



<b>Application Reference:</b>	<b>Stopping Up Order</b>
<b>Location:</b>	<b>Land at Lowen Road Rainham</b>
<b>Ward:</b>	<b>South Hornchurch</b>
<b>Description:</b>	<b>Stopping up of Highway</b>
<b>Case Officer:</b>	<b>Mark Philpotts</b>
<b>Reason for Report to Committee:</b>	<b>The Head of Planning considers Committee consideration to be necessary.</b>

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## 1 Background

- 1.1 on 13 March 2014 the Council approved planning permission under application reference P0047.14 (reserved matters pursuant to application reference P2058.08) for the demolition of 24 residential units and 5 commercial units (89-153 odd Lowen Road) and erection of 87 new residential units in 2 blocks, accessed from Lowen Road with landscaping and parking areas. The decision notice was issued on 19 March 2014. In order to facilitate the development, stopping up of the adopted public highway is required as the approved scheme will encroach onto the existing public highway.
- 1.2 A resolution is therefore sought to stop up the adopted public highway shown zebra hatched on the plan reference Lowen Road Stopping Up Plan at Appendix A ("Plan") to enable the development to be carried out in accordance with the planning permission granted under application reference number P0047.14 pursuant to P2058.08.
- 1.3 The Council's highway officers have considered the application and consider that the stopping up is acceptable in all material respects to enable development pursuant to planning permission.

## **2 Recommendation**

That the Committee resolve to authorise the stopping up of the highway land at Lowen Road shown zebra hatched on the Plan, in accordance with the procedure set out in section 252 of the Town and Country Planning Act 1990, subject to:

- the grant and lawful implementation of planning permission application reference P0047.14;
- payment, by the applicant, of all costs associated with the stopping up;
- any direction by the Mayor of London

on the following basis:

if no objections are received (or any received are withdrawn), or the Mayor of London decides a local inquiry is unnecessary, then the stopping up order will be confirmed by officers;

if objections are received from a local authority, statutory undertaker or gas transporter (and are not withdrawn), or other objections are received (and not withdrawn) and the Mayor of London decides that an inquiry is necessary, the Council shall cause a local inquiry to be held.

## **3 Proposal and Location details**

- 3.1 Section 247(2A) of the Town and Country Planning Act 1990 (“the Act”) provides that the Council of a London borough may by order authorise the stopping up or diversion of any highway within the borough if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of the Act.
- 3.2 In *K C Holdings Ltd v Secretary of State for Wales* [1990] JPL 353 the Deputy Judge held that “may” implies a discretion to consider the demerits and merits of the particular closure in relation to the particular facts of the case. In *Vasilou v Secretary of State for Transport* [1991] 2 All ER 77, the Court of Appeal held that when exercising his discretion, the Secretary of State was not only entitled, but required to take into account any directly adverse effect the order would have on all those entitled to the rights which would be extinguished by it, especially as the section contains no provision for compensating those so affected.
- 3.3 The layout of the Orchard Village development has already been considered and approved under application ref P0047.14 (pursuant to application P2058.08) following a full statutory public consultation exercise. The approved layout plans would require the stopping up of the area(s) of land that are the subject of this report. The stopping up now proposed would give effect to the development on the land over which Lowen Road, Rainham lies.

- 3.4 The area of land to which the application to stop up relates is a section of Lowen Road, Rainham measuring approximately 6.5 meters in width by 75 meter in length and sited between OS grid reference points 550726(E), 183292 (N); and 550775(E), 183334(N). The land is classified as carriageway and footway on the register of highways maintainable at the public expense.
- 3.5 The development approved pursuant to the planning permission incorporates a redesign of the existing road layout within the confines of the Orchard Village development.
- 3.6 It is considered that the most effective way to accommodate the approved road layout is by stopping up parts of the existing highway. Once the stopping up process is complete, the intention is to adopt the new approved layout using powers available to the Council under section 38 of the Highways Act 1980. Officers therefore consider that there would be no disadvantages suffered by the public or by those with properties near or adjoining the existing highway. In contrast, there are advantages of stopping up the highway rights as doing so will enable the development to be carried out.

#### **4 Planning History**

The following planning decisions are relevant to the application:

P2058.08 – The Mardyke Estate Rainham – redevelopment to provide for up to 555 residential units, with associated car parking, alterations to existing access and provision of new landscape and amenity space, together with up to 900 sqm of class A1, A2, A3, A4, A5 and/or D2 accommodation and up to 600sqm of class B1(A) offices. Full permission is sought for the new estate road (the bus route).-outline application - Approved

P0047.14 – Orchard Village (formerly Mardyke Estate) Phase 4 Rainham RM13 8PU – reserved Matters application pursuant to P2058.08 for the demolition of 24 residential units and 5 commercial units (89-153 odd Lowen Road) and erection of 87 new residential units in 2 blocks, accessed from Lowen Road with landscape and parking areas - Approved

The stopping up is necessary in order that development pursuant to planning permission can be carried out.

## **5 Consultation**

- 5.1 The Council's highway officer has no objection to the proposed stopping up order.
- 5.2 No public or external consultation has been carried out by the Council in respect of the current stopping up application; however, should the Committee approve the stopping up before making the order, the Council would carry out consultation as required by Section 252 of the Act. This would involve consulting statutory undertakers, posting site notices and publishing the proposed orders in a local newspaper and the London Gazette. A 28-day consultation period would allow interested parties to respond.
- 5.3 Under Section 252(4)(b) of the Act if an objection is received from any local authority, undertaker or gas transporter on whom a notice is required to be served, or from any other person appearing to the council to be affected by the order and that objection is not withdrawn (through negotiation between the objector and the applicant) the Council must:
- (i) notify the Mayor; and
  - (ii) cause a local inquiry to be held.
- 5.4 If however, none of the objections received were made by a local authority or undertaker or transporter then, under Section 252(5A) of the Act, the Mayor shall decide whether, in the "special circumstances of the case" the holding of such an inquiry is unnecessary, and if he decides that it is unnecessary he shall so notify the Council which may dispense with the inquiry.
- 5.5 If there are no objections, or all the objections are withdrawn, then the Council may confirm the stopping up order without an inquiry.

## **6 Conclusion**

It is considered that the proposed stopping up of the area of land is necessary to enable development to proceed in accordance with planning permission and is acceptable in highways terms. It is noted, however, that there remain obligations relating to consultation and a local inquiry may be held, should the stopping up be approved by the Committee.

## Appendix A

Plan reference: Lowen Road Stopping Up Plan