

Agenda Item No. 4(e)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

7 July 2015

Report of the Strategic Director – Economy, Transport and Environment

**REQUEST TO STOP UP PART OF THE PUBLIC HIGHWAY USING
SECTION 116/117 HIGHWAYS ACT 1980 – BYRON STREET,
CHESTERFIELD**

(1) **Purpose of Report** To seek the Cabinet Member's approval to pursue a Stopping Up Order under Section 116 of the Highways Act 1980 extinguishing highway rights over Byron Street in Chesterfield.

(2) **Information and Analysis** Byron Street is a private street on the western side of A61 Derby Road, Chesterfield. Its private street status means that whilst the street is not maintained by the Council, some form of highway rights are considered to exist over it. The historic layout of the street is shown on the attached plan HA1. Plan HA2 shows the current arrangement and the length of street to be stopped up, hatched in black.

Over the past few years various developments have taken place in the vicinity of Byron Street, some of which have built over the line of the original highway or changed its use, such that there is no longer any need for the street to be a public highway.

Under normal circumstances, where development requires the stopping up of a highway in order to proceed, this is achieved by the Department for Transport using powers under Section 247 of the Town and Country Planning Act 1990. However, the power is not retrospective and where development has already been substantially completed, the use of Section 247 powers are not considered appropriate.

For this reason, the most recent applicant and landowner, St John's Ambulance Service, has asked the Council to use its powers under the Highways Act 1980 to stop up the street. When presented with this type of request the Council has to consider whether it would be in the public interest to retain the street as highway and pursue any subsequent enforcement action to protect its public use, or whether it is in the public interest to use the

Council's resources to carry out the consultations and other work associated with the stopping up process.

Preliminary investigations have not revealed any potential objectors to the Stopping Up Order (although this does not guarantee an uncontested application to the Magistrates Court). The applicant has agreed to cover all of the Council's costs in connection with the stopping up process, even if the application proves to be abortive as a result of objections.

On balance, it is therefore considered reasonable to formalise the existing situation by extinguishing the highway rights over Byron Street between the back of the nearside footway of Derby Road and the closed end of the street (a distance of approximately 105 metres). This would relieve the Highway Authority of any future enforcement or other liabilities in connection with the private street.

(3) **Financial Considerations** All of the costs associated with pursuing the Stopping Up Order (normally estimated as being between £4,500 and £5,000 for an unopposed Order) will be met by the developers of the site and an indemnity agreement, dated 24 January 2014, has been received from them confirming this.

(4) **Legal Considerations** Section 116 of the Highways Act 1980 empowers the County Council to make an application to the Magistrates Court to stop up redundant areas of public highway. Section 117 of the same Act enables third parties to ask the Council to pursue a Stopping Up Order on their behalf and entitles the Council to recover its reasonable costs if it resolves to pursue an Order.

Following the stopping up of the relevant area of the highway, responsibility for the land so released reverts to the subsoil owners.

The Director of Legal Services will be required to undertake all necessary steps to seek a Stopping-Up Order (including advertising the application in the press and serving notices on various parties) in respect of this land, including the formal submission of the case to the Magistrates' Court.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

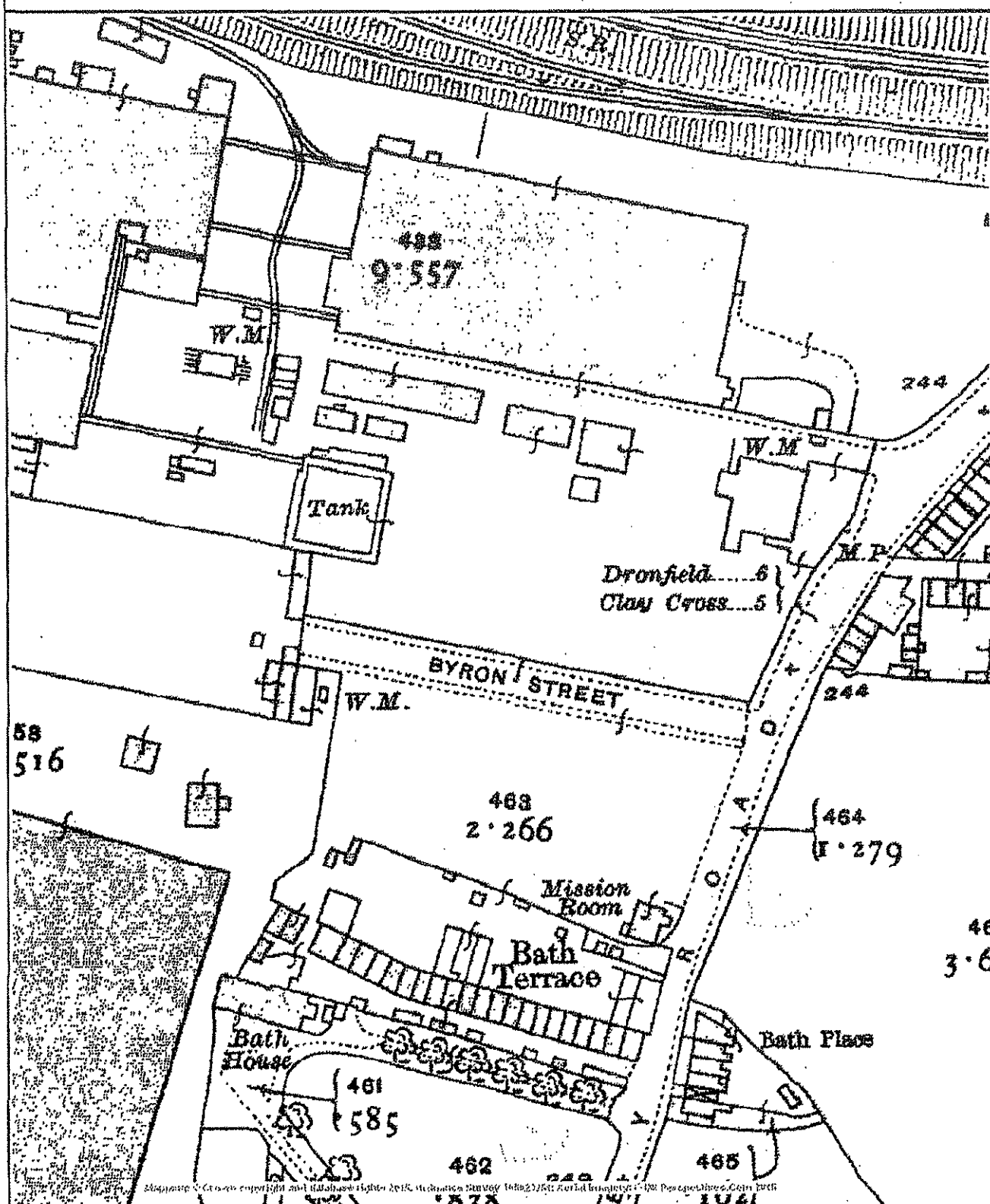
(5) **Key Decision** No.

- (6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.
- (7) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details - Graham Hill, extension 38647.
- (8) **OFFICER'S RECOMMENDATION** That the Cabinet Member approves the making of an application by the Director of Legal Services for a Stopping Up Order under Section 116/117 of the Highways Act 1980 to extinguish the highway rights over Byron Street, Chesterfield, as shown on the attached plan, and recover the costs of doing so from the developer.

Mike Ashworth
Strategic Director – Economy, Transport and Environment

Title

Byron Street, Chesterfield



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Byron Street Chesterfield

