



<b>Application Reference:</b>	<b>Stopping Up Order and Diversion Order</b>
<b>Location:</b>	<b>Public Footpath 260</b>
<b>Ward:</b>	<b>Rainham</b>
<b>Description:</b>	<b>Stopping up of Highway</b>
<b>Case Officer:</b>	<b>John Deasy</b>
<b>Reason for Report to Committee:</b>	<b>The Assistant Director of Planning considers committee consideration to be necessary.</b>

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## 1 Background

- 1.1 On 14 May 2019 the Council received an application for outline planning permission under application reference P0751.19 for demolition of existing buildings and redevelopment of site to provide 197 residential dwellings, public and private open space and associated works ("Development"). Public Footpath 260 ("Footpath") passes over the site of the Development. Parameter plans under P0751.19 confirm that the Development could not proceed unless the Footpath is stopped up.
- 1.2 A resolution is therefore sought to stop up and divert the Footpath shown zebra hatched black on the plan referenced 44110-NNP-PBA-XX-XX-DR-D-0203 at Appendix A ("Plan") to enable the Development to be carried out subject to the grant of planning permission under application reference number P0751.19.
- 1.3 The proposed diversion route of the Footpath is shown on the Plan.
- 1.4 The Council's highway officers have considered the application and consider that the stopping up and diversion 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 and diversion of Public Footpath 260 (current route of the Footpath is shown zebra hatched on the Plan, proposed diversion route of the Footpath is shown shaded grey on the Plan) in accordance with the procedure set out in sections 257, 259 and Schedule 14 of the Town and Country Planning Act 1990, subject to:

- the grant and lawful implementation of planning permission application reference P0751.19;
- payment, by the applicant, of all costs associated with the stopping up and diversion;
- any direction by the Secretary of State

on the following basis:

if no objections are received or any objections received are withdrawn, then the stopping up and diversion order will be confirmed by officers;

if objections are received from a local authority or National Park Authority (and are not withdrawn), or other objections are received (and not withdrawn) and the Secretary of State decides that an inquiry is necessary, the Council shall cause a local inquiry to be held.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 and diverting the Footpath pursuant to section 257 of the Town and Country Planning Act 1990.

### **3 Proposal and Location details**

3.1 Section 257(1) 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 public footpath 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 have been considered under application ref P0751.19 following a full statutory public consultation exercise. The Footpath is sited within the parameters of the Development and must be stopped up to allow the Development to proceed.
- 3.4 The Footpath links Dunedin Road, Rainham and New Road Rainham and accommodates shared cycle use. The Footpath has an average width of approximately 5 meters and is approximately 54 meters in length sited between OS grid reference points (as shown on the Plan):
- 551774.284E / 182614.803N at point A
  - 551769.906E / 182615.660N at point B
  - 551784.250E / 182667.700N at point C
  - 551784.250E / 182666.480N at point D
- 3.6 The Development incorporates a redesign of the Footpath within the confines of the development site. The proposed diversion route would relocate the Footpath approximately 5 meters in an easterly direction from its current location. The diverted Footpath would continue to provide a link between Dunedin Road, Rainham and New Road Rainham for pedestrians and cyclists. The diverted Footpath would be approximately 48 meters in width and 51 meters in length sited between OS grid reference points (as shown on the Plan):
- 551765.734E / 182618.530N at point E
  - 551760.915E / 182619.166N at point F
  - 551775.108E / 182668.664N at point G
  - 551779.954E / 182668.121N at point H
- 3.7 It is considered that the most effective way to accommodate the proposed highway layout is by stopping up and diverting the Footpath. The proposed diversion route of the Footpath is sited approximately 5 meters away from its current location. Officers 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 would enable the Development to be carried out (subject to the grant of planning permission).

## **4 Planning History**

The following planning decisions are relevant to the application:

P0751.19 – Demolition of existing buildings and redevelopment of site comprising a number of buildings ranging between 3-10 storeys, providing 197 residential dwellings (Class C3), public and private open space, formation of new accesses and alterations to existing accesses, associated car and cycle parking and associated works – undecided

The stopping up is necessary in order that development can be carried out subject to the grant of planning permission.

## **5 Consultation**

- 5.1 The Council's highway officer has no objection to the proposed stopping up and diversion 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 the order is confirmed, the Council would carry out consultation as required by Schedule 14 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.
- 5.2 Under Schedule 14 of the Act if an objection is received and not withdrawn (through negotiation between the objector and the applicant) the Council must refer the order to the Secretary of State.
- 5.3 Where an objection is from a local authority or National Park authority on whom a notice is required to be served, the Secretary of State will cause a local inquiry to be held. Where an objection is from any other person affected by the order the Secretary of State must either:
  - (i) cause a local inquiry to be held; or
  - (ii) provide that person with an opportunity to be heard by an appointee of the Secretary of State.
- 5.5 If there are no objections, or all the objections are withdrawn, then the Council may confirm the stopping up and diversion order without referral to the Secretary of State.

## **6 Conclusion**

It is considered that the proposed stopping up and diversion of the Footpath is necessary to enable development to proceed subject to the grant of 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): 44110-NNP-PBA-XX-XX-DR-D-0203