

CABINET MEMBER FOR TRANSPORT - 3 JUNE 2010

EXTENT OF THE HIGHWAY NORTHFIELD END AREA OF HENLEY-ON-THAMES

Report by the Head of Transport

Introduction

1. This report concerns changes to the extent of the known highway in the Northfield End area of Henley-on-Thames and the implication of this change to the County Council as local highway authority. A possible statutory solution for one area is also considered.

Background

2. The current highway record map for this part of Henley shows areas of land on the south west side of Northfield End (A4130), Bell Street (east side of main Bell Street, A4155), the whole of Bell Lane, Rupert Close, Rupert's Lane and Phyllis Court Drive to be excluded from the public highway. The authority, in response to requests has consistently advised over many years that these areas are not highway in line with the map. Adjacent landowners have therefore treated these areas as private for a considerable number of years. It should be noted that the A4130 formed part of the A423 trunk road and was the responsibility of the Department of Transport until it was de-trunked in 1992.
3. Several years ago Henley Town Council and The Henley Society claimed that the areas of Northfield End, Bell Street and Bell Lane do in fact form part of the highway. Research by officers proved to be inconclusive and the issue remained unresolved.
4. Subsequently the Town Council made a formal complaint about encroachments and the parking situated in the area of Bell Street on the understanding that it is highway. Under section 130 (6) of the Highways Act 1980 the authority has a duty to act on the Town Council's request if it is believed to be valid. The Solicitor to the Council took advice from Counsel over this because of the unresolved highway status situation. The advice indicated the authority could postpone any action provided the outstanding highway status issue was resolved within a reasonable time. To act on this advice it was decided to employ an independent specialist consultant to resolve the status issues.
5. The consultant was asked for completeness, to include in the area under consideration all the other roads mentioned in paragraph 2 above and the east side of the Marlow Road in this part of Henley. The attached drawing No 786/G183A at annex 1 shows this area. The consultant produced a report in

February 2009, based on evidence provided and her further research, setting out her conclusions about the extent of the highway in the areas concerned. Following this further evidence was presented which resulted in a supplementary report by the consultant in June 2009.

Consultation

6. Officers felt that the point had been reached when the 40 or so residents/landowners, affected by these reports for the roads described in paragraph 3 only, should be told about what the authority was doing and why and given the opportunity to provide evidence/ information of their own that may have a bearing on the issues. They were all sent an explanatory letter on 10 August 2009 giving them until 13 November that year to make their full representations. The two reports were placed on deposit in Henley and Oxford for inspection by these consultees.
7. About a dozen of the residents and the Town Council submitted evidence/information by the closing date. All this further evidence/information was passed to the consultant, who, having considered it all and discussed it with officers prepared a final report dated March 2010.

Brief Outline of the Conclusions from the Final Report

8. The report concludes that on balance some areas of land not shown as highway on the current highway record map are in fact highway. They are the area on the southwest side of Northfield End, the area on the east side of Bell Street and all of Bell Lane. These areas are shown hatched on the attached drawing No 786/G183B at annex 2.
9. The report also concludes that on balance Rupert's Lane, Rupert Close and Phyllis Court Drive are not highway and that the extent of the highway in Marlow Road is correct. Since this confirms what the highway record map shows no further action is considered necessary for these roads or their residents.
10. In addition the report indicates that there may be a public right of way with the status of footway or bridleway from the end of Bell Lane to the river Thames. This however is not an issue for this report.

Legal Note

11. Under common law land that can be shown to be highway, but not necessarily identified as such by the highway authority, will nonetheless in law be highway. This legal principle is unaffected by the current condition of the highway any current private use or the lapse of time since it was last used by the public. The legal maxim of 'once a highway always a highway' will apply. The highway authority will therefore be obliged to accept it regardless of any adverse implications for the authority and others. Also if it can be shown to have been highway prior to 1835 the highway authority will be expected to

maintain it regardless of its current condition. This is the case for the areas identified in this part of Henley if the conclusions of the report are accepted.

Endorse the Consultant's Conclusions

12. The consultant's report is detailed and exhaustive and officers believe that its conclusions are reasonable and based on sound judgement. If accepted by the Cabinet Member the areas identified in paragraph 8 and shown hatched on drawing no. 786/G183B will be added to the authority's highway record map as land that is publicly maintainable highway and all those residents originally consulted informed.

Implications for the County Council

13. If the consultant's conclusions are accepted the following are the probable implications for the County Council.

13.1 Bell Street

This area of road is currently used for private parking. The land in front of Nos 94 to 102 Bell Street is set out into 10 bays and at the south eastern end where it tapers into the existing highway Rupert House School has a private parking area for 4 vehicles. There will be substantial claims for compensation for the loss of the 10 private spaces in front of Nos 94 to 102 which are estimated to run into 6 figures.

This road and footway will become the maintenance responsibility of the County Council. It is understood that to gain access to these bays vehicles are regularly driven over the adjacent footway; there is no raised kerb here that would normally deter this manoeuvre. Over time this has adversely affected the paths condition and there has been at least one complaint about it.

The authority can include this area in its Henley parking review and the integrated transport scheme.

The authority will be expected to deal with the outstanding complaint from the Town Council as set out in paragraph 4 above.

13.2 Bell Lane

This lane is currently gravelled and will become the responsibility of the highway authority. To date there have been no representations concerning possible claims.

The authority could include this lane in the Henley parking review.

13.3 South West side of Northfield End

This area lies between the public footway and the public carriageway. It currently has various private uses including parking and an area of planting.

The area could be included in the Henley parking review and will require consultation with the residents and businesses affected.

It may be possible to arrange licences to plant and maintain for those areas that are currently covered in planting. It is felt that the associated administration costs, which are normally at the applicant's expense, under the circumstances should be met by the County Council. However the other cost implication for public liability insurance requires further consultation and could cause problems for this approach. It could mean therefore that the authority would have to assume the maintenance responsibility for these areas.

Extinguishment of Highway Status, Bell Street

14. The possibility of extinguishing the rediscovered highway status and returning to the status quo has been considered by officers. It is felt that the only area suitable for this consideration is the road in front of Nos 92 to 102 Bell Street currently used for private parking. Preliminary investigations by officers revealed the public have not used this area for many years and is believed to be unnecessary. However, it is felt that the footway fronting this row of properties is needed for public use and should be excluded from any application.
15. A successful stopping up of this road would remove the possibility of substantial claims. The power to do this is s.116 of the Highways Act 1980 and it allows the authority to make a case at the local Magistrates Court for an order extinguishing the highway status. The magistrates must be satisfied that the area of highway concerned is unnecessary for public use. Any one can make representations to the magistrates and therefore there is no guarantee they will make an order.
16. Under s.116 Henley Town Council and South Oxfordshire District Council have the power to veto the proposal if the highway concerned is part of an unclassified road. Due to the history of this road there is doubt over its classification and it has therefore been accepted that their vetoes would apply.
 - 16.1 The Town Council has been consulted and debated the issues at full Council on 4 May 2010 and has approved the County Council's recommendations to apply to stop up the highway status over the carriageway fronting 92 to 102 Bell Street. They resolved to exclude the area fronting Rupert House School except, we believe, for the bursary at 92 and not to withdraw their formal complaint mentioned in paragraph 4 above.
 - 16.2 South Oxfordshire District Council has also been consulted but more recently and at the time of preparing this report their view is not known. However, it is

hoped to have their written response by 3 June and that they will follow the view expressed by the Town Council.

17. The area of highway proposed for this stopping up, which reflects the Town Council's approval, is shown cross hatched on the attached drawing No 786/G183C at annex 3. It is felt the footway fronting the row of properties is needed for public use and has been specifically excluded from the proposal as mentioned in paragraph 14 above. An Internal consultation within Environment and Economy has revealed there is no highway objection to this proposal.
18. An initial consultation of the public utility companies has concluded that they have no requirement for the relaying of their services as part of this proposed stopping up. This is crucial since under the Act the County Council would be responsible for any costs associated with any relaying works. Only Southern Gas Networks (SGN), who has a large main running down the street, has raised concerns. However, it is anticipated these can be resolved through further negotiations and possible agreements between SGN and the landowners concerned.

Financial Implications

19. It is expected that there will be claims for compensation made against the County Council as described in paragraph 13 above. If the stopping up proposal shown on drawing No.786/G183C is ultimately successful and the parking review moves forward these claims will be substantially reduced.

RECOMMENDATION

20. **The Cabinet Member for Transport is RECOMMENDED to:**
 - (a) **accept the consultant's final report dated March 2010 and endorse its conclusions;**
 - (b) **authorise the Head of Transport to update the authority's highway record map in line with the consultant's conclusions and inform the landowners/residents affected;**
 - (c) **authorise the Head of Transport to undertake pre-application consultations associated with a stopping up of the highway for the area shown cross hatched on drawing no. 786/G183C under section 116 of the Highways Act 1980 and if the consultations support the proposal authorise the Solicitor to the Council at the direction of the Head of Transport to make an application to the Magistrates' Court for an order stopping up this section of highway on the grounds that it is unnecessary;**
 - (d) **authorise the Head of Transport to include Northfield End, Bell Street and Bell Lane in Henley-on-Thames in the parking review including any associated minor works and consult all the**

residents and businesses affected and where possible arrange planting licenses with the administration costs to be met by the County Council but subject to the satisfactory resolution of the public liability insurance issue.

STEVE HOWELL
Head of Transport
Environment & Economy

Background papers: Consultant's report dated March 2010

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May 2010



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25
50m



Not to Scale

Amendments	Date
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Northfield End Area

Extent of Land Under Investigation

Scale	Initial	Date
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Steve Howell

Head of Transport

Environment and Economy

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Drawing No.

786/G183A





