



Application Reference:	Stopping Up Order
Location:	Land bounded by New Zealand Way Queenstown Gardens and Gisborne Gardens, Rainham, RM13 8JT
Ward:	South Hornchurch
Description:	Stopping up of Highway
Case Officer:	Mark Philpotts
Reason for Report to Committee:	The Head of Planning considers committee consideration to be necessary.

1 Background

- 1.1 On 16 August 2018 the Council approved planning permission under application reference P1004.18 for the development of 30 new units of affordable housing comprising 2 bedroom and 3 bedroom houses with associated landscaping and car parking. The decision notice was issued on 17 September 2018. 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 hatched black on the plan reference 'Stopping Up Plan (Plan 1)' at Appendix A ("the Plan ") to enable the development to be carried out in accordance with the planning permission granted under application reference number P1004.18.
- 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;

(a) to authorise the stopping up of the highway land in the vicinity of New Zealand Way 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 lawful implementation of planning permission application reference P1004.18;
- 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if no objections are received (or any received are withdrawn), or the Mayor of London decides a local inquiry is unnecessary, then the stopping up order will be confirmed by officers;

if objections are received from a local authority, statutory undertaker or gas transporter (and are not withdrawn), or other objections are received (and not withdrawn) and the Mayor of London decides that an inquiry is necessary, the Council shall cause a local inquiry to be held.

(b) to delegate authority to the Assistant Director of Environment to do anything necessary and incidental to facilitate the process of stopping up the highway pursuant to section 247 of the Town and Country Planning Act 1990.

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 *Vasiliou 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 development has already been considered and approved under application ref P1004.18 following a full statutory public consultation exercise. The approved layout plans would require the stopping up of the area

of land that is the subject of this report. The stopping up now proposed would give effect to the development on the land to be stopped up.

- 3.4 The area of land to which the application to stop up relates is an area of highway verge bounded by New Zealand Way, Queenstown Gardens and Gisborne Gardens, Rainham measuring approximately 92.5 metres in width and approximately 345.93 metres in length and sited between OS grid reference points 551723(E), 182828(N); 551858(E), 182857(N); 551852(E), 182758(N) and 551795(E), 182746(N).
The land is classified as Highway verge 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 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. When the stopping up process is complete, the Council's intention is to adopt a strip of 1.8 metre width footway around the perimeter of the site which forms part of the new approved layout using powers available to the Council under section 228 of the Highways Act 1980). Officers therefore consider that there would be no significant 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:

P1004.18 – Land bounded by New Zealand Way, Queenstown Gardens and Gisborne Rainham, RM13 8JT– development of 30 new units of affordable housing comprising 2 bedroom and 3 bedroom houses with associated landscaping and car parking. -outline application - 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 highway 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: New Zealand Way Stopping Up Plan

