

Extinguishment of Highway, Former A38 at Marley Head, South Brent

Report of the Head of Highways and Traffic Management

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that this Committee raises no objection to the stopping up of the highway under Section 116 of the Highways Act 1980 at Marley Head, South Brent as shown on drawing SB/MH/01 subject to confirmation that neither the Parish Council nor the District Council raise objections.

1. Summary

This report is concerned with the extinguishment of a small area of highway beside a former petrol filling station. This section of highway was not extinguished at the time that the A38 dual carriageway was constructed, although adjacent parts of the highway network were extinguished.

2. Background/Introduction

The highway became redundant in 1971 when the A38 dual carriageway was constructed. However, for some unknown reason, this part of the old highway was not extinguished. It was effectively excluded from the rest of the highway network by the erection of a fence at its junction with the current B3372. The highway forms part of a larger site owned by three separate landowners that has been encamped by travellers.

The land has been occupied in breach of planning control since January 2007. Following a long process of negotiation and two failed planning applications, a planning Enforcement Notice was served in June 2010 requiring the occupiers of the land to stop using the land for human habitation and to remove all vehicles, caravans and other structures by 6 May 2011.

The Enforcement Notice was not complied with. On 5 August 2011 Members discussed the continued breach of the terms of the Enforcement Notice. After considering all potential options, Authority Members resolved to apply to the High Court for an injunction to secure a cessation of the breach of planning control.

Dartmoor National Park Authority has commenced injunction proceedings in the High Court in respect of the unauthorised encampment at Marley Head, South Brent. An application for an injunction was lodged with the High Court in Bristol on Thursday 23 February 2013 and court papers have now been issued for an initial hearing on 19 April 2013.

It is understood that the land on which the highway is situated will revert to the adjoining owners under the riparian ownership presumption. This may allow the landowners jointly to seek to regain possession of their land.

3. Proposal

The highway rights should be extinguished to allow the land to revert to the control of the owners.

4. Consultations/Representations/Technical Data

Letters have been written to the Chief Executive of the South Hams District Council and to the Clerk to South Brent Parish Council in accordance with Section 116 (3) of the Highways Act 1980. At the time of writing, responses have not been received.

The Local Member has also re-confirmed that he agrees that this part of the highway is redundant and that he has no objection to the stopping up process being undertaken.

5. Financial Considerations

It is estimated that the cost of the extinguishment will be in the order of £2,500 and that costs will be borne by the County Council.

6. Sustainability Considerations

There are no known sustainability issues for the Highway Authority associated with the recommendation.

7. Carbon Impact Considerations

This proposal will have no impact on Carbon emissions.

8. Equality Considerations

There are no known equality issues associated with this proposed extinguishment.

9. Legal Considerations

There are no known implications at this time.

10. Risk Management Considerations

This proposal has been assessed and no risks have been identified.

11. Public Health Impact

There are no implications.

12 Discussion

The land is surplus to highway authority use. It is also being used in contravention of planning decision by Dartmoor National Park Authority.

13. Options/Alternatives

Other than retaining the land as highway there are no alternative options.

14. Reason for Recommendation/

It seems that an administrative omission in 1971 has left this redundant highway in limbo for the last 37 years. The highway is of no use to the general public and has been rendered inaccessible to them for a considerable time by the erection of a fence at the side of the B3372.

Lester Willmington
Head of Highways and Traffic Management

Electoral Division: South Brent & Dartington

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Reference
1. HATOC Committee	Sept 2008	EEC/08/223/HQ
2. South Brent Parish Files	Jan- Sept 2008	Various

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sc/cr/marley head extinguishment
02 hq 100413

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