

SURREY COUNTY COUNCIL

CABINET MEMBER FOR TRANSPORT AND ENVIRONMENT

DATE: 20 SEPTEMBER 2012

**REPORT OF: JASON RUSSELL, ASSISTANT DIRECTOR,
HIGHWAYS**



**SUBJECT: PROPOSED STOPPING UP OF HIGHWAY AT YEW TREE
WALK, EFFINGHAM**

KEY ISSUE/DECISION:

Yew Tree Walk, a short cul-de-sac off The Street in Effingham, was adopted as a highway maintainable at public expense in 1968. However, for reasons unknown, this was not included in the records of the former Area Highways Office and they regarded this road as private and did not maintain it. The residents have, therefore, maintained the road at their own expense for many years and when they erected signs and created a gateway effect at the entrance to the road to deter parking were aggrieved to discover that it is in fact an adopted highway. In order to rectify this anomaly the residents have requested the County Council to apply to the Magistrate's Court for an order stopping up the highway rights over their road.

DETAILS:

Business Case

1. Although Yew Tree Walk, Effingham was adopted as a highway maintainable at public expense on 1 August 1968, the records of the former Area Highways Office were not updated to reflect this. On at least two occasions (in 1983 and 2002) the Area Office wrote to the residents informing them that Yew Tree Walk was private and its maintenance was their responsibility.
2. The residents have incurred considerable expense maintaining the road over the years and have supplied copies of invoices for surfacing work that they paid for in 2004 and 2010 totalling nearly £6,000.
3. The residents wish Yew Tree Walk to legally become a private road and have requested the County Council to apply to the Magistrate's Court on their behalf for an order stopping it up as a highway, pursuant to sections 116 and 117 of the Highways Act 1980.

Consultation

4. Before making an application to the Magistrate's Court for a stopping up order the highway authority must serve notice of their intention to do so on the district/borough council and the parish council if there is one. If either council objects to the making of the application within two months of the date of service of the notice it may not be made.

5. At least 28 days before the making of an application for a stopping up order the highway authority must serve notice of their intention to apply for the order on:
 - the owners and occupiers of all lands adjoining the highway;
 - any utility company having apparatus under, in, upon, over, along or across the highway;
 - if the highway is a classified road, the Minister for Transport, district/borough council and parish council if there is one.
6. Notices must also be displayed on site and published in the London Gazette and at least one local paper 28 days prior to the making of the application.

Financial and value for money implications

7. The cost of applying for a stopping up order is likely to be in the region of £4,000, which is less than the residents have spent on maintaining the road. In these exceptional circumstances and given that the County Council wrongly informed the residents that their road was private, it is considered appropriate for the cost of making the application to be borne by the County Council.

Equalities implications

8. There are no equalities implications in taking the recommended action.

Risk management implications

9. The County Council's policy regarding applying for stopping up orders on behalf of a third party has been drafted to ensure that the Council is indemnified against all risks associated with the making of an application for a stopping up order. Providing the policies are adhered to and correct procedures are followed any risks will lie with those requesting the stopping up.

Climate change/carbon emissions implications

10. The County Council attaches great importance to being environmentally aware and wishes to show leadership in cutting carbon emissions and tackling climate change.
11. The proposals in the report have no foreseen impact on climate change or carbon emissions.

Legal implications/legislative requirements

12. The County Council's policy on applying for stopping up orders was drafted to meet the requirements of the Highways Act 1980 ("the Act"). Section 116 of the Act provides the power for a highway authority to apply to the Magistrate's 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 behalf of a third party. Schedule 12 to the Act determines the form of notices that must be given in connection with an application for a stopping up order.

Corporate Parenting/Looked After Children implications

13. This proposal has no foreseen impact on the Council's corporate parenting role or looked after children.

Section 151 Officer commentary

14. The S151 Officer confirms that all material financial and business issues and risks have been considered in this report.

RECOMMENDATIONS:

It is recommended that an application be made to the Magistrate's Court for an order stopping up Yew Tree Walk, Effingham as a highway, in accordance with the provisions of section 116 of the Highways Act 1980, and that the cost be borne by the County Council.

REASONS FOR RECOMMENDATIONS:

To rectify the long-standing anomaly with respect to the status of Yew Tree Walk.

WHAT HAPPENS NEXT:

An application for an order stopping up Yew Tree Walk as a highway will be made to the Magistrate's Court, subject to there being no unresolvable objections from the Borough or Parish Councils.

Contact Officer:

Ian Taylor, Highways Information Team Manager, Tel: 020 8541 8921

Consulted:

Bill Barker, Local Member
Trevor Pugh, Strategic Director Environment and Infrastructure
John Hilder, Area Highways Manager
Peter Agent, Asset Planning Group Manager
Nancy El-Shatoury, Principal Solicitor
Tony Orzieri, Finance Manager

Informed:

Sources/background papers:

Letter dated 7 November 2011 from Yew Tree Walk Residents Association.

Sections 116 & 117 and Schedule 12, Highways Act 1980:

<http://www.legislation.gov.uk/ukpga/1980/66>

Report to the Cabinet on 21 December 2010 titled "Policy Regarding the Removal of Public Rights Over Roads and Highway Land" (item 12).

<http://www.surreycc.gov.uk/legcom/CouncilP.nsf/78333512986c70b7002568ff003ca441/abd9e9e972369bac802577f500433884?OpenDocument>
