

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

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REFERENCE: HT -

**PROPOSED APPLICATION TO STOP UP PUBLIC VEHICULAR RIGHTS OVER PART OF
THE HIGHWAY LEADING TO GARS DON MILL, GARS DON**

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 public vehicular rights (PVR) over a 285-metre length of the highway leading to Garsdon Mill, Garsdon ("the highway concerned"). An application would be subject to the reservation of a restricted byway and has been requested by Mr Jones of Garsdon Mill.

Background

2. The plan at **Appendix 1** shows the location of the 285-metre span of highway concerned. The proposal seeks to stop up PVR, essentially the legal right of the public to pass and repass in a mechanically-propelled vehicle over the land concerned. Should such an application be made, the public would have the right to use the highway on foot, horseback, by bicycle, mobility scooter and by horse and carriage. With regard to PVR, the highway concerned only serves Garsdon Mill and two other properties, both of which are owned by Mr Jones and whose tenants have agreed to the proposal. Their consents are shown at **Appendix 2**.
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[sub-section 2 has been repealed]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 or the rights over it, as in the present case.

4. A previous proposal considered by officers was similar but did not provide for the reservation of a restricted byway. As a result, an objection was received from Mr Bill Riley, a rights of way campaigner, who maintains that the connecting Bridleway 96 should be subject to PVR and that the proposal should reserve a restricted byway over the highway concerned. This position was supported by the Wiltshire Bridleways Association. Legally the difference is that the *present* proposal would also allow for use of the highway by a horse and carriage which could then continue over Bridleway 96 if the bridleway was subsequently found to be subject to PVR. Officers were satisfied with the previous proposal but, in practical terms, this revised proposal would be unlikely to make any difference: Mr Jones has seen no use of the highway by a horse and carriage in the 28 years he has lived at Garsdon Mill. However, the revision has been sufficient to result in the withdrawal of the objection and officers would be happy to proceed on this basis.
5. The Area Highway Engineer is satisfied that PVR over the highway concerned are unnecessary for public use or any other highway-related purpose and it would be appropriate to make an application to stop them up, subject to the reservation of a restricted byway.
6. Should the application proceed and a stopping up order made, the council would not be legally required to maintain the highway, including the bridge forming part of it, to the same standard as is presently the case where it is vehicular highway. It would then be the intention to agree a specification and for Mr Jones to carry out works to the highway including the bridge with the aim of alleviating flooding at Garsdon Mill.
7. On 15 July 2014, Lea and Cleverton Parish Council gave its consent to the application; the consent form is shown at **Appendix 2**. Cllr Toby Sturgis, the local member, has made no objection.

Main Considerations for the Council

8. 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.
9. 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?
10. Officers consider that public vehicular 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

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

Environmental Impact of the Proposal

12. None

Equalities Impact of the Proposal

13. None

Risk Assessment

14. None

Financial Implications

15. The legal costs of the application would be met by Mr Jones of Garsdon Mill.

Options Considered

16. 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

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

Reasons for Proposal

18. Officers are satisfied that the PVR over the section of highway concerned are unnecessary and in the circumstances it would be appropriate for the Council to apply to stop it up, subject to the reservation of a restricted byway.

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

None