

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

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REFERENCE: HSB-04-15

**PROPOSED APPLICATION TO STOP UP PART OF THE HIGHWAY ADJACENT TO
CRAB HAY HOUSE, EASTCOURT, MALMESBURY**

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 Crab Hay House, Eastcourt ("the highway concerned").

Background

2. The plan at **Appendix 1** shows the location of the highway concerned edged black and hatched 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[sub-section 2 has been repealed]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 this case, the Area Highway Engineer considers that it would be appropriate to make an application to stop up the highway. The area concerned ranges from 35 to 45 metres in length with a width of between 5 and 15 metres. An application would be made on behalf of Mr Duncan Lamb, who owns both the land concerned and adjacent land including Crab Hay House.
5. Officers consider that the highway is not necessary for public use or any other highway-related reason.
6. On 6 November 2014, Crudwell Parish Council gave its consent to the application; the consent form is shown at **Appendix 2**. Cllr Chuck Berry, the local member, has no objection to the proposal.
7. The drainage through Crab Hay House has been updated recently to allow for any enhanced flows from the highway. The outstanding problem involves getting excess rainwater from the highway into the upgraded drainage system, which will complete flood alleviation works. Mr Lamb wishes to erect a low wall on the land to improve the privacy of his property. Also, if an order were to be made, he intends to install a line of hydraulically-pressed concrete kerbs complete with side entry kerbing and standard road gullies to collect the water and convey it away from the highway. This would allow the verge to dry out and be maintained in the future and, should the road be confined between kerbs and well drained, it will not deteriorate as quickly. Accordingly the proposed application has the firm support of the Land Drainage Engineer for the area.
8. Should the application be granted, the road sign shown on the plan at **Appendix 1** will be moved onto the highway and Mr Lamb will be required to pay the sum of £250 towards the cost of doing so.

Main Considerations for the Council

9. 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.

10. 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?
11. 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

12. At the time of writing, there are no objections to the proposal.

Environmental Impact of the Proposal

13. None

Equalities Impact of the Proposal

14. None

Risk Assessment

15. None

Financial Implications

16. The legal and advertising costs incurred in making an application to the magistrates' court stop up the highway would be met by the Council. The likely costs of approximately £4,500, plus additional costs of £250 for relocation of a road sign, would be met by Mr Lamb.

Options Considered

17. 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

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

Reasons for Proposal

19. 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