

**CABINET MEMBER FOR HIGHWAYS, STREET SCENE & FLOODING –
COUNCILLOR NICK HOLDER**

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REFERENCE: HSSF-21-24

**PROPOSED APPLICATION TO STOP UP HIGHWAY ADJACENT TO
THE SHIP INN, BURCOMBE LANE, BURCOMBE**

Purpose of Report

- 1 To ask the Cabinet Member to consider whether the Council should proceed with a proposal to apply to the magistrates' court for an Order stopping up part of the highway adjacent to The Ship Inn, Burcombe Lane, Burcombe, on the ground that the part is unnecessary for public use or any other highway-related purpose.

Relevance to the Council's Business Plan

- 2 The proposal would feed into the aim of being an innovative and effective council as part of our 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 section of land concerned is shown cross-hatched on the plan at **Appendix 1**. It is adjacent to The Ship Inn, Burcombe, and, as with the Inn, is understood to be owned by UK Properties LLC, whose request has led to the present proposal. On the ground, the area concerned is enclosed by a low wall and contains outdoor seating with tables; this is believed to have been the situation on site for some years and can be seen in the photographs at **Appendix 2**. If a stopping-up order were made, the public would cease to have the legal right to pass and repass over this section.

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. Burcombe Parish Council consented to the proposed application on 4 March 2024. The parish council was accordingly asked to complete a form which includes a section to be partially deleted depending on whether consent has been given or refused. To date, it has unfortunately not proved possible to secure a correctly-completed form. The local member, Councillor Nabil Najjar, has made 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 Highways Engineer is not aware of any complaints from the public regarding the condition of the section concerned and supports the proposal.

Safeguarding Considerations

9. There are no relevant safeguarding considerations.

Public Health Implications

10. There are no relevant public health implications.

Environmental Impact of the Proposal

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

Equalities Impact of the Proposal

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

Risk Assessment

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

Financial Implications

14. The legal costs of an application will be met by UK Properties LLC, whether or not it is granted by the court. Other financial implications are mainly associated with risk liabilities. If a stopping-up order were made, the land would no longer be subject to highway rights and the Council would not be liable for its maintenance. The Director of Finance and Procurement is of the view that the proposal is positive from the perspectives of council liability perspective and financial risk.

Legal Implications

15. As highway authority, the Council has a discretionary power, rather than a duty, to make such applications.
16. 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 duty to maintain the highway concerned.

Options Considered

17. The Cabinet Member for Highways, 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

18. Officers have assessed the proposal and consider that the section of highway concerned is unnecessary for public use or any other highway-related reason. Accordingly, they are of the view that the application should be made.

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