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Division(s) affected: Wantage Rural

Environmental Committee

AGENDA ITEM TW19

TRAFFIC & WORKS SUB-COMMITTEE - 22 FEBRUARY 1996

RECEIVED

ROAD CLOSURE - FORD LANE, EAST HENDRED

19 FEB 1996

Report by County Engineer

Introduction

1. An application has been received under Section 117 of the Highways Act 1980 for the Council to apply to the Magistrates to make an Order stopping up with reservation of bridleway rights the area of Ford (also known as Fordy) Lane, East Hendred shown hatched on the attached plan no. 935/G103. This closure and associated turning area would enable a condition attached to a planning consent for residential development to be met. The Section 117 application is from the prospective developer, Berkeley Homes Ltd.

Background

2. Ford Lane is narrow and twisty, dropping from Cat Street in the north to a stream near the access to 'Riduna' and rising again to Church Street in the south. This poor alignment was recognised by Berkshire County Council (highway authority until 1974) who in 1969 made a traffic regulation order (TRO) closing the lane to vehicular traffic, except for access to frontage properties, at the point identified by a solid black line on plan No 935/G103. Local complaints allege that this TRO is being ignored (the degree is not known) causing problems for those legally able to use the lane including children and parents going to and from The Hendreds School. (The TRO permits vehicular access to the school.)
3. In 1995 planning permission was granted (by the Vale of White Horse District Council) for two houses in the garden of 'Riduna' which will take access onto Ford Lane. The highway authority consultation response by your officers when the application was made was a recommendation of refusal on highway safety grounds, but included a proviso that if the lane was closed at a particular point to vehicular traffic with turning areas either side, the objection would be overcome. This became a condition of the consent except for the requirement for a turning area on the south side of the closure, which the District Council decided to omit.
4. The application which has now been received under Section 117 of the Highways Act 1980 is for the Council to make application to the Magistrates for an order under Section 116 which would extinguish vehicular rights permanently across the hatched area shown on the plans, but without affecting pedestrians, cyclists or horseriders. Provision is made in Section 117 for the highway authority to charge the applicant for all reasonable costs associated with the application to the Magistrates but not for any further costs or expenses incurred as a consequence of making the order. In this situation the authority has a

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discretion as to whether or not to apply for the order and if it decides not to there is no right of appeal.

Consultations

5. A consultation exercise has been undertaken to gauge local feeling, the views of other Councils, utility companies, amenity societies and the emergency services. Of the 31 letters sent 24 answers have been received and only two of these are objections. The Parish Council's reply included a 70 signature petition in favour of the closure. A copy of all the replies can be seen in the Members' Resource Centre.
6. The Auto-Cycle Union (ACU) and the Byways and Bridleways Trust (BBT) are the two objectors. The ACU believe the lane is necessary for those who live in the southern part of Ford Lane (although no one from there has objected.) BBT believe the existing TRO enables the lane to be closed but in fact it clearly permits selective access along Ford Lane, including access to the school as described above.

Evaluation

7. A Section 116 Order can only be made on the grounds that either the highway is unnecessary or that it can be diverted so as to make it nearer or more commodious to the public. There is no 'nearer or more commodious' diversion here, so the highway could only be stopped up if it were proved to the satisfaction of the Magistrates to be unnecessary.
8. Case law suggests that lack of necessity will be difficult to prove if a highway is legitimately used at present to any extent. Such use occurs in Ford lane, as a result of the exemption for access in the TRO. Moreover, a Section 116 order would close permanently one of the two means of vehicular access between the northern and southern halves of East Hendred and prevent direct access to the school from the north. This could create a problem for residents and the school should the other means of access, the High Street, need to be closed temporarily for whatever reason in the future.
9. It is therefore difficult to see how in the circumstances the highway could be considered unnecessary. An application to the Magistrates for a Section 116 Order is therefore considered to be inappropriate and of uncertain outcome. Moreover, if a Section 116 Order were to be made, it would in any event be necessary for the existing TRO to be revoked because it applies to a different part in the lane from the closure now proposed. As this revocation would itself involve the full Traffic Regulation Order procedure it would seem simpler to close the lane by amending (in reality replacing) the existing TRO so as to move the point of closure northwards and to remove the access exemption, leaving the lane available to vehicles as a through route only in an emergency. (A TRO can be temporarily suspended at any time to cater for emergencies.)
10. The present policy on Section 116 Orders dates from 1977 and requires all costs to be met by the applicant, the stopping up to be advantageous to the highway authority and that no Statutory Undertakers apparatus is affected. TROs are only included in the traffic management programme if

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they would contribute directly to an improvement in road safety, following economies in both budget and staff resources for this activity. The latter consideration has made it difficult to accommodate proposals for TROs even where third party funding has been offered, because of the potential for delaying progress on schemes of higher priority to the County Council.

11. The particular factors which apply in this case to suggest that a TRO should be promoted, subject to 100% funding by the developer, are:-
- (a) planning permission has been granted on the premise that the lane will be closed to through vehicular traffic close to the development site - failure to do so would render the development access particularly dangerous;
  - (b) the existing TRO is incapable of achieving the same purpose, and is believed to be increasingly ineffective in limiting vehicular use of the lane;
  - (c) there would be a general safety benefit for pedestrian, cyclists and equestrians, particularly for children going to and from school along the lane;
  - (d) there is clear widespread local support for the principle of closure which, if undertaken by TRO, appears likely to be acceptable to both bodies which have objected to the idea of a Section 116 closure.

Environmental Implications

12. Whilst reducing in Ford Lane, traffic levels will increase marginally in High Street, Church Street and Orchard Lane, and the environmental effects will therefore be neutral.

Financial and Staffing Implications

13. All the costs associated with the TRO would have to be met by the applicant. Further technical and legal work will have to be contained within existing staff resources.

Implications for People Living in Poverty

14. There are no direct implications for those living in poverty.

RECOMMENDATIONS

15. It is **RECOMMENDED** that:
- (a) the application under Section 117 of the Highways Act 1980 be refused on the grounds that it appears unlikely to be possible to prove lack of necessity of the highway within the strict terms of section 116 of the Act;

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(b)



- (1) all reasonable [redacted] associated with the Traffic Regulation Order (including the cost of staff time) are met by the applicant;
- (2) [redacted] are designed, constructed and erected to the complete satisfaction of the County Engineer with all costs being met by the applicant; and
- (3) the closure is designed and [redacted] complete satisfaction of the County Engineer with all costs being met by the applicant;

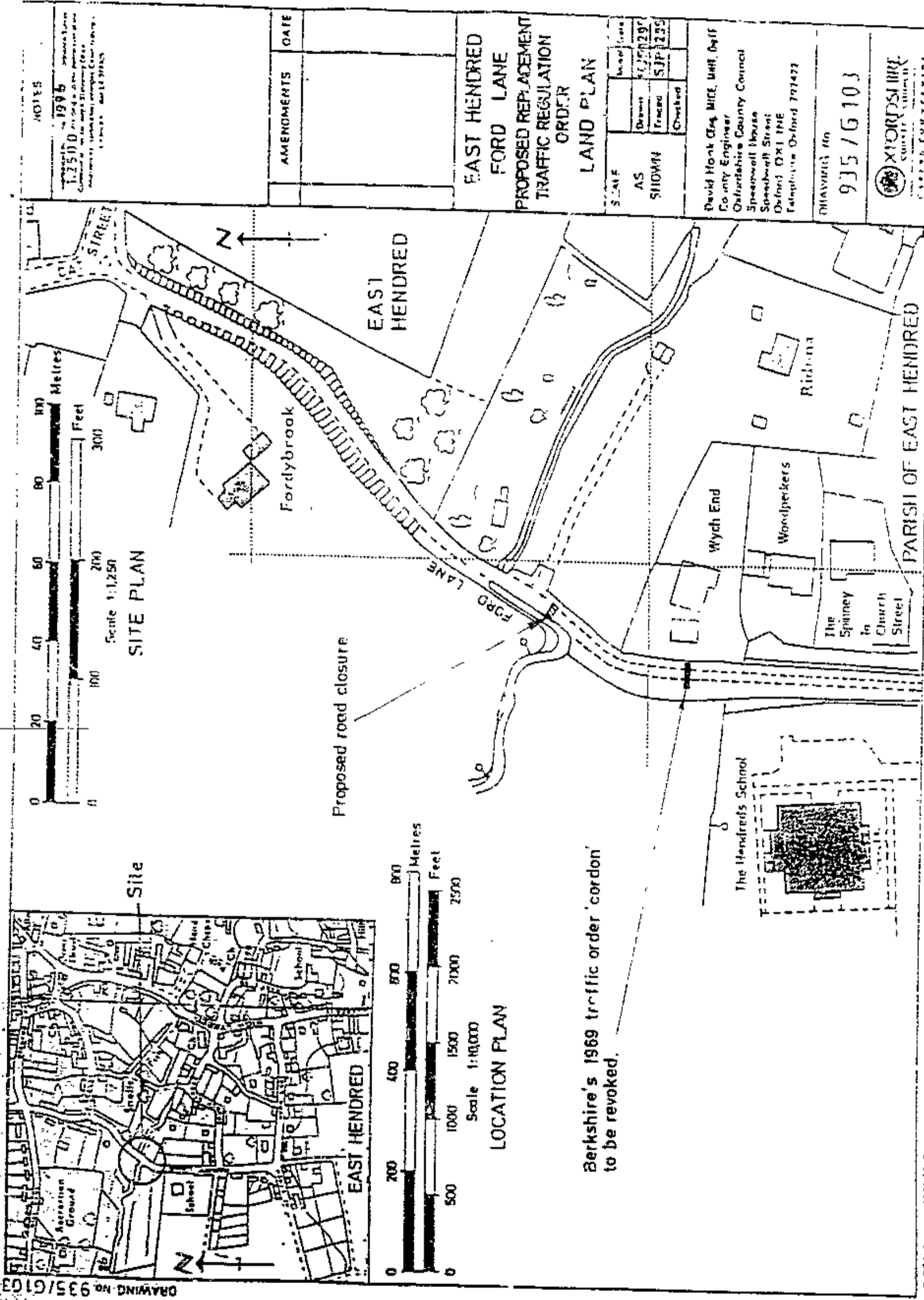
County Engineer

Background papers: Application for closure from Berkeley Homes, Consultation letter dated 15 December 1995 and replies of consultees.

Contact Officer:

8 February 1996

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