

Cabinet Member for City Services

15th June 2020

Name of Cabinet Member:

Cabinet Member for City Services – Councillor P Hetherton

Director Approving Submission of the report:

Director of Transportation and Highways

Ward(s) affected:

Whoberley

Title:

Highways Act 1980 Section 116 Application to Stop up Highway at 1 Broomfield Road, Coventry.

Is this a key decision?

No

Executive Summary:

This report sets out the details and recommendations on an application that has been made to the Council by the owner of 1 Broomfield Road, Coventry, CV5 6JW requesting the Council to apply to the Magistrates' Court for an order to stop up a section of highway, which currently forms part of Broomfield Road that falls within the private access to a number of private properties.

Recommendations:

Cabinet Member for City Services is recommended to:

- 1) Approve that an application is made to the Magistrates' Court for an order stopping up the land identified on the plan at Annex 1 as a highway, in accordance with the provision of sections 116 and 117 of the Highways Act 1980 and agree to pay the associated costs.

List of Appendices included:

Plan of the highway to stop up – reference number: - T&T/PROW/ALM/HA1980/S116

Background Papers

None

Other useful documents:

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 at 1 Broomfield Road, Coventry.

1. Context (or background)

- 1.1 The Highway Authority has been questioned over a section of land which is currently shown as being maintainable at the public expense. The applicant has requested for this section of highway to be removed and returned to their ownership.
- 1.2 Currently, the section of highway that forms part of Broomfield Road in question, is shown as highway maintainable at public expense and recorded on the Council's List of Streets. As such, the Council as a statutory duty to maintain all highway that is on the lists of streets which includes the repair of potholes and resurfacing. The Council is also liable for any injuries that might be caused through any lack of maintenance.
- 1.3 For any highway, that is maintainable at the public expense, to be removed from the Council's List of Streets then 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.
- 1.4 The Council can then make an application under section 116 of the Highways Act 1980 to the Magistrates Court seeking 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.
- 1.5 In this case, the Council has now received an application from the applicant, made under section 117 of the Act, requesting that the Council makes an application to the Magistrates Court under section 116 of the Act to stop up a section of highway that is known as Broomfield Road.
- 1.6 Upon investigation into this application, to determine whether the highway in question is surplus to highway requirements, it has been considered that a drafting error may have occurred. However, this has not been corroborated by either the applicant or the Council. As such, the Highway Authority is satisfied that this section of highway is no longer required and that the Council can support the application and now pursue with the Magistrates Court for it to be stopped up.

2 Options considered and recommended proposal

- 2.1 Approve that an application is made to the Magistrates' Court for an order stopping up the land identified on the plan at Annex 1 as a highway, in accordance with the provision of sections 116 and 117 of the Highways Act 1980 and agree to pay the associated costs.
- 2.2 Approve that an application is made to the Magistrates' Court for an order stopping up the land identified on the plan at Annex 1 as a highway, in accordance with the provision of sections 116 and 117 of the Highways Act 1980 with the applicant to pay the associated costs
- 2.3 Take no action and that the section of land remains as highway maintainable at public expense.

Recommended proposal

- 2.4 Due to the inclusion of the identified section of land onto the Council's List of Street being considered as a drafting error then the following proposal is recommended:-

- 2.5 Approve that an application is made to the Magistrates' Court for an order stopping up the land identified on the plan at Annex 1 as a highway, in accordance with the provision of sections 116 and 117 of the Highways Act 1980 and agree to pay the associated costs

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 statutory undertakers who have responded with no objections.

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 Director of Finance and Director of Law and Governance

5.1 Financial implications

It has been suggested that the costs of the process is to be met by the Council due to it being required as a consequence of a drafting error made by the Highway Authority. The estimated costs are likely to be £ 5,000

There is a small on-going financial benefit to the Council's highway maintenance budget as the Council will no longer be responsible for the maintenance of the land. Therefore, it will allow funds to be concentrated on priority maintenance work on the rest of the highway.

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. Although this is not the intention of the highway authority to recover its costs. 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)?**

Not applicable

6.2 How is risk being managed?

None

6.3 What is the impact on the organisation?

None

6.4 Equalities / EIA

No specific equalities impact assessment has been carried out.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

None

Report author(s)

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Place

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Graham Clark	Lead Accountant	Finance	20th March 2020	14th May 2020
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Councillor P Hetherton	Cabinet Member for City Services	-	3 rd June 2020	3 rd June 2020

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