

**SURREY COUNTY COUNCIL****CABINET MEMBER FOR TRANSPORT AND ENVIRONMENT****DATE: 17 MAY 2013****LEAD OFFICER: JASON RUSSELL, ASSISTANT DIRECTOR, HIGHWAYS****SUBJECT: PROPOSED STOPPING UP OF WEY ROAD AND ROUND OAK ROAD, WEYBRIDGE****SUMMARY OF ISSUE:**

The Wey Road and Round Oak Road Residents Association have requested the County Council to apply to the Magistrates' Court for an order to be made removing (stopping up) the highway rights over their roads. Their reasons for wishing this to be done are so they can gain control over access and parking.

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

**RECOMMENDATIONS:**

It is recommended that:

1. An application be made to the Magistrates' Court for an order stopping up Wey Road and Round Oak Road as highways, 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 results of the consultation exercise carried out in November 2012 show that a significant majority of the owners of the properties fronting Wey Road and Round Oak Road wish them to be stopped up as highways.

**DETAILS:**

1. Wey Road and Round Oak Road ("the roads") are residential estate roads that were constructed in the late nineteenth century and were adopted as highways maintainable at public expense before the County Council became highway authority in 1974. The roads form a loop off Portmore Park Road and their only purpose within the highway network is to serve the properties fronting them. There is no reason for the public at large to use them as a through route. A plan showing the location and layout of the roads can be found at Annexe 1.
2. The County Council's policy regarding requests for the removal of public rights over roads ("the policy"), which the Cabinet approved on 21 December 2010, is reproduced in the consultation letter that can be found at Annexe 2. The policy states that, where the Cabinet Member for Transport and Environment considers a road to be unnecessary as a highway and a

significant majority of the owners of the properties fronting it wish it to cease to be a highway, the County Council will apply to the Magistrates' Court for an order stopping up the road as a highway, subject to certain conditions and the requirements of the Highways Act 1980.

3. The results of the consultation exercise described below show that over two-thirds of the owners are in favour of the stopping up. This is considered to be a significant majority for the purpose of the application of the policy.

#### **CONSULTATION:**

4. The letter reproduced in Annexe 2 was sent to the 87 registered owners of the 94 properties in the roads (some people own more than one property). Of the 80 owners that responded, 57 (71%) are in favour of the stopping up, which represents 65% of the total consulted. If the results are looked at by frontage measurement (which is relevant because this reflects the theoretical liability in the event that the roads are stopped up), 71% are in favour, 27% are against and 2% did not respond.
5. The written responses that were received are reproduced in Annex 3. The Residents Association believe they have already addressed the concerns expressed by the objectors, including putting in place legally binding agreements that would mean that those who did not wish to contribute towards the future upkeep of the road would not have to do so. The Residents Association's detailed responses to the objections raised can be found in Annexe 4.

#### **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 policy requires the Residents Association to meet all costs associated with the making of the application for a stopping up order and the application will not proceed until sufficient funds are deposited with the County Council.
8. Although road length is one of the factors taken into account in the Government's grant calculation, this change is not expected to impact on the actual level of grant funding the Council receives.

#### **Section 151 Officer Commentary**

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

#### **Legal Implications – Monitoring Officer**

10. 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.
11. An important factor to take into consideration is that for a stopping up order to be made under Section 116 it must be demonstrated to the Magistrates' Court that it is unnecessary for the roads to be highways. The roads do not serve any useful function within the highway network other than to provide access to the properties fronting them. From the point of view of the highway authority as long as the required rights of access to the properties served by the roads are secured it is not considered necessary for them to remain highways. However, the residents may have other reasons for wishing the roads to remain highways.
12. The owner of a property in Round Oak Road has questioned the validity of the policy and what constitutes a significant majority. They have stated that they wish the roads to remain publicly maintainable highways and have asked that their objection to the proposed stopping up be put to the Elmbridge Local Committee (in accordance with the policy). They have also indicated that they will seek a judicial review if it is decided to apply for a stopping up order.

#### **Equalities and Diversity**

13. 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:**

When the Residents Association have put in place the necessary legal arrangements and have 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.

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.

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.

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.

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 Elmbridge 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.

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**Contact Officer:**

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

**Consulted:**

Trevor Pugh, Strategic Director Environment and Infrastructure  
Nick Healey, Area Highways Manager  
Peter Agent, Asset Planning Group Manager  
Richard Bolton, Local Highways Services Group Manager  
Peter Gardner, Senior Lawyer (Highways)  
Owners of properties fronting Wey Road and Round Oak Road

**Informed:**

Christian Mahne, Local Member  
Andrew Davis, Local Member for Elmbridge Borough Council

**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)

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