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| Application Reference: | Stopping Up Order |
| Location: | Land at 149-153 New Road |
| Ward: | Rainham |
| Description: | Stopping up of Highway |
| Case Officer: | John Deasy |
| Reason for Report to Committee: | The Assistant Director of Planning considers committee consideration to be necessary. |

1 Background

- 1.1 On 12 October 2017 the Council granted outline planning permission under application reference P0726.17 for demolition of all buildings and redevelopment of the site for residential use providing up to 14 units with ancillary car parking, landscaping and access. Parameter plans approved under P0726.17 confirm that 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 black on the plan(s) entitled Stopping Up Plan Plot 3 referenced PA-2602-SU-P3 and Stopping Up Plan Plot 4 referenced PA-2602-SU-P4 at Appendix A ("the Plans") to enable the development to be carried out in accordance with the grant of planning permission under application reference number P0726.17.
- 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 at New Road Rainham shown zebra hatched on the Plans, 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 P0726.17;
- 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if no objections are received (or any objections received are withdrawn), or the Mayor of London decides a local inquiry is unnecessary, then the stopping up order will be confirmed by officers;

if objections are received from a local authority, statutory undertaker or gas transporter (and are not withdrawn), or other objections are received (and not withdrawn) and the Mayor of London decides that an inquiry is necessary, the Council shall cause a local inquiry to be held.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 parameters of the development has already been considered and approved under application ref P0726.17 following a full statutory public consultation exercise. The approved parameter 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 There are two areas of land to which the application to stop up relates. The areas are hardstanding adjacent to the footway of New Road Rainham, measuring approximately: Plot 3 (drawing PA-2602-SU-P3) 3 metres in width and 4 metres in length and Plot 4 (drawing PA-2602-SU-P4) 0.1 metres in width and approximately 27 metres in length sited between OS grid reference points: Plot 3 551124E and 182814N Plot 4 551139E and 182807N.
- 3.5 The land is classified as general purpose Highway on the register of highways maintainable at the public expense.
- 3.6 The development approved pursuant to the planning permission incorporates a redesign of the existing highway layout within the confines of the development.
- 3.7 It is considered that the most effective way to accommodate the approved highway layout is by stopping up parts of the existing highway. 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:

P0726.17 – Outline planning application for the demolition of all buildings and redevelopment of the site for residential use providing up to 14 units with ancillary car parking, landscaping and access – Planning Permission Granted

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 areas 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(s): PA-2602-SU-P3; PA-2602-SU-P4