

PLANNING COMMITTEE:

OCTOBER 6, 2022

**REPORT OF: DIRECTOR - PLANNING, TRANSPORT &
ENVIRONMENT**

**Section 116 Highways Act 1980 Stopping Up of Highway
on Wood Street, Cardiff**

1 Reason for the Report

The Central Square Development received planning consent and a slither of land has been incorporated within the new building structure. The slither of land is considered no longer necessary for public use as it has been built upon and therefore requires stopping up.

2 Background

Central Square development received planning consent to redevelop the old bus station off Wood Street. There is a small slither of land of adopted highway which has been incorporated into the new building and no longer accessible to the public. The area now requires a retrospective stopping up to update the highway legal record to reflect what is on the ground.

All section 116 applications require a notice of proposal advertised on site and in the local paper for 28 days to be determined at Magistrate Court.

3 Issues

The stopping up is necessary as the adopted highway has been built upon and obstructed. The Section 116 application however is subject to public consultation and may be objected to. If there are objections during the Notice of Proposal public consultation stage, then a decision would be referred to by Planning Environment Decisions Wales (PEDW).

4 Local Member Consultation

- Utility Companies (Virgin, BT Openreach, Welsh Water, Western Power & Wales and West)
- Statutory Users Groups (Ramblers, Auto Cycle Union, British Horse Society, Byways and Bridleways Trust, Open Spaces Society, Cycling UK, Welsh Trail Riders Association)
- Ward Members: Councillor Ali Ahmed; Councillor Norma Mackie; Councillor Sarah Merry; Councillor Chris Weaver

No comments received from Ward Members or User Groups.

Objections were received from Western Power Distribution and Welsh Water due to the proximity of their apparatus to the stopping up location.

Western Power and Welsh Water have both withdrawn their objections now they are satisfied their apparatus is still accessible in the retained adopted highway sections.

5 Legal Implications

Section 116 of the Highways Act 1980 allows an application to be made by a highway authority to a magistrates' court for an order to stop-up or divert any highway other than a trunk road or special road. Under the provisions of this section a magistrates' court may make an order to stop up a highway or divert it if it is:

- a. Unnecessary or
- b. can be diverted so as to make it nearer or more commodious to the public

This procedure can only be initiated by the Highway Authority although under s.117 anyone can apply to the highway authority for it to make application on their behalf to the magistrates' court.

As held in caselaw, magistrates need to bear in mind that the way has to be unnecessary for the public; the convenience of the landowner is not a relevant factor. Notice has to be given to the relevant Community Council if the stopping up application is for an unclassified road, bridleway or footpath. If such Council does not give their consent within the two month Notice period, then the application cannot proceed.

Notice also has to be given to owners and occupiers of adjoining lands and to Statutory Undertakers by means of letters and an advert in the London Gazette and one local newspaper. Notices must be displayed prominently on site, at either end of the highway to be stopped up and should embody a plan.

Any person on whom the Notice is required to be served and any person who uses the highway and any person who would be aggrieved by the making of the order has a right

to object to the application and be heard at the hearing in the Magistrates' Court. There is a right of appeal to the Crown Court against the making of the Order. The Magistrates' Court will not make an order unless it is satisfied that the applicant authority has given the Notices as required by the legislation and the requirements set out above are met.

Equality Act

In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal duties Councils must, in making decisions, have due regard for the need to:

- (1) eliminate unlawful discrimination
- (2) advance equality of opportunity
- (3) foster good relations on the basis of protected characteristics

Protected characteristics are: (a) Age (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality (e) Disability (f) Pregnancy and maternity (g) Marriage and civil partnership (h) Sexual orientation (i) Religion or belief – including lack of belief.

Other Considerations

Consideration should be given as to whether an equalities impact assessment (EQIA) is required, (including an updated assessment if there has been a time lapse since the assessment was carried out), to ensure that the Council has understood the potential impacts of the proposed decision in terms of its public sector equality duty. The decision maker should consider any EQIA. The proposal must also be subject to any relevant health and safety assessment.

Section 17 of the Crime and Disorder Act 1998 also imposes a general duty on the Council, when exercising its functions, to take account of community safety dimension, with a view to reduce local crime and disorder in its area.

Before exercising its functions under the 1984 Act, the Council must have regard to its duties under The Active Travel (Wales) Act 2013, the Welsh Language (Wales) Measure 2011.

Well Being of Future Generations (Wales) Act 2015

The decision maker should also have regard, when making its decision, to the Council's wider obligations under The Well-Being of Future Generations (Wales) Act 2015 ('the Act').

The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2021-24: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202021-24.pdf> When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them.

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

6 Financial Implications

The applicant has agreed to pay the application fees which includes Highways and Legal Services resources.

7 Recommendations

The recommendation is for Planning Committee to approve the application for Legal Services to make the Legal Order and book Magistrate Court appearance.

Gary Brown
HEAD OF HIGHWAY INFRASTRUCTURE AND OPERATIONS IN
TRANSPORT, PLANNING & ENVIRONMENT

Appendices:

- Appendix 1 Location Map of Stopping Up Wood Street
- Appendix 2 Location Photos

Background Papers:

- Section 116 Completed Application Form
- Report Ref 104667_Officer Decision Report and Approval