

<b>Joint Eastern Arun County Local Committee URGENT ACTION</b>	<b>Ref No: EA01(19/20)</b>
<b>Date: 5<sup>th</sup> April 2019</b>	<b>Key Decision: No</b>
<b>Stopping Up Order at Downs Way, Angmering</b>	<b>Part I</b>
<b>Report by Director of Law and Assurance and Director of Highway and Transport.</b>	<b>Electoral Division: Angmering</b>

### **Summary**

This report is to seek CLC approval to stop-up an area of highway in Downs Way to rectify an anomaly that has existed since 2008.

### **Recommendations**

That the Director of Law and Assurance be authorised to make an application to the Magistrates Court for an Order to stop up the highway as summarised in this report and shown on the plan attached at Appendix A.

### **Proposal**

#### **1. Background and Context**

- 1.1 The length of Downs Way that is the subject of this report is a cul-de-sac which originally consisted of 12 properties on each side in blocks of 6. The cul-de-sac is accessed from the south by a feeder road and terminates at the north end, immediately south of the A259, with a footpath running around the northern perimeter of the estate.
- 1.2 Following an enquiry made by a member of the public regarding the highway boundary in relation to his property, number 87a Downs Way, it has come to light that it has been constructed on the publicly maintainable highway.
- 1.3 The various roads, paths and verges serving the properties in Downs Way, Angmering were dedicated as publicly maintainable highway under an Agreement made in line with the provisions of Section 40 of The Highways Act 1959 by the developer of the estate in 1967.
- 1.4 It would appear that in 2008, the then owner of number 87 Downs Way applied for and obtained planning permission to construct a property adjoining his own house upon land which it is assumed he thought to be part of his own garden.
- 1.5 The current resident subsequently bought the newly constructed property (No 87a) in 2016 and has recently placed the property on the market for

sale. As a result of queries being raised with him by potential purchasers, concerning the proposals to dual the A259 immediately north of number 87a, the resident sought clarification from the County Council on how these highway works will affect the property.

- 1.6 In checking the position, it was found that the land on which the property is constructed is included within the highway and shown on the adoption plan from 1967.
- 1.7 It is unlawful to construct anything on the highway or to obstruct it in any way without lawful authority. However, it should be noted that this property has been in situ since 2008 and was purchased by the current owner without knowledge of these facts.
- 1.8 The current owner has taken the property off the market until such time as this matter has been resolved.

## **2. Proposal**

- 2.1 The area of highway upon which the property has been constructed is unnecessary and of no public benefit. Given the highly unusual circumstances of this particular case, it is proposed that the highway, forming the footprint of the house and garden, be stopped up, and that the highway status is therefore removed. This will then regularise the position and enable the resident to properly market the property.
- 2.2 In order to do this, an application would need to be made to the Magistrates Court under Section 116 of the Highways Act 1980 seeking an Order from the Court confirming stopping up of the area of highway in question, upon the basis that it is no longer necessary.

## **3. Resources**

- 3.1 A hearing at the Magistrates Court would incur disbursements understood at the time of writing to be a fee in the region of £200 for the hearing itself, plus the costs of the advertisement in both the local paper and London Gazette of the hearing date. In addition to this, the process would involve officer time in carrying out the administrative consultation processes and then attending and presenting the hearing at the Magistrates' Court.
- 3.2 The costs of the Magistrates Court Hearing and notices will be met by the Development Management Team of Economy Infrastructure & Environment. Given the broad statutory consultation required and the various issues that could be raised, it is difficult to put a cost on this. However, it is hoped that the matter will progress smoothly, hence the amount of time spent would be minimal and therefore less costly.

## **Factors taken into account**

## **4. Consultation**

- 4.1 Consultation is carried out as part of the process. The statutory undertakers, Town and District Councils and adjoining landowners consent is sought and the proposals are advertised in the local press and London Gazette.

## **5. Risk Management Implications**

- 5.1 As the stopping-up order will have to go to Magistrates Court there is a risk that objections may arise and the Magistrates may refuse to consent to the stopping-up. However, given that the property has been situated on the highway for the last 10 years without issue, it is considered likely that the Court will agree that the area of highway is unnecessary and can be stopped up.
- 5.2 In addition to this, if the application is not made and the situation remains unresolved, the property will be unmarketable because of the present position and the County Council is then, potentially, exposed to the risk of a claim being made against it.

## **6. Other Options Considered**

- 6.1 Given that the construction of anything on the highway is unlawful, the alternative would be to demolish the property. This would then expose the County Council to a claim being made against it by the owner. In addition, it is not considered that this option would be in the public interest.

Do nothing - leaving the situation as it is, is not an option as the current owner will not be able to sell the property on, and which may leave the County Council liable to a claim.

## **7. Equality Duty**

- 7.1 Not applicable

## **8. Social Value**

- 8.1 Not applicable

## **9. Crime and Disorder Act Implications**

- 9.1 There are not thought to be any Crime and Disorder Act implications.

## **10. Human Rights Implications**

- 10.1 The County Council's positive obligations under the Human Rights Act have been considered in the preparation of these recommendations. It is unlawful for a public authority to act in any way which is incompatible with a convention right. The rights that should be considered are those pursuant to Article 8 and Article 1, Protocol 1.
- 10.2 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a

public authority if that authority does so with an intention of protecting the rights and freedom of others.

- 10.3 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference with it may take place where it is in the public interest to do so subject to the conditions provided by law. However, any interference must be proportionate. It is not considered proportionate to take action to remove the obstruction from the highway in this instance as the loss that would occur to the property owner would be significant and outweigh the loss to the public of this area of highway.
- 10.4 This proposal seeks to ensure that those rights are delivered and is not thought to interfere with the right of the public to the use and enjoyment of the highway at this location.

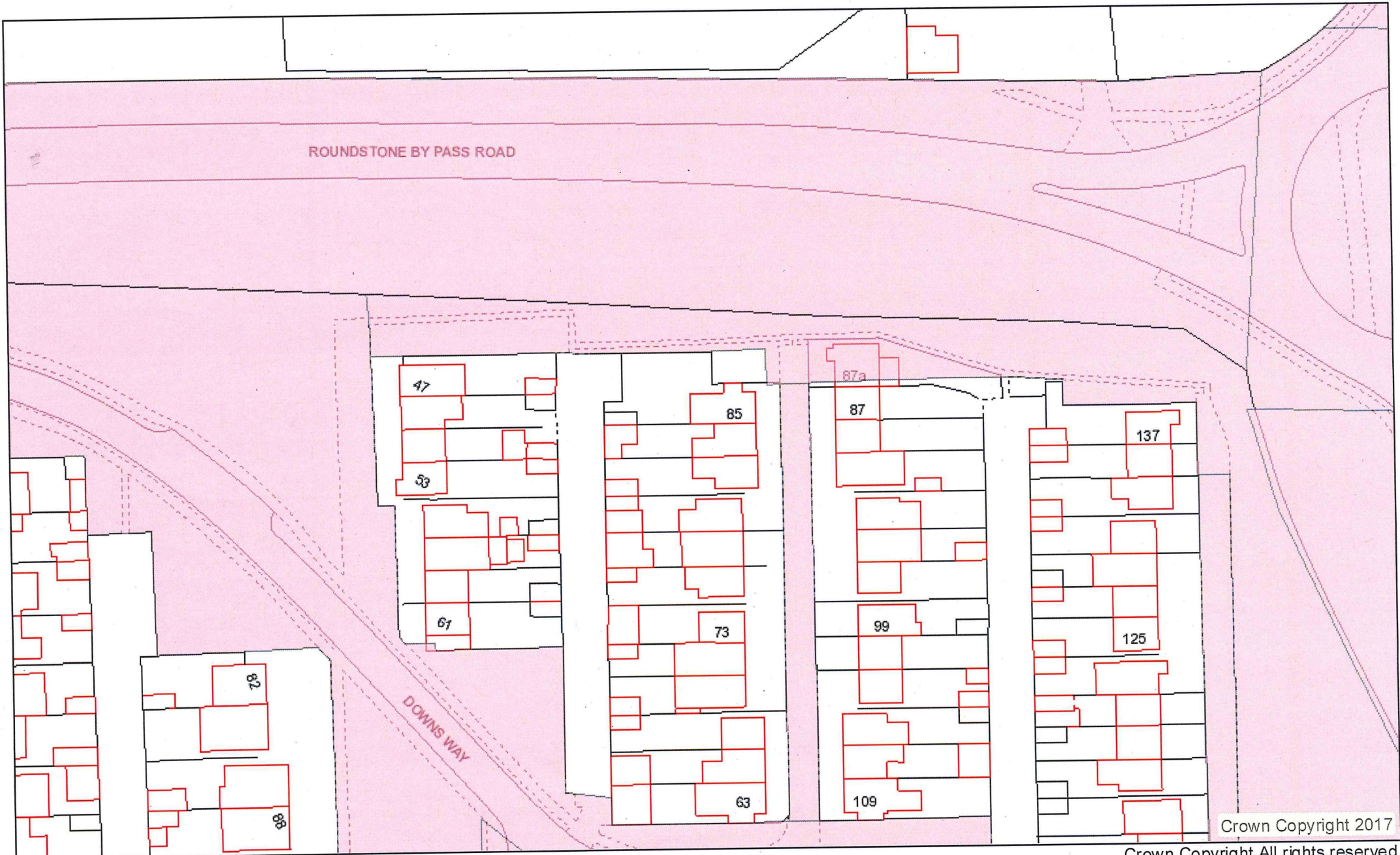
**Matt Davey**  
Director of Highways and  
Transport

**Tony Kershaw**  
Director of Law and Assurance

**Contact:** Benjamin Whiffin, tel. 03302223823. Gail Rowley, tel. 0330222 2696

**Appendix A** – a plan of the location highlighting the extent of the highway (shown in pink).

<b>Agreed</b>  ..... <b>Katherine Eberhart</b> Director of Finance, Performance & Procurement ..... <b>Deborah Urquhart</b> Chairman, Joint Eastern Arun County Local Committee Date  .....
<b>Action Authorised</b>  ..... <b>Tony Kershaw</b> Director of Law and Assurance Date  .....



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