, Street Scene & Flooding may resolve to:

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

Reason for Proposal

19. The Area Highway Engineer has assessed the proposal. He considers that the section of highway concerned is unnecessary for public use and the application should be made..

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