

North Horsham County Local Committee	Ref No: NH01 19/20
17 June 2019	Key Decision: No
Hill Mead Horsham Proposed Stopping Up Order	Part I
Report by Director of Highways, Transport & Planning and Director of Law and Assurance	Electoral Division(s): Horsham Hurst

Summary

The owner of 86 Hill Mead, Horsham is seeking County Council approval to progress an application to stop up an area of highway adjacent to their property so that the land can be incorporated into their land. The land serves no useful purpose as public highway and removal of the highway status will remove the public maintenance liability.

The Committee is asked to approve the proposal to stop up the relevant area of public highway.

Recommendations

That the Committee authorises the Director of Law and Assurance 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 small area of highway in Hill Mead Horsham, which is the subject of this Report, is situated behind the existing footway adjacent to the property known as 86 Hill Mead and is shown shaded on the drawing at Appendix A.
- 1.2 The owner of 86 Hill Mead is seeking County Council approval to progress an application to stop up the area of highway shown shaded so that the land can be utilised as private drive, to enable the parking of his motor vehicle and to regularise an arrangement that has been exercised by him for a number of years.
- 1.3 The Area Highways Manager has considered the request and has confirmed that the area of highway in question is unnecessary in that it serves no useful

purpose for the public and he has therefore confirmed his agreement to it being stopped up.

- 1.4 In addition removal of the public highway status would remove the obligation upon the County Council to be responsible for the cost of maintaining the area of highway.

2. Proposal

- 2.1 The area of highway, identified above, is unnecessary and of no public benefit. Given that highway stopping up would regularise use of the part of the highway in question it is proposed that the highway be stopped up, and that the highway status is therefore removed.
- 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 including Court fees 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 owner of 86 Hill Mead has indicated that, if authorised by the County Council, he would intend to instruct his own solicitor, to act as agent for the County Council, to make the application to the Magistrates Court, and he has agreed to be responsible for his solicitor's costs and all fees and advertising costs, and in addition, to pay to the County Council the sum of £500 in respect of administrative costs and attendance, by the Area Highway Manager, to give evidence at the Magistrate Court hearing, confirming that the area of highway is unnecessary.

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

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 highway in question has been used by the householder for some time for the parking of his motor vehicle, without issue, it is considered likely that the Court will agree that the area of highway is unnecessary and can be stopped up.

6. Other Options Considered

- 6.1 Removal of the highway status is the only option which would enable the house owner exclusive use, as part of his drive, of the area of highway in question

7. Equality Duty

- 7.1 The Equality Act 2010 bans unfair treatment and seeks equal opportunities in the workplace and in wider society. It also imposes a Public Sector Equality Duty. The protected characteristics are age, disability, gender reassignment, marriage / civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.2 The protected characteristics have been duly considered and assessed in the course of the consideration of this proposal. No relevant or disproportionate impact upon any of the protected characteristics in the Equality Act 2010 has been identified in the consideration of the proposals detailed in this report.

8. Social Value

- 8.1 The proposal is considered to meet with the County Council's Social Value Policy in that it has no implications on the economic, social and environmental wellbeing of the area.

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.

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Appendices

Appendix A – plan of highway to be stopped up

Background Papers none