

SURREY COUNTY COUNCIL**CABINET MEMBER FOR HIGHWAYS, TRANSPORT AND FLOODING****DATE: 2 DECEMBER 2015****LEAD OFFICER: TREVOR PUGH, STRATEGIC DIRECTOR OF ENVIRONMENT AND INFRASTRUCTURE****SUBJECT: PROPOSED STOPPING UP OF LAND AT REAR OF 36 WENSLEYDALE DRIVE, CAMBERLEY****SUMMARY OF ISSUE:**

The owner of 36 Wensleydale Drive, Camberley has requested the County Council to apply to the Magistrates Court for an order to be made removing (stopping up) the highway rights over a piece of land adjacent to their property. Their reason for wishing this to be done is to take responsibility for the land in question.

The Cabinet Member is asked to decide whether an application for a stopping up order should be made.

RECOMMENDATIONS:

It is recommended that an application be made to the Magistrates' Court for an order stopping up the land identified on the plan at Annex 1 as highway, in accordance with the provisions of Section 116 and 117 of the Highways Act 1980 and subject to the conditions of the County Council's approved policy on stopping up applications.

REASON FOR RECOMMENDATIONS:

The land in question is deemed surplus to highway requirements as the verge in question is not used as a thoroughfare and the metalled footway would remain as is meaning all public movements on foot are preserved. On completion of a successful application the County Council would be relinquished from any future maintenance liability for the land in question.

DETAILS:

1. When a request is received for the highway rights over highway land to be removed and the Cabinet Member for Highways, Transport and Flooding considers that it is no longer necessary for the land to be part of the highway, the County Council will, subject to the conditions contained in the policy approved by the Cabinet on 21 December 2010, apply to the Magistrate's Court for an order stopping up the land as a highway.
2. The land subject of the proposed application forms a planted verge adjacent to a metalled footway (as shown in red on the plan at Annex 1) and was adopted as highway maintainable at public expense under an agreement made pursuant to Section 40 of The Highways Act 1959 between Sunley Homes and The Urban District of Frimley and Camberley dated 26 September 1973.

3. The land is currently held in title SY411468 owned by Bovis Homes. An agreement in principle is in place for the owners of 36 Wensleydale Drive to purchase the land on the completion of a successful stopping up application.

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.

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.

RISK MANAGEMENT AND IMPLICATIONS:

6. 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.

Financial and Value for Money Implications

7. The applicant is to pay all costs associated with the application for a stopping up order. There is no financial cost to the County Council.

Section 151 Officer Commentary

8. The Section 151 Officer confirms that all material financial and business issues and risks have been considered in this report.

Legal Implications – Monitoring Officer

9. 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 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 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.

Equalities and Diversity

10. The Equalities Impact Assessment that was carried out when the County Council's policy on stopping up was approved by the Cabinet in December 2010 identified potential positive and negative impacts on the age, disability, gender and belief/faith strands as well as potential social exclusion issues. As the process for applying for a stopping up order includes opportunities for anyone who feels they may be disadvantaged to object and, if they wish, be heard in Court, the assessment did not identify any actions necessary to address the potential negative impacts.

WHAT HAPPENS NEXT:

11. When the applicant has deposited sufficient monies with the County Council to cover the cost of making an application for a stopping up order, the process of making the application will commence.
12. Before making an application to the Magistrates' Court for a stopping up order to be made, 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.
13. 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;
 - the Minister for Transport, district/borough council and parish council if there is one, if the highway is a classified road.
14. 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.
15. In accordance with Clause 3 of the County Council's policy regarding requests for the removal of public rights over roads, any unresolved objections will be reported to the Mole Valley Local Committee for a decision on whether to continue with the making of an application to the Magistrates' Court for a stopping up order to be made.

Contact Officer:

George Emmett, Highway Boundary Team Leader, 020 8541 7446

Consulted:

Trevor Pugh, Strategic Director of Environment and Infrastructure
John Furey, Cabinet Member for Transport, Highways and Environment
Jason Russell, Assistant Director, Highways
David Ivison, County Councillor
Paul Ilnicki, Surrey Heath Borough Councillor

Ian Cullen, Surrey Heath Borough Councillor
Jonathan Lytle, Surrey Heath Borough Councillor
Andrew Milne, Area Highways Manager
Nancy El-Shatoury, Legal Services
Tony Orzieri, Financial Services
Karen Limmer, Legal Services, Surrey Heath Borough Council
Bovis Homes, Land owners
Mr and Mrs Eldridge, 34 Wensleydale Drive, Adjoining land owners

Annexes:

Annex 1 – Plan: Land subject of proposed application – 36 Wensleydale Drive

Sources/background papers:

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://mycouncil.surreycc.gov.uk/ceclistdocuments.aspx?MID=466&DF=21%2f12%2f2010&A=1&R=0&F=embed\\$Item%2012%20-%20Policy%20regarding%20the%20removal%20of%20Public%20Rights%20over%20Roads%20and%20Highway%20Land.htm](http://mycouncil.surreycc.gov.uk/ceclistdocuments.aspx?MID=466&DF=21%2f12%2f2010&A=1&R=0&F=embed$Item%2012%20-%20Policy%20regarding%20the%20removal%20of%20Public%20Rights%20over%20Roads%20and%20Highway%20Land.htm)
