

ARBORETUM, DUNKIRK AND LENTON, RADFORD AND PARK AREA COMMITTEE,
21 FEBRUARY 2018

Title of paper:	Request for Authorisation to Stop Up a Highway At Sunbourne Court, Radford	
Director(s)/ Corporate Director(s):	David Bishop, Corporate Director for Development and Growth	Wards affected: Arboretum
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Other colleagues who have provided input:	KB, Legal and Governance Strategy and Resources	
Date of consultation with Portfolio Holder(s) (if relevant)	N/A	
Relevant Council Plan Key Theme:		
Strategic Regeneration and Development		<input type="checkbox"/>
Schools		<input type="checkbox"/>
Planning and Housing		<input type="checkbox"/>
Community Services		<input type="checkbox"/>
Energy, Sustainability and Customer		<input type="checkbox"/>
Jobs, Growth and Transport		<input checked="" type="checkbox"/>
Adults, Health and Community Sector		<input type="checkbox"/>
Children, Early Intervention and Early Years		<input type="checkbox"/>
Leisure and Culture		<input type="checkbox"/>
Resources and Neighbourhood Regeneration		<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):		
This report seeks authority to make an application to the Magistrates Court for an order to stop up (permanently close) the highway known as Sunbourne Court (“the highway”), off Forest Road West, Radford.		
Recommendation(s):		
1	To authorise the making of an application to the Magistrates Court pursuant to Section 116 of the Highways Act 1980 in order to stop up the highway shown at Appendix 1 and 2.	

1 REASONS FOR RECOMMENDATIONS

- 1.1 Having considered the request and the legal tests for stopping up highways, it is recommended that the highway is stopped up under section 116 of the Highways Act 1980 on the grounds that it is unnecessary for public use.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 During June 2016 the City Council received a request from 8B (UK) Limited who are the freehold owners of the land and fifteen residential premises at Sunbourne Court to stop up (close permanently) the highway (also known as Sunbourne Court) which serves the fifteen residential premises and eleven privately owned residential premises not owned by 8B (UK) Limited. 8B (UK) Limited’s ownership includes the subsoil beneath the highway surface, which is a carriageway with footways either

side. The reason for the request is that 8B (UK) Limited believe the highway is not needed by the public at large because it is a cul de sac (“dead end”) at its northern end, is not used as a public through route and therefore has no public benefit.

- 2.2 The highway is adopted and maintained by the City Council which means it has a vested interest in the surface of the highway in order to carry out its duty to repair and maintain it. The highway has two street lights an area of 87 square metres, a length of 27 metres and a variable width of between 8 and 20 metres. The highway is shown on the plan at Appendix 1 and on the photographs at Appendix 2.
- 2.3 In order to establish the public’s current and likely future use of the highway, and whether the highway is unnecessary, during July 2017 and January 2018 user surveys were carried out during peak-commuter times. A summary of the survey results is included under Legal Implications at paragraph 5.1.2 below.
- 2.4 Following pre-application consultations with a number of utility companies, Western Power Distribution, National Grid (Cadent) and Openreach identified that their assets would be affected by the stopping up. An agreement has been reached with all three utility companies, and in the event that the Magistrates Court approves the application for the stopping up order, an easement or wayleave will be agreed between each company and the landowners 8B (UK) Limited.
- 2.5 Although incidental to the legal grounds for making an application to the Magistrates Court under Section 116 of the Highways Act 1980, Area Committee are asked to note the following:-
 - according to 8B (UK) Limited, there have been issues with inconsiderate parking by non-residents which affects access for Sunbourne Court residents
 - if the highway is stopped up, it means the public’s right of way over the highway would be permanently extinguished but the tarmac surface over the land would remain in situ and revert to 8B (UK) Limited to be used as a private access to the adjoining residential premises and private car park
 - if stopped up, the City Councils liability to maintain / repair the highway will end
 - if stopped up, 8B (UK) Limited may wish to install barriers on the entrance to Sunbourne Court to control parking and access to non-residents (installing barriers may require planning permission which is a separate process to the stopping up order)
 - based on the results of the user surveys at paragraph 5.1.3 below, and the low number of non-residents parking on the highway itself during the surveys, any displaced parking by non-residents will be accommodated on Forest Road West; and
 - if stopped up, any future change in land use, such as a new housing development, would need planning permission which is a separate process to the stopping up order.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 There is no other highway legislation available to permanently close a highway on the ground that the highway is unnecessary for public use. The only other option is to not make the application to the Magistrates Court and leave the highway as it is.

4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 The cost of the investigations and preparing the application to the Magistrates Court is in the region of £7000. This cost (and any further increase in this cost) along with the cost for decommissioning the two streetlights on the highway will be covered in full by 8B (UK) Limited. There are no financial implications for Area Committee.

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 Under Section 116 of the Highways Act 1980, if it appears to a Magistrates' Court, that a highway (in this case the highway shown at appendix 1 and 2) is "unnecessary" for public use, the court may by order, authorise the stopping up of that highway. The evidence and reasons why the highway is deemed to be unnecessary are set out below.

5.1.2 At its northern end the highway terminates at the entrance to the private car park in the ownership of 8B (UK) Limited and is therefore a cul-de-sac, and as such it is unlikely to be used by the public at large. In order to establish public use, during July 2017 and January 2018, user surveys were carried out between the hours of 7.30am and 9.30am and then 4.30pm and 6.30pm over 3 days (a Monday, Wednesday and a Saturday - six surveys in total). Due to the layout of the adjacent residential premises and pedestrian access for residents to / from the rear of Archway Court and Sunbourne Court from Limpenny Street, Ortzen Street and Forest Road West, and vice versa, there was potential for overlap between public pedestrian use (the public at large passing and repassing over the highway from point A to B) and private pedestrian use (using the highway to access adjoining premises only). The survey enumerator confirmed that all the recorded users who accessed the highway from the direction of the residential premises during the surveys fall into the category of private user.

5.1.3 Summary of survey results

Ten vehicles parked on the highway and the occupants either walked towards the adjoining premises or towards Forest Road West, some returning shortly afterwards and some not. Of these ten vehicles, five appeared to be residents and five non-residents. Twelve vehicles parked in the private car park and the occupants either walked towards the premises or towards Forest Road West, some returning shortly afterwards and some not. No vehicles used the highway in a single manoeuvre (drove in and immediately out again) so did not qualify as the public at large passing and repassing over the highway. During the surveys, the highway was not used by the public at large either on foot, cycle or by vehicle.

5.1.4 It is therefore considered that the application to the Magistrates Court for the stopping up order meets the "unnecessary" test and is justified. Ahead of the hearing at the Magistrates, a third survey will be carried out in order that the Magistrates will have up to date information on the public's use (or none use) of the highway.

5.1.5 At least 28 days prior to the date on which the application for the stopping up order is considered by the Magistrates' Court, Notice must be served on statutory undertakers with apparatus under, in, upon, over, along or across the highway and

on all the owners and occupiers of land adjacent to the highway. Notice of the application must be placed in the London Gazette and a local newspaper and also displayed on site. Consultation will also be carried out with local user groups including the Ramblers and the Nottingham Local Access Forum.

5.1.6 On the hearing of the application to the Magistrates' Court, the applicant authority, any person to whom notice is required to be given, any person who uses the highway and any other person who may be aggrieved by the making of the order applied for may be heard and may object to the order on the ground that the highway is used by them (and / or the public at large) and is therefore necessary. Should this be the case, there is no guarantee that the Magistrates Court will approve the application to stop up the highway.

5.1.7 The approval to make applications to the Magistrates Court for the stopping up of highways on grounds of necessity falls within the terms of reference of Area Committees in the Council's current Constitution. Should Area Committee be satisfied that the highway is unnecessary for public use, authorisation will also be required from the Corporate Director for Development and Growth.

5.2 Crime and Disorder Act Implications

In the event that the Magistrates approve the application and the highway is stopped up, there will be no crime and disorder implications.

5.3 Procurement Implications

This report is seeking approval from Area Committee to apply to the Magistrates Court for an order to stop up a highway. There are no procurement implications from the recommendations within this report.

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISION RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE) (AREA COMMITTEES ONLY)

6.1 None.

7 EQUALITY IMPACT ASSESSMENT

7.1 The equality impact of the proposed stopping up of the highway has been assessed. Due to the public at large not using the highway, it is unlikely to be used by the public in the future, and in the event that the highway is stopped up, private use by residents accessing the adjoining premises will not be affected. Stopping up the highway will not affect the public and hence there are no equality implications.

8 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

8.1 None

9 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

9.1 Highways Act 1980