

25 March 2015

Excalibur Estate, Lewisham

in the London Borough of Lewisham

Stopping up order

Section 247 of the Town and Country Planning Act 1990 (as amended) by Schedule 22 of the Greater London Authority Act 1999

The proposal

The comprehensive stopping up of the areas of highway including all carriageways and footpaths within the Excalibur Estate.

Recommendation

That Lewisham Council be advised that there are special circumstances in this case so that the holding of an inquiry is not necessary.

Context

1 On 30 March 2012 Lewisham Council (“the Council”) granted planning permission DC/10/75793 for the comprehensive redevelopment of the Excalibur Estate (“the Development”).

2 The applicant for planning permission was London and Quadrant Housing Group (“the Developer”). The Excalibur Estate is located in the south of the London Borough of Lewisham, to the east of Forester Memorial Park and to the south of Catford Town Centre. The site comprises 187 post war pre-fabricated homes, which were erected in 1946 and intended to have a ten year life span. The site is an infill site and with the exception of the access roads and the children’s nursery, is entirely bounded by rear garden fences. The site is not located in a Conservation Area, however, six of the pre-fabricated homes in the estate located on Persant Road, were given Grade II Listed status in 2006, due to their particular constructional and architectural interest.

3 The Development will provide a total of 371 residential units of between one to three storeys in height. Of the total housing delivery, 152 of the proposed units were submitted in full detail to the Council, with the remaining 219 granted under an outline permission. The redevelopment will also include car and cycle parking, associated highway infrastructure, and soft and hard landscaping including the provision of open space.

4 The planning process assessed the planning merits of the Excalibur Estate redevelopment including the comprehensive redevelopment of the existing estate road and footpath network and concluded, taking the development plan and all material considerations into account that planning permission should be granted for application DC/10/75793.

5 The comprehensive nature of the estate redevelopment proposals involves a complete reconfiguration of the highway network within the application site in order that the Development may be carried out. As a result, it is proposed that all of the carriageways and footpaths within the Excalibur Estate shown on the appended map (and described below) be stopped up which will, amongst other things, enable new rights of way and public spaces to be created.

6 The Council proposes to make a comprehensive stopping up order pursuant to section 247(2A) of the Town and Country Planning Act 1990 (“the Act”) on the basis that it is satisfied that this is necessary in order to enable the Development to be carried out.

7 Objections were received to the proposed stopping up order which remain outstanding and ordinarily the Council is required to hold a local inquiry. However, in accordance with section 252 of the Act the Council has notified the Mayor of the objections and seeks his decision whether, in the special circumstances of the case, the holding of an inquiry is unnecessary.

8 In addition to the above, since the referral of the draft order to the Mayor, the Deputy Mayor for Planning has received three letters from Sir Steve Bullock the Mayor of Lewisham, Heidi Alexandra MP (Lewisham East) and Bryan Steed, Chairman of the Excalibur Estate Regeneration Steering Group expressing their support for the stopping up order and the regeneration of the estate.

9 The Mayor of London’s decision on this case will be made available on the GLA’s website www.london.gov.uk.

The Proposed Stopping Up Order

10 As set out above, the areas of highway to be stopped up consist of most of the existing carriageways and footpaths within the Excalibur Estate and are more particularly described in the Council’s referral letter dated 9 February 2015 which includes a plan (“the Plan”) showing these areas. A copy of the plan is appended to this report, however, the area to be stopped up includes:

- Ector Road; between Mordred Road and Persant Road.
- Mordred Road; between Baudwin Road at the north east and Ector Road.
- Pelinore Road; between Mordred and Persant Road.
- Wentland Road; between Battersby Road and Extor Road.
- Wentland Close; from the junction of Wentland Road and Meliot Road.
- Persant Road; between Baudwin Road and Meliot Road.
- Meliot Road; between the junction of Wentland Road and Persant Road.
- Part of Baudwin Road; running south of the junction with Castillon Road.

11 The existing planning consent for the comprehensive redevelopment of the estate requires that the existing highway structure be incorporated into the new development site and built upon in order to achieve the consented layout and urban form. As part of the

redevelopment, new carriageways, footpaths and associated highway infrastructure will be created.

Consideration of the Need for a Local Inquiry

12 Section 252(4)(b) of the Act provides that if an objection to a proposed stopping up is received from any local authority, National Park Authority or undertaker or public gas transporter, or from any other person appearing to the relevant council to be affected by the order and that objection is not withdrawn the council must notify the Mayor and ordinarily it must cause a local inquiry to be held.

13 The only exception to the usual requirement to hold a local inquiry arises under section 252(5A) of the Act whereby, provided that none of the outstanding objections is from a local authority or undertaker or transporter, the Mayor shall decide whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary.

14 When the Council carried out the necessary consultation on the proposed stopping up order, it received three letters of objection from local residents. On 9 February 2015 the Council notified the Mayor of these objections. None of the objectors is, for the purposes of s252 of the Act, a local authority, undertaker or transporter. Accordingly, the Mayor must decide whether the holding of a local inquiry is unnecessary.

15 Advice received from the Secretary of State when he was the order-making authority is that he would only find special circumstances if satisfied that no objections remained which could benefit from being heard at an inquiry, for example objections made on non-highway grounds or objections made in bad faith. If objections remained relating to traffic issues, the Secretary of State generally considered that these should be heard at an inquiry, although not so as to permit a re-run of the planning merits of the development.

16 Furthermore, guidance for Inspectors published by the Planning Inspectorate states that, when considering objections to a stopping up order, there is a need to weigh the disadvantages or loss likely to arise as a result of the stopping up, whether to members of the public generally or to persons whose properties adjoin or are near the existing highway, against the advantages to be conferred by the proposed order.

17 The letters of objections raise a variety of concerns with regards to the stopping up order in addition to more general objections to the extant planning permission. The objections relating to the stopping up order can be summarised as follows:

- The accompanying plan is incorrect and does not reflect the estate boundary.
- The roads have been used without interruption since 1946 and are now Highways. Therefore, the Council does not have the right to close them.
- The freeholder rights of way have not been extinguished and the Council has not approached existing freeholders about this prior to the draft stopping up order being made.
- A stopping up order cannot be made while the estate is still occupied.
- The Developer does not own the land and therefore they cannot apply for a stopping up order.
- The application does not have a reference number and therefore has no authenticity.

- The consultation process has not been carried out correctly or sufficiently. There has been a failure of process and access to the notice; notices affixed to lampposts are not sufficient and individual notices should have been provided. Failure to place notices in local and national press and a failure to notice that notices on lampposts would deteriorate in weather conditions. There has been a failure to notify the Tenant Management Committee and give warning to tenants and residents of such an application.
- The current estate roads provide access to local amenities and bus services and this would change, therefore the notice did not contain good reasons for the closing of the highways.
- The hoarding currently erected on the estate and the existing road closures has been carried out illegally.

18 In addition to the above, one of the letters makes objections to the principle of redeveloping the estate, the housing typologies proposed and access to the Steering Group meetings. As set out in paragraph four above, the principle of the comprehensive redevelopment of the estate, the layout and the proposed housing typology were assessed as part of the planning process and are therefore not considered relevant for the purposes of this assessment as they would amount to a re-run of the planning merits of the development. With regards to the comments regarding the inclusivity of the Regeneration Resident Steering Group, it has been confirmed by the Council that this is a consultative group of residents who meet to discuss the details of the future redevelopment and is open to all residents.

19 Both the Developer and the Council have written to each of the objectors in December 2014 and January 2015 respectively, to address the concerns raised in their representations. However, none of the objections have since been withdrawn and all three remain outstanding.

20 It is noted that the majority of the objections relate to the status of the carriageways and footpaths, the Developer's right to make an application to stop up land which they do not own, the Council's right to make the order, particularly while the estate is still occupied and to the way the consultation process carried out. While these objections explicitly relate to the stopping up order, they raise issues with the associated statutory procedures and are not raising issues regarding the loss of access across the existing highway and the impacts of these changes. Notwithstanding this, many of these issues have been clarified in the correspondence from both the Developer and the Council to the objectors and are summarised in the following paragraphs.

21 The Council has clarified that all the roads and footpaths subject to the draft order are designated as highways not maintainable at public expense, not private estate roads, and can therefore be included in the draft order. The area subject to the draft order is consistent with the existing site plan which is approved under the parent planning application (DC/10/75973) and it is therefore considered correct. Due to the highway designation, it is statutory procedure that an application for a stopping up order be made under Section 247 of the Town and Country Planning Act 1990 to close them. In this instance, in accordance with the approved planning permission, the Council, as landowner gave permission to the Developer to make the order as it is intended that ownership of the land will pass from the Council to the Developer in phases as the development progresses. The Council has appropriated the land for phases one and two and the extinguishing of freeholder rights has been converted to a claim for compensation as part of this process. It is understood this approach will be carried out on later phases. Notwithstanding this, Section 247 of the Act does not prevent an application being made by the Developer and therefore the proposed draft order has been made in accordance with statutory procedures.

22 Furthermore, the Act does not preclude an order being made while the estate is still occupied. While the area proposed to be stopped up includes all of the estate roads and paths, these will not immediately cease to exist on the making of the order but will close incrementally in accordance with the approved phasing of the development ensuring continued access for existing and new residents during the redevelopment of the estate. In accordance with the conditions of the existing planning permission, each phase is subject to a construction logistics plan to ensure that potential impacts from construction traffic, pollution and noise are appropriately mitigated and will inform alternative access arrangements for residents. As per the process for phase one, the applicant has given a commitment to a programme of consultation with the residents regarding any forthcoming road closures.

23 With regards to those objections raised with the consultation process, it is understood that the Council has carried out the consultation in accordance with statutory requirements of the Act, by securing laminated notices around the site that were monitored on a weekly basis to ensure they were still attached and visible and procured notices in the South London Press and the London Gazette in November 2014. The Council has provided evidence of the press notices and a copy of the statutory notice erected around the estate which clearly states that the order is necessary *“to enable the construction of new carriageways and footways, associated highway infrastructure, soft and hard landscaping including the provision of open space as part of the redevelopment and regeneration of the Excalibur Estate”* in accordance with planning permission DC/10/75973. In addition to the above, the Council and the applicant has written to the residents on several occasions throughout 2014 with regards to the order making process and updates on the overall regeneration programme. The Council has confirmed that the Tenant Management Co-Operative has also been informed via newsletters from the applicant distributed across the estate in May and December 2014. In light of the above, GLA officers are content that the Council has carried out the consultation process in accordance with the statutory procedures required under Section 247 of the Act.

24 In addition to the above, the Council has clarified that the current temporary hoarding and road closures on site have been erected legally and the Developer obtained the necessary licences and approvals from the Council. Given the temporary nature of the closures and hoarding they were not subject to a stopping up order and are required to allow the Developer’s contractor to safely demolish the existing homes in phases one and two.

25 Officers consider that the majority of the objections discussed above relating to land ownership, extinguishing of freeholder rights of way, road and footpath status, the rights to apply for and making of the order, the legal status of the existing temporary road closures and hoarding and the nature of the consultation process are objecting on procedural grounds as opposed to the impact of the actual closure of the roads and footpaths. As set out above, these have been subsequently addressed through further clarification from the Council of the statutory procedures required under Section 247 of the Town and Country Planning Act 1990 and would therefore not benefit from being heard at an enquiry. If the Mayor were to require that an inquiry be held on the basis of the remaining objections regarding the changes to access and the principle of the estate redevelopment it would result in the re-running of the planning merits of the development and a revisiting of issues which have already been considered at the planning application stage, which were deemed not to be of sufficient weight to warrant a refusal of the planning application.

Financial Considerations

26 If the Mayor decides that a local inquiry is to be held he must notify the Council who shall cause a local Inquiry to be held. In this instance, the Act provides that the costs incurred

by the Council in relation to the Inquiry and the costs of the parties involved shall be paid by such party to the Inquiry as the Council acting with the consent of the Mayor may direct.

Conclusion

27 The planning process assessed the planning merits of the redevelopment of the Excalibur Estate redevelopment and concluded, taking the development plan and all material considerations into account, that planning permission should be granted. The stopping up of the identified areas of highway is necessary to enable the Development to be carried out.

28 While the objections to the proposed stopping up order are associated with closure of the existing highways they are mostly raised on procedural grounds and have been satisfactorily addressed through further clarification of the statutory procedures required under Section 247 of the Act and would therefore not benefit from being heard at an inquiry. The remaining outstanding objection regarding the changes to access and the principle of the estate redevelopment if heard at an inquiry would amount to a re-run of the planning merits of the development and a revisiting of issues which have already been considered at the planning application stage. Accordingly, in the special circumstances of this case, the holding of an inquiry is unnecessary.

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