
Cabinet Member for City Services

12th December 2016

Name of Cabinet Member:

Cabinet Member for City Services – Councillor J Innes

Director Approving Submission of the report:

Executive Director of Place

Ward(s) affected:

Wainbody

Title:

Highways Act 1980 Section 116 Application to Stop up Highway Adjacent to Bransford Avenue/Lichen Green

Is this a key decision?

No

Executive Summary:

An Application has been made to the Council by the owner of 10 Lichen Green requesting the council to apply to the Magistrates Court for an order which would stop up the highway adjacent to Bransford Avenue/Lichen Green. The highway in question is grass verge, with a highway tree.

Recommendations:

- 1) Cabinet Member for City Services is recommended to: approve an application being made to the Magistrates' Court for an order stopping up the land identified on the plan contained within the appendices to the report titled Highways Act 1980 Section 116 – Application to Stop-up Highway Adjacent to Bransford Avenue/Lichen Green, in accordance with the provisions of sections 116 and 117 of the Highways Act 1980.

List of Appendices included:

Appendix 1 - Highways Act 1980 Section 116 – Application to Stop-up Highway Adjacent to Bransford Avenue/Lichen Green - Plan

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Highways Act 1980 section 116 Application to Stop up Highway adjacent to Bransford Avenue/Lichen Green

1. Context (or background)

- 1.1 Bransford Avenue/Lichen Green is currently highway maintainable at public expense, recorded on the Council's List of Streets. The Council is under a duty to maintain all highway that is on the lists of streets. The highway includes carriageway, footway and verges.
- 1.2 An application can be made to the Council under section 117 of the Highways Act 1980 ('the Act') for the highway to be stopped under section 116 of the Act.
- 1.3 The Council can make an application under section 116 of the Highways Act 1980 to the Magistrates Court to have a highway stopped up if it is considered that the highway in question is surplus to highway requirements and is no longer required for public use. There are no other means of stopping up highway that is carriageway, footway or verge unless it is subject to a planning consent or development, in this case the land is not subject to a planning consent.
- 1.4 Once highway rights are extinguished, control over the land reverts to the freehold or leasehold owner of the subsoil.
- 1.5 The applicant, is making the application to stop up the highway in order to take control of the land and maintenance of a tree within the area edged red. The tree in question in the applicant's opinion is causing damage to his property. The Council's tree preservation officer has been consulted and has no objections to the proposal.
- 1.6 The applicant has consulted Coventry City Council, who did not object to the proposal. In addition there are no Statutory Undertakers (Public Utilities) affected by the proposals, thus no objection was raised.
- 1.7 The land is currently registered under title number WK45582 and the freehold owner is currently registered as Beazer Homes Bedford Limited. However it has been confirmed that the land has been purchased by the applicant and therefore it is likely that the title will be updated in due course.

2. Options considered and recommended proposal

- 2.1 The Council has received an application from the applicant made under section 117 of the Highways Act 1980 ("the Act") requesting that the Council makes an application to the Magistrates Court under section 116 to stop up the highway known as land adjacent to Bransford Avenue/Lichen Green.
- 2.2 Bransford Avenue is a connecting residential road that loops to link with De Montfort Way at both its northern and southern extents. Lichen Green is a cul-de-sac that forms a junction onto Bransford Avenue. The highway to be stopped up is recorded on the lists of streets as a verge. The verge area contains a highway tree which the applicant believes is causing damage to his property.
- 2.3 This land does not serve any function for the safe operation of the highway and no required visibility splays will be removed.
- 2.4 The applicant has agreed to cover all costs related to the stopping up.

2.5 It is believed that in light of the above the highway marked red on the attached plan is no longer required for public use. The stopping up of the highway at this location will result in a small reduction in the Council's highways maintenance expenditure and permit the sub-soil land owner to undertake any works to the tree to prevent damage to his property that in his opinion it is causing.

3. Results of consultation undertaken

3.1 Before making an application for a stopping up order to the Magistrates Court the highway authority are required to serve notice of their intention to do so on the various third parties and organisations 28 days prior to the making of the application. The notice must also be published in the London Gazette and at least one local newspaper 28 days prior to the making of the application.

3.2 The applicant has carried out an informal consultation with the following organisations:

3.2.1 Coventry City Council Highway maintenance, street pride and green spaces and tree preservation teams, who made no objections to the proposals.

3.2.2 Coventry City Council Rights of Way Officer who made the following comments and the applicant amended the proposals accordingly:

- That 3 metres of highway land must be retained from the northern edge of the footpath that runs from Lichen Green to Barnsford Avenue.
- Where this retained land meets Barnsford Avenue that it must be a graduated curve to ensure there are no acute angles

3.2.3 Statutory undertakers (utilities) who confirmed that there are no apparatus within the area of application land and are therefore they are not affected by the proposals.

4. Timetable for implementing this decision

4.1 Subject to recommendations being approved, the application will be made as soon as practicable.

5. Comments from Executive Director of Resources

5.1 Financial implications

All costs will be met by the applicant so there is no cost to the Council of making this decision. The stopping up of the highway at this location will result in a small reduction in the Council's highways maintenance expenditure.

5.2 Legal implications

The recommendation in this report and all subsequent actions are provided for in the Act. Section 116 of the Act provides the power for a highway authority to apply to the Magistrates' Court for an order stopping up a highway, or part of a highway. Section 117 enables a highway authority to apply for a stopping up order on a third parties behalf and entitles the authority to recover its reasonable costs in doing so. Schedule 12 to the Act sets out the form to be used for notices in connection with an application for a stopping up order.

Following the stopping up, the responsibility for the land so released reverts to the subsoil owners.

Legal services will be required take the necessary steps to seek the Order. This includes advertising the application in the press, serving notices on various parties and making a formal application to the Magistrates' Court.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

N/A

6.2 How is risk being managed?

N/A

6.3 What is the impact on the organisation?

Should the extent of highway be stopped up this will reduce the area of land the Council are required to maintain.

6.4 Equalities / EIA

The process of applying for a stopping up order offers opportunities for anyone who feels that they may be disadvantaged by the order to object and be heard in court, if they so wish.

6.5 Implications for (or impact on) the environment

N/A

6.6 Implications for partner organisations?

Loss of highway verge/green space

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