

Stopping up of public highway; Land adjacent to Hillsborough Lodge, Prince of Wales Road, Exeter

Report of the Director of Climate Change, Environment and Transport

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 Hillsborough Lodge, Prince of Wales Road, Exeter as detailed in Appendix 1, is not needed for public use; and**
- (b) this Committee resolves that subject to the consultations referred to in section 3, 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 Highway 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.

It is proposed to stop up this area as it would no longer be pavement due to works on the adjacent retaining wall. This means that the area would fall behind the new wall and it is the Council's view that this area of highway is no longer needed for public use and that an application should be made to a magistrates' court for an order stopping up the highway status of the land shown edged red on the plan in Appendix 1.

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 Hillsborough Lodge, Prince of Wales Road, Exeter as shown on the drawing attached as Appendix 1.

3. 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 2.

Responses are still outstanding for Exeter City Council who have until 1st August 2022 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.

4. Strategic Plan

The proposal to stop up the highway will reduce the maintenance liability for the Council. This is considered an effective use of the resource that is available and helps the Council be financially resilient and a trusted Council.

5. Financial Considerations

It is estimated that the cost of processing the stopping up order will be £3,000.00 which will be paid for from the Capital Bridge Assessment and Strengthening budget as this is part of the works to replace the failed retaining wall with a small embankment.

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 Hillsborough Lodge, Prince of Wales Road, Exeter as described above, as the land is not needed for public use and is unnecessary as public highway.

Meg Booth
Director of Climate Change, Environment and Transport

Electoral Divisions: Duryard & Pennsylvania

Local Government Act 1972: List of Background Papers

Contact for Enquiries: Alli German

Tel No: 01392 383000

Room: M8, Great Moor House, Bittern Road, Exeter, EX2 7NL

Background Paper	Date	File Reference
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Nil

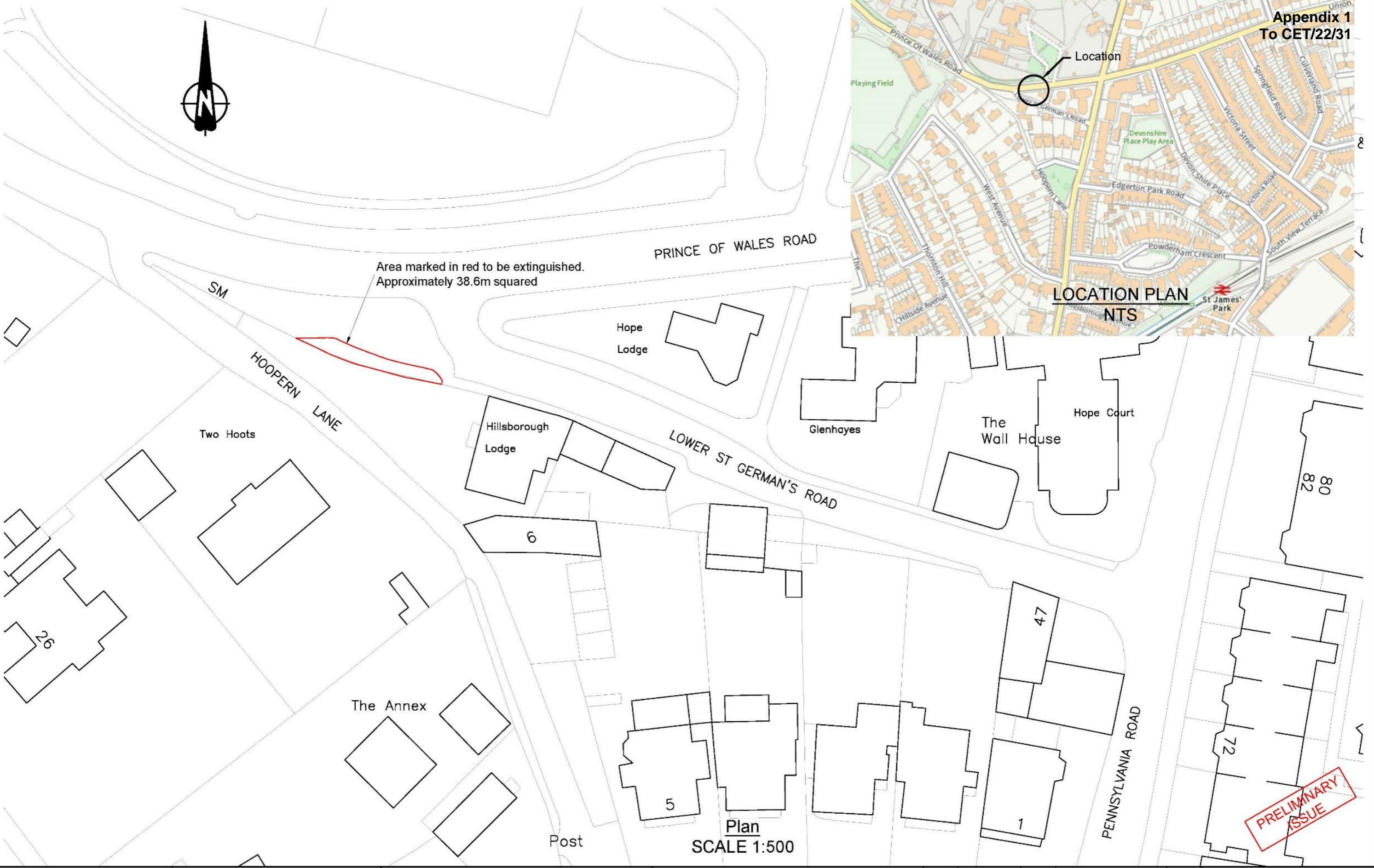
jb240622exh

sc/cr/Stopping up of public highway Hillsborough Lodge Prince of Wales Road Exeter
03 050722



LOCATION PLAN
NTS

Area marked in red to be extinguished.
Approximately 38.6m squared



Plan
SCALE 1:500

**PRELIMINARY
ISSUE**



Engineering Design Group
Matford Offices
County Hall
Topsham Road
Exeter
EX2 4QD
Tel 0345 155 1004
Fax 01392 382342
customer@devon.gov.uk
www.devon.gov.uk

JOB
**HILLSBOROUGH LODGE
RETAINING WALL - 52099**

DRAWING TITLE
EXTINGUISHING HIGHWAY PLAN

Rev	Date	Drawn	Revisions	Chk
P0	15.02.22	R.B	Preliminary	T.M
P1	27.05.22	R.B	Change of Scale	T.M

Do not scale from this drawing in either hard or electronic format. No responsibility is accepted where this drawing is used in circumstances other than that for which it was originally prepared and issued.

Drawing Number	Revision
B.M.(52099)/01	P1
Scale	Size
AS SHOWN	A3

Organisations Contacted & Response

Organisation Contacted	Response
Exeter City Council	Letter sent 1/6/22 No response received – deadline for response is 1/8/22
BT	Letter sent 1/6/22 No response received
South West Water PLC	Letter sent 1/6/22. No response received
Wales and West Utilities PLC	Letter sent 1/6/22. Response received 16/6/22 – no issues raised.
Western Power Distribution PLC	Letter sent 1/6/22. No response received
Councillor Percy Prowse	Letter sent 1/6/22 Response received by telephone call on 20/6/22 – confirmed happy to progress.