

Stopping up of public highway; Land off Albion Hill, Exmouth

Report of the Chief Officer for Highways, Infrastructure Development and Waste

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

Recommendation: It is recommended that:

- (a) the extent of highway land adjacent to Albion Hill, Exmouth, as detailed in Appendix I, is not needed for public use; and**
- (b) this Committee resolves that subject to the consultations referred to in section 4, Devon County Council makes an application to the magistrates' court for an order under Section 116 of the Highways Act 1980 that the said highway land be stopped up.**

1. Introduction

Under Section 116 of the Highways Act 1980, Devon County Council can make an application to a magistrates' court to stop up a section of highway if they think it is unnecessary.

We have received representation from the landowner of land adjacent to Albion Hill, Exmouth who wishes to apply for a stopping up order so that the land in question (as shown in Appendix I) no longer forms part of the public highway.

The landowner is a developer who has already received planning permission from East Devon District Council to build on this land.

2. Proposal

It is recommended that an application is made to the Magistrates' Court under Section 116 of the Highways Act 1980 for the stopping-up of part of the public highway adjacent to Albion Hill, Exmouth as shown on the drawing attached as Appendix I.

3. Alternatives

Devon County Council could refuse the application but would have no specific reasons for doing so as it is not considered the public highway provides any benefit to the highway network.

4. Consultations

A number of organisations have been contacted on the proposal and a summary of the consultees and their response can be found in Appendix II.

A response is still outstanding from East Devon District Council and Exmouth Town Council who have until 24 July 2021 to respond. If a response is received prior to the deadline then it will be discussed with the local member and chair before a final decision is made whether to proceed with the application to the Magistrates Court.

5. Financial Considerations

There are no financial implications to this proposal as all costs will be met by the applicant.

6. Legal Considerations

Under Section 116 of the Highways Act 1980 a highway authority can apply to a magistrates' court to stop up highway on the ground that it is 'unnecessary'. Whether a highway is unnecessary is a question of fact. It should be unnecessary for the sort of purpose for which the public might reasonably be expected to use it, for example, to reach a specific destination or for recreational purposes.

Only a highway authority can apply to a magistrates' court for a stopping up order. A highway authority has discretion on whether or not to make an application. However, this discretion is capable of being judicially reviewed. It should therefore have good reason for not making an order.

7. Environmental Impact Considerations (Including Climate Change)

There are no environmental impacts in relation to this proposal.

8. Equality Considerations

There are no equality considerations in relation to this proposal.

9. Risk Management Considerations

No risks have been identified.

10. Public Health Impact

There are no implications of the proposals on public health in the area.

11. Reasons for Recommendations

In summary it is recommended that the Committee approve the request for an application to the magistrates' court for a stopping up order on the land adjacent to Albion Hill, Exmouth as described above, as the land is not needed for public use and is unnecessary as public highway.

Meg Booth
Chief Officer for highways, Infrastructure, Development and Waste

Electoral Division: Exmouth & Budleigh Salterton

Local Government Act 1972: List of Background Papers

Contact for enquiries: Pippa Gray

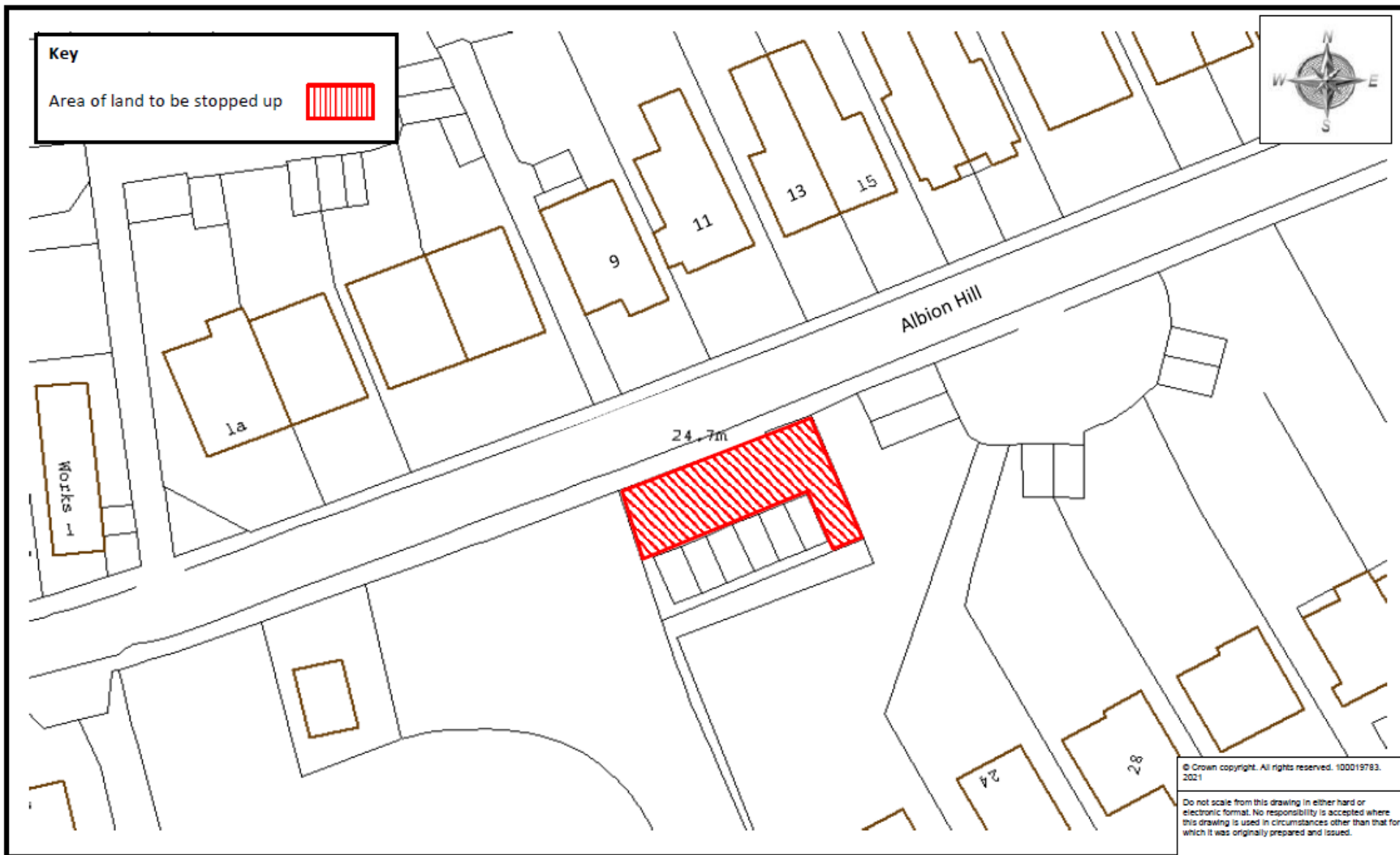
Room No: M8, Great Moor House, Bittern Road, Exeter, EX2 7NL

Tel No: 01392 383000

Background Paper	Date	File Ref.
------------------	------	-----------

Nil

pg090721edh
sc/cr/Stopping up of public highway; Land off Albion Hill, Exmouth
02 140721



Meg Booth - Chief Officer for Highways, Infrastructure Development & Waste

TRAFFIC MANAGEMENT TEAM
DEVON HIGHWAYS
GREAT MOOR HOUSE,
BITTERN ROAD,
EXETER,
EX2 7NL
Telephone 0345 155 1004

SCHEME

ALBION HILL, EXMOUTH

DRAWING

PROPOSED STOPPING UP OF HIGHWAY

drawn by

scale

PG

1:500

date

O.S.Ref

24-May-2021

300594,81082

drawing number

SU21/01 (A)

Organisations Contacted and Response

Organisation Contacted	Response
East Devon District Council	Letter sent 27/05/21. No response received – deadline for response is 24/07/21.
Exmouth Town Council	Letter sent 27/05/21. No response received – deadline for response is 24/07/21.
BT	Letter sent 27/05/21. No response received. (A utility stats search showed that they had apparatus in the street but not directly underneath the land to be stopped up.)
South West Water PLC	Letter sent 27/05/21. No response received. (A utility stats search showed that they had apparatus in the street but not directly underneath the land to be stopped up.)
Wales and West Utilities PLC	Response received 03/06/21 showing that they have services in the street but not in the area of land proposed to be stopped up.
Western Power Distribution PLC	Letter sent 27/05/21. No response received. (A utility stats search showed that they had apparatus in the street but not directly underneath the land to be stopped up.)
9 Albion Hill, Exmouth	Letter sent 27/05/21. No response received.
11 Albion Hill, Exmouth	Letter sent 27/05/21. No response received.
22 Albion Hill, Exmouth	Letter sent 27/05/21. No response received.
24 Albion Hill, Exmouth	Letter sent 27/05/21. Response received 18/06/21: Resident emailed objecting to the proposed stopping up of the highway but the comments related to the planning issues rather than the stopping up of the highway. Response sent back to respondent 29/06/21 explaining the proposal to stop up the land further and asking for any objection on why the land is needed to be retained as public highway. No further response received.