

Public Rights of Committee

Date of Meeting:	6 th December 2021
Report Title:	Application for the stopping up of a strip of land to the rear of 205A Mow Cop Road, Mow Cop under the provisions of Section 116 Highways Act 1980.
Report of:	Director of Governance and Compliance
Ward(s) Affected:	Odd Rode

1. Executive Summary

- 1.1.** This report deals with an application by Michael Skerratt of 205A Mow Cop Road, Mow Cop requesting that the Council make an application to the Magistrates Court under Section 116 Highways Act 1980 that the strip of land shown shaded red in Appendix 2 is stopped up.

2. Recommendations

- 2.1.** That the Public Rights of Way committee declare unnecessary the area of highway land shown on the attached plan in Appendix 2, and authorise the submission of an application to the Magistrates' Court, for all highway rights to be stopped-up over this area, in accordance with Section 116 of the Highways Act 1980

3. Reasons for Recommendations

- 3.1.** The application is recommended for approval as:
- 3.1.1.** The strip of land is considered unnecessary in accordance with Section 116(1)(b) of the Highways Act 1980 as set out in the report.

- 3.1.2. The proposals are consistent with the Council's Policy on obstructions (where long standing and impractical to remove) and are in accordance with Section 116 of the Highways Act 1980.
- 3.1.3. The Council has the power under Section 117 of the Highways Act 1980 to make such an application on behalf of another person.

4. Other Options Considered

- 4.1. That an order be made under Section 118 of the Highways Act 1980 to stop up the width of footpath shown in Appendix 2.
- 4.2. Section 118 of the Highways Act 1980 stops up footpath rights over land. Directly to the north west of 205A Mow Cop Road, Mow Cop is the "The Mill", a former textile mill which is now luxury flats. During the working life of the mill a path connected from the rear of the mill to the land in question and additional highway rights including vehicular rights may have been created over the land. It is prudent to ensure that all highway rights are stopped up over the land in question.
- 4.3. In addition to the reason set out in 4.2 using the process in Section 116 of the Highways Act 1980 is a process that allows this matter to be expedited.

5. Background

- 5.1. 205A Mow Cop Road, Mow Cop is situated in the southern part of the village of Mount Pleasant. To the north east lies Mow Cop and to the south open fields and Kidsgrove beyond. The applicant has lived at the property since December 2015.
- 5.2. To the south of the property runs Footpath 59 Odd Rode which is a short length of public footpath that connects Chapel Street / Mow Cop Road to the road The Hollow.
- 5.3. Footpath 59 Odd Rode was added to the definitive map following a Definitive Map Modification Order approved with modifications in 2000 by the Secretary of State.
- 5.4. In January 2018 notice was received from the Land Registry that an application had been lodged for registration of a piece of land to the rear of 205A Mow Cop Road, Mow Cop. The Land Registry regularly inform the Council of new registrations when they are made adjacent to existing highway.

5.5. On consulting the Council's records, the Public Rights of Way team instructed Legal Services to lodge an objection on the basis that the land in question formed part of the width of Footpath 59 Odd Rode. An objection was lodged with the Land Registry. The Land Registry on considering the evidence from both parties was unable to decide the case and passed the matter to the Lands Tribunal. Following negotiations in the Land Tribunals the Council agreed to suspend any enforcement act whilst the applicant sort to resolve the matter.

5.6. In April 2020 a Section 117 Highways Act 1980 application was received from the applicant requesting that the Council make an application to the Magistrates Court under Section 116 of the Highways Act 1980 that a width of footpath, shown in Appendix 2, should be stopped up.

5.7. Point A to B is 2.2 metres wide and point C to D is 3.2 metres wide. The length of the strip is 40 metres.

5.8. The remaining width of Footpath 59 Odd Rode immediately to the rear of 205A Mow Cop Road, Mow Cop (shown in Appendix 3), should the Public Rights of Way committee be minded to approve the recommendation, would leave approximately 3 metres at its widest point (below A to B) and 1.4 metres at its narrowest part (to the west of C to D). It should be noted by the Committee that these widths are currently available to the public.

5.9. Section 116(1) of the Highways Act 1980 states:

"Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [highway] authority have made an application under this section—

(a)is unnecessary

.....

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

"

A "highway" is defined under section 328(1) of the Highways Act 1980 as:

"the whole or a part of a highway". It therefore follows that "part of a highway" can apply to the width of a highway.

5.10. On applying the test of whether the land in question is unnecessary we can look at several factors.

First, that the land in question has been unavailable for a significant length of time and to the author's knowledge no complaints have been made to the

Council during this time. The fence line can be clearly seen in the aerial photographs in Appendix 5.

Second, that the footpath would historically have connected with a path to the rear of “The Mill”, shown in the plan annexed in Appendix 4. Now that “The Mill” has been converted to private apartments and the land to the rear has been converted to shared open space for the occupants the purpose for which the land was used, to transport materials and people to and from the mill, has ceased.

Third, informal enquiries made of the statutory undertakers has revealed that no services are under the land. Should the land be stopped up there would be no requirement for the Council or the landowner to divert any service.

Fourth, that should the Magistrates Court approve an Order the public would be able to utilise Footpath 59 Odd Rode as they currently do and would not suffer detriment compared to the current position.

5.11 Appendix 1 shows the line of the Footpath 59 Odd Rode.

Appendix 2 shows the area proposed to be stopped up.

Appendix 3 shows the area of Footpath 59 which would remain available. The committee should note that this is the currently available footpath.

Appendix 4 shows the 1910 edition of the Ordnance Survey map. On the plan an access link from Footpath 59 Odd Rode to the rear of “The Mill” can be seen.

Appendix 5 shows a series of aerial photographs of the area over a number of years. These show a clear separation of the land in question from Footpath 59 Odd Rode.

Appendix 6 shows photographs from the report authors’ site visit in July 2021. The photographs proceed from The Hollow end to the Chapel Street end. There is clear evidence of the available route being used by the public although it was overgrown. As the photographs were taken not long after a national lockdown and during the summer months this is unsurprising.

6. Consultation and Engagement

- 6.1.** Informal consultation has been carried out with the parish council, user groups and statutory undertakers prior to bringing this matter to committee.
- 6.2.** Should the Public Rights of Way Committee be minded to approve the recommendation formal notification will be given to all interested parties as well as those required by statute.
- 6.3.** Following informal consultation Odd Rode Parish Council stated that they would be unlikely to refuse consent for an Order in the Magistrates Court to

be applied for. Under Section 116 of the Highways Act 1980 the Parish Council has a veto over any Section 116 order being made.

- 6.4.** Following informal consultation, the Peak and Northern Footpaths Society responded requesting further information from the author, which was duly provided. No further position statement has been provided from the Peak and Northern Footpaths Society.
- 6.5.** Following informal consultation, the Open Spaces Society responded through their local correspondent that they would likely object to the proposal as it interferes with the definitive line of the footpath. That additional land indicated to the north of the proposed area to be stopped up is possibly highway and that the land has value as highway.

7. Implications

7.1. Legal

- 7.1.1.** Before an application can be made to the Magistrates' court it will be necessary to notify certain parties of the proposal and to publicly advertise the council's intention to make the application. In considering the application, the court will determine whether the highway is unnecessary and in doing so, will consider any representations received. It is a possibility, therefore, that the Magistrates may refuse the application. If the application is successful, the highway rights are extinguished, and ownership of the surface will revert to the subsoil owner.
- 7.1.2.** The remaining width of footpath lying adjacent to the area proposed to be stopped up will be unaffected and remain as a public footpath.

7.2. Finance

- 7.2.1.** There are no direct financial implications of these proposals as the costs associated with the process, including applying to the Magistrates Court, will be recovered from the applicant on a cost recovery basis.

7.3. Policy

- 7.3.1.** There are no direct policy implications.

7.4. Equality

- 7.4.1.** There are no direct equality implications as a result of the proposals.

7.5. Human Resources

- 7.5.1.** There are no direct implications for human resources.

7.6. Risk Management

7.6.1. There are no direct implications for risk management.

7.7. Rural Communities

7.7.1. There are no direct implications for rural communities.

7.8. Children and Young People/Cared for Children

7.8.1. There are no direct implications for children and young people/cared for children.

7.9. Public Health

7.9.1. There are no direct implications for public health.

7.10. Climate Change

7.10.1. The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

Access to Information	
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Appendices:	Appendix 1 – Line of FP59 Odd Rode Appendix 2 – Plan of area proposed to be stopped up. Appendix 3 – Plan showing remaining width of Footpath 59 should the area of land be stopped up. Appendix 4 – OS Map dated 1910 Appendix 5 – Aerial photographs of area Appendix 6 – Photographs of the footpath taken from the authors site visit in July 2021.