**CABINET MEMBER FOR HIGHWAYS, STREETSCENE AND BROADBAND –
MR J THOMSON**

OFFICER CONTACT: Kevin Gale (718023) e-mail: kevin.gale@wiltshire.gov.uk

REFERENCE: HSB-25-14

**PROPOSED APPLICATION TO STOP UP PART OF THE HIGHWAY ADJACENT TO
SWANBOROUGH COTTAGE, POULSHOT**

Purpose of Report

1. To ask the Cabinet Member for Highways, Streetscene and Broadband to consider whether to consent to a proposal by officers to apply to the magistrates' court for an order stopping up part of the highway adjacent to Swanborough Cottage, 46 Mill Lane, Poulshot ("the highway concerned").

Background

2. The plan at **Appendix 1** shows the location of the highway concerned edged red. The proposal seeks to stop up highway rights, essentially the legal right of the public to pass and repass over land forming part of the highway verge.

3. Under Section 116 of the Highways Act 1980 ("the Act") , Magistrates' Courts have a power to authorise the stopping up or diversion of highway, 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    [sub-section 2 has been repealed]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 2 months from 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.

According to s. 328 of the Act, a "highway" means the whole or a part of a highway and such an application may therefore include part of a highway, as in the present case.

4. In 1998, when replying to a search request, the council wrongly identified the extent of the highway adjacent to Swanborough Cottage, stating that highway rights ran over a lesser area than is actually the case. Subsequently, the owners, Ms Telling and Ms Martin, added an extension to their property which is now partly situated on the highway. The council apologised for the error in a letter sent by the council's Rights of Way and Highway Records Team to the owners' solicitors on 20 December 2013.

5. The Area Highway Engineer is satisfied that the highway concerned is unnecessary for public use or any other highway-related purpose and it would be appropriate to make an application to stop up part of the highway. The total area concerned is approximately 42 metres² and is situated to the right of the white line shown on the photograph at **Appendix 2**. An application would be subject to the reservation of a public footpath, Poulshot 7, which crosses the highway concerned, as shown in **Appendix 1**.

6. On 1 July 2014, Poulshot Parish Council gave its consent to the application; the consent form is shown at **Appendix 2**. Cllr Jonathan Seed, the local member, supports the proposal.

Main Considerations for the Council

7. Case law has clarified that in deciding whether to make an application, the Highway Authority has to 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.

8. The central questions to be addressed are: what is the highway function being performed by that part of the highway which is the subject of the requested application and whether it is unnecessary for that function to be performed by that part or whole of the highway. If the answer is that it is unnecessary for that function to be performed, the other question is: are there any other highway reasons why a stopping up application should not be made?

9. Officers consider that highway rights over the area concerned are not necessary for the public to pass and repass or visibility, health and safety, access by a third party or any other highway-related reason.

Objections to the application

10. At the time of writing, there have been no objections to the proposal.

Environmental Impact of the Proposal

11. None

Equalities Impact of the Proposal

12. None

Risk Assessment

13. None

Financial Implications

14. The council would carry out the necessary legal work. The only external cost would be approximately £450.00 for advertising.
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Options Considered

15. The Cabinet Member for Highways, Streetscene and Broadband 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.

Proposal

16.   It is proposed that the Cabinet Member adopt the option at 15 (ii) above.

Reasons for Proposal

17.   Officers are satisfied that the section of highway is unnecessary and in the circumstances it would be appropriate for the Council to apply to stop it up.

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

None