

 Havering LONDON BOROUGH	Planning Committee 10 February 2022
---	--

Application Reference:	Stopping Up Order
Location:	23 Rosslyn Avenue, Harold Wood, Essex RM3 0RG
Ward:	Harold Wood
Description:	Stopping up of land adjoining No. 23 Rosslyn Avenue, Harold Wood
Case Officer:	Musood Karim
Reason for Report to Committee:	The Head of Planning considers committee consideration to be necessary.

1. Background

- 1.1 On 15th March 2021 the Council resolved to refuse an application for planning permission (application reference P0071.21) for:

relocation of existing fence, fronting Tindall Close to incorporate the land into existing garden.

- 1.2 Planning Permission was refused on the following ground(s):

The proposed development would, by reason of its height, total length and position, form an unacceptably dominant and visually intrusive feature within the street, harmful to the appearance of the street scene and detracting from the open character of the surrounding area, contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies Development Plan Document, the Residential Extensions and Alterations Supplementary Planning Document and Policy D1 of the London Plan Adopted March 2021.

- 1.3 The Council's refusal of planning permission was appealed to the Planning Inspectorate (appeal reference: APP/B5480/D/21/3274891) and on 10th September 2021 the appeal was allowed with planning permission

granted for: *relocation of existing fence to incorporate purchased land into existing garden at 23 Rosslyn Avenue, Romford RM3 0RG*

- 1.4 In order to facilitate the development granted planning permission at appeal stopping up of the adopted public highway is required as the approved scheme will encroach onto the existing public highway.
- 1.5 A resolution is therefore sought to stop up the existing grass verge shown on drawing reference no. TQ546902 attached at Appendix A (“the Plan”) to enable the development to be carried out pursuant to the planning permission granted on appeal.
- 1.4 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 the planning permission granted on Appeal.

2. **Recommendations**

That the Planning Committee resolve:

- (a) to authorise the stopping up of the highway land adjoining 23 Rosslyn Avenue, Harold Wood as shown 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 the planning permission granted on appeal (reference APP/B5480/D/21/3274891);
- payment, by the applicant, of all costs associated with the stopping up;
- any direction by the Mayor of London

on the following basis:

- i) 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;
- ii) 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 Public Realm, 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. Proposals 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 developments 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 on appeal by the Planning Inspectorate under appeal reference (APP/B5480/D/21/3274891) following a full statutory consultation exercise. The approved parameter plan(s) would require the stopping up of the land adjacent to 23 Rosslyn Avenue 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 grass verge adjacent to 23 Rosslyn Avenue. The land measures approximately 34.5 linear metres in length and 3 linear meters in width at its widest point and sited between Ordnance Survey grid reference points **Point A** 554636.279 (E) 190304.450 (N) on the north side and **Point B** 554650.808 (E), 190272.920 (N) and **Point C** 554 647.862 (E) 190271.700 (N) of south side of the grass verge.
- 3.5 The land is classified as grass verge on the Register of Highways maintained by the Council.
- 3.6 The development approved on appeal incorporates the subject land within the existing garden of 23 Rosslyn Avenue.
- 3.7 It is considered that the only way to incorporate the subject land within the existing garden of 23 Rosslyn Avenue is by stopping up the existing highways

rights. Officers consider that there would be no significant disadvantages suffered by the public in stopping up the land.

3.8 The Planning Inspector in their Appeal Decision at paragraph 9 noted that:

“The removal, therefore, of the existing grass verge, would not, in my judgement, be harmful to the streetscene or to the open character of the area. Similarly, the repositioning of the existing boundary fence further west, to the back edge of the public footway, would not appear overly dominant or visually intrusive, when compared with the existing fencing and in this respect, it would also not be dissimilar to the positioning of the boundary fencing / walls found at the junction of Rosslyn Avenue with Peel Way and Gubbins Lane. The proposed scale and siting of the relocated timber fence would, therefore, be broadly consistent with other boundary treatments in the area.”

4. Planning History

4.1 The following planning decisions are relevant to the application:

P0071.21 – the re-location of existing boundary fence fronting Tindall Close to incorporate the purchased land by the applicant into existing garden which the applicant has the title deed – Refused

APP/B5480/D/21/3274891– appeal of planning application P0071.21 – Approved on Appeal

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

5. Consultation

5.1 The Council’s highway officer has no objection to the proposed stopping up order, subject to full compliance with planning conditions and adherence to the following highway conditions:

- i) that the proposed boundary fence will be erected in full accordance with drawing DPL.04 attached to the planning permission,
- ii) that no materials will be deposited on the public highway which may cause danger or hindrance to highway users

5.2 No public or external consultations 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 or utility provider 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 of London 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 of London 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.

5.6 In any event, the above advertisement and administrative works by the Council’s Legal Services will involve payment of all associated fees payable by the applicants.

6. **Conclusions**

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

Appendix A

Plan reference: TQ546902

Appendix B

Copy of the Appeal by Planning Inspectorate
Ref. APP/B5480/D/21/3274891 of 10thSeptember 2021