

SECTION 116 of the HIGHWAYS ACT 1980

REQUEST FOR THE AUTHORITY TO MAKE AN APPLICATION TO STOP UP HIGHWAY AT CROSSWAYS, FARMBOROUGH

(Ward Division: Farmborough)

1. The Issue

- 1.1 The proposal is for Bath and North East Somerset Council (“the Authority”) to make an application to the Magistrates’ Court to stop up a section of the unnamed road leading from Zion Place to Crossways and a section of Flatts Lane, both of which are near Crossways in the parish of Farmborough.

2. Recommendation

- 2.1 That the Team Manager - Highways Maintenance & Drainage grants authorisation for the Authority to apply to the Magistrates’ Court under section 116 of the Highways Act 1980 (“the 1980 Act”) to stop up a section of the unnamed road leading from Zion Place to Crossways and a section of Flatts Lane as detailed on the plan attached at Appendix 1 (“the Decision Plan”).

3. Financial Implications

- 3.1 The applicant has paid the Authority’s standard £2,750 upfront application fee for processing Highway Stopping Up Applications; this covers to the costs incurred by the Authority including officer time, legal costs, mileage, consumables and the applicable court fees.
- 3.2 Furthermore, the applicant has made an undertaking to meet the cost of diverting any statutory undertaker’s apparatus and/or the cost of entering into any wayleave agreements.

4. Human Rights

- 4.1 The Human Rights Act 1998 incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law. So far as it is possible, all legislation must be interpreted so as to be compatible with the Convention.
- 4.2 The Authority is required to consider the application in accordance with the principles of proportionality. The Authority will need to consider the protection of individual rights and the interests of the community at large.
- 4.3 In particular the Convention rights which should be taken into account in relation to this application are Article 6 (the right to a fair hearing), Article 8 (Right to Respect for Family and Private Life) and Article 1 of the First Protocol (Protection of Property).

5. Legal Background

- 5.1 The Authority has a discretionary power to apply to the Magistrates' Court to have public highway stopped up under section 116(1)(a) of the Act on the grounds that it is '*unnecessary*.' Section 116(3) of the Act states that an application cannot be made if the Parish Council has refused to consent to the making of the application; however, Farmborough Parish Council have confirmed that they have no objection to the proposals.
- 5.2 The Authority must also give due regard to the effect the stopping up would have on biodiversity and members of the public with protected characteristics as defined by the Equality Act 2010.

6. Background and Application

- 6.1 On 8 April 2018, Dr E R Gibbons applied to the Authority's Highways team for an application to be made to the Magistrate's Court to stop up:
- an approximately 194m² section of the unnamed lane leading from Zion Place to Crossways centred on grid reference ST 6453 5963;
 - and an approximately 17m² section of Flatts Lane centred on grid reference ST 6453 5964.

The land in question is shown cross-hatched in red on the Decision Plan at Appendix 1 and is hereafter referred to as "the Application Land".

7. Consultations

- 7.1 In June 2018, the Authority carried out a four week public consultation on the proposals. The Ward Councillor and national and local stakeholders including the police and adjacent landowners were all consulted about the proposed stopping up. Additionally, notices were erected both on site and on the Authority's website to seek the views of members of the public.
- 7.2 An adjacent landowner initially objected due to concerns that the proposals would prevent access for agricultural vehicles to a field. However, the objection was withdrawn after the effects of the proposals were explained and it was agreed that access would not be adversely affected. Farmborough Parish Council stated that they have no objection and Avon and Somerset Constabulary stated that they have no observations.
- 7.3 Sky, SSE, Vodaphone, Virgin, Cadent, Wales & West and Bristol Water responded to state that their plant would not be affected by the proposals.

7.4 The Authority did not receive any sustained adverse comments regarding the proposals.

8. Officer Comments

- 8.1 **The legislative test under consideration is whether the routes are unnecessary for public use.**
- 8.2 The section of the unnamed lane leading from Zion Place to Crossways which is proposed to be stopped up forms part of a residential garden. The land is separated from the remainder of the highway by a fence and the land has not been used for highway purposes for a considerable period of time. The land is not required to allow the public to pass and repass between Zion Place and Crossways. Furthermore, the Authority does not regard there to be any current need for the road to be physically widened and it is not anticipated that such a need will arise in the future.
- 8.3 The section of Flatts Lane which is proposed to be stopped up is a small triangle of overgrown land. The land is separated from the remainder of Flatts Lane by a low stone wall and the land has not been used for highway purposes for a considerable period of time. The land is not required to allow the public to pass and repass along Flatts Lane. Furthermore, the Authority does not regard there to be any current need for the road to be physically widened and it is not anticipated that such a need will arise in the future. Stopping up this section of Flatts Lane will not affect access to the agricultural field to the west.
- 8.4 **The Authority must give due regard to the effect the stopping up will have on biodiversity and members of the public with protected characteristics.**
- 8.5 The stopping up would have a neutral effect on biodiversity and members of the public with protected characteristics.

9. Risk Management

- 9.1 There are no significant risks associated with applying to stop up the Application Land.

10. Conclusion

- 10.1 It appears that the relevant statutory tests for stopping up the section of unnamed lane leading from Zion Place to Crossways and the section of Flatts Lane have been met.
- 10.2 The Authority should apply to the Magistrates' Court to stop up the public highway rights over the sections of land shown cross-hatched in red on the Decision Plan at Appendix 1.
-

AUTHORISATION

Under the authorisation granted by the Council on 10 May 2018, the Team Manager - Highways Maintenance & Drainage resolves that the Authority should apply to the Magistrates' Court to stop up all public rights over the section of the unnamed lane leading from Zion Place to Crossways and the section of Flatts Lane both of which are shown cross-hatched in red on the Decision Plan at Appendix 1.



.....

Dated: 16/8/18:.....

Craig Jackson
Team Manager - Highways Maintenance & Drainage

APPENDIX 1: Decision Plan

Section 116 of the Highways Act 1980:
Proposed Stopping Up of Public Highway

Public highway to be stopped up



Unaffected public highway



Scale 1:750



