

**SURREY COUNTY COUNCIL****CABINET MEMBER FOR TRANSPORT, HIGHWAYS AND ENVIRONMENT****DATE: 10 SEPTEMBER 2013****LEAD OFFICER: TREVOR PUGH, STRATEGIC DIRECTOR OF ENVIRONMENT AND INFRASTRUCTURE****SUBJECT: PROPOSED STOPPING UP OF LAND AT 28 POOL ROAD, WEST MOLESEY****SUMMARY OF ISSUE:**

The owner of 28 Pool Road, West Molesey 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 legalise a longstanding encroachment. If the land is not stopped up the County Council, as highway authority, is duty bound to secure the removal of the encroachment.

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 and if the land is not stopped up the County Council, as highway authority, is duty bound to secure the removal of the encroachment.

**DETAILS:**

1. When a request is received for the highway rights over highway land to be removed and the Cabinet Member for Transport, Highways and Environment 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 was adopted as highway maintainable at public expense by virtue of an agreement made under Section 40 of the Highways Act 1959 dated 16 July 1969 for the Fleetside development to the East of 28 Pool Road.

3. The land was fenced by a previous owner of 28 Pool Road and subsequent extensions to the property have now resulted in some of the structures physically standing on highway land. Both the fence and the structure are encroaching on highway land.
4. The land currently resides in Land Registry title SY367028 and the owner is West Hall Estate Company Ltd. The owners of 28 Pool Road have agreed a deal in principle to purchase of the land on the completion of a successful stopping up application.
5. If the land is not stopped up the County Council, as highway authority, is duty bound to secure the removal of the encroachment.

#### **CONSULTATION:**

6. 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.
7. 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:**

8. 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**

9. 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**

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

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

11. 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**

12. 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:**

13. 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.
14. 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.
15. 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.
16. 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.
17. In accordance with clause 3 of the County Council's policy regarding requests for the removal of public rights over areas of highway land, 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.

**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  
Ernest Mallett, Local Member  
Nicholas Healey, Area Highways Manager  
Nancy El-Shatoury, Legal Services  
Tony Orzieri, Financial Services  
Catriona Herbert, Legal Dept, Elmbridge Borough Council

**Annexes:**

Annex 1 – Plan: Land subject of proposed application – Pool Road

**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/celistdocuments.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/celistdocuments.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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