

South Side of Brentford High Street and Waterside**in the London Borough of Hounslow
planning application no. 00607/BA/P2****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

Stopping Up Order: At the land known as Land to the South Side of Brentford High Street and Waterside Brentford London namely; part of the carriageway and footway of Brent Way, Catherine Wheel Road, Boars Head Yard, Dock Road, and other un-named roads and footpaths.

Recommendation

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

Context

1 On 2 April 2015 Hounslow Council (“the Council”) granted planning permission for a hybrid planning application (part detail part outline) reference: 00607/BA/P2 for the: “demolition of existing buildings and retention of a number of buildings as part of a comprehensive mixed use development comprising a maximum of 111,821sq.m including a maximum of 876 residential units along with associated works. The proposed development includes retail, residential, business and leisure and associated uses as part of the development including car parking, cycle storage, and an energy centre. Creation of enhanced vehicular access and public realm works including hard and soft landscaping, works to the river walls and facilities associated with the mooring of boats, boat storage and maintenance. Works to 129-130 High Street, works to and within Workhouse Dock including the provision of mooring facilities, a new pontoon access and associated facilities and other works incidental to the proposals”.

2 The applicant for the planning permission was Geronimo Ltd. The 4.79 hectare site is located within Brentford Town Centre. The site occupies a significant area of frontage along the High Street (London Road) and the River Brent/Grand Union Canal to the south. The plots eastern edge is bound by the Heidelberg Building whilst the western edge fronts Augustus Close. The area to be stopped up comprises highways at the land known as Land to the South Side of Brentford High Street and Waterside Brentford London namely those areas known as being part of the carriageway and footway of Brent Way, Catherine Wheel Road, Boars Head Yard, Dock Road, and other un-named roads and footpaths.

3 The planning process assessed the planning merits of the development described at paragraph 1 and concluded, taking the development plan and all material considerations into

account, that planning permission should be granted for application 00607/BA/P2. As set out in the Council's committee report, the application involves the loss of several areas of public highway and footway (outlined at Figure 1), in order to enable the development to take place.

4 The Council proposes to make a 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.

5 Five objections to the proposed stopping up order were received, 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.

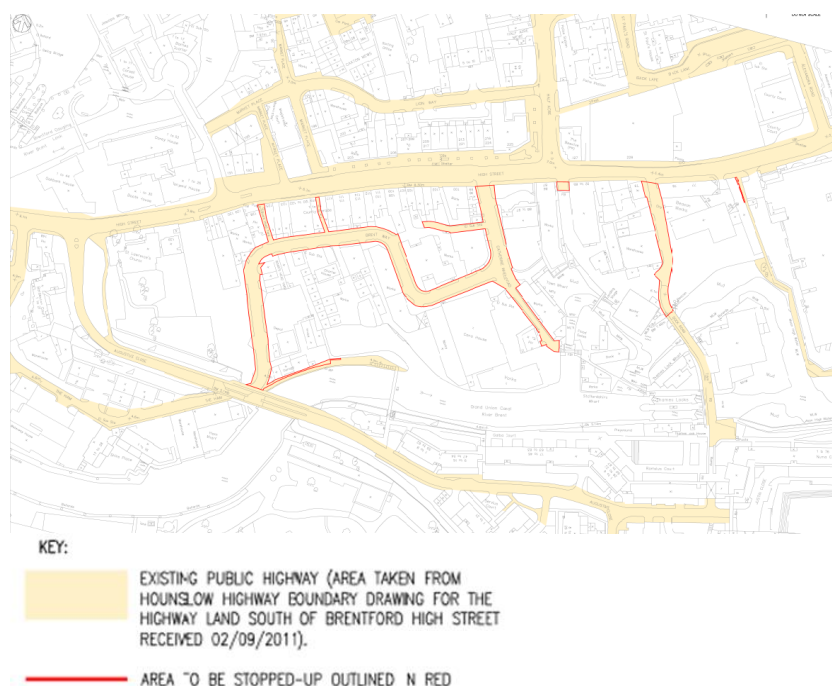
6 The Mayor of London's decision on this case will be made available on the GLA's website www.london.gov.uk.

The proposed Stopping Up Order

7 As set out above, the areas to be stopped up, described in the Council's stopping up proposal are outlined in red in Figure 1 below and encompasses:

- Part of the footpath to the east of the site,
- Dock Road (from the High Street to the bridge over the canal), this road is public highway privately maintained by Brentford Dock Ltd,
- An existing bellmouth entrance to the site,
- Catherine Wheel Road and un-named side road,
- Brent Way,
- Pedestrian route between 117-119 County Parade,
- Boars Head Yard,
- Part of the footpath leading east along the canal from Brent Way.

Figure 1: Areas to be stopped up.



Consideration of the need for a local Inquiry

8 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.

9 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.

10 When the Council carried out the necessary consultation required under section 247 of the Act on 26 January 2017, it received correspondence from a total of 16 parties. Objections were received from Virgin Media, Sky, SEPD, Thames Water and BT Open Reach but were subsequently withdrawn. In response to the objections the applicant has entered a legal agreement (discussed below) and notified the objectors of these provisions via a letters issued directly to objectors. Subsequently 6 of the objections were withdrawn. On 28 August 2018 the Council notified the Mayor of the outstanding objections. The remaining 5 objectors do not contain, 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. The remaining grounds for objection are summarised as follows:

- Impact on traffic movements,
- Reduced access including for emergency vehicles,
- Increased pressure on and the reduced convenience of existing routes,
- Reduced vehicle parking,
- Impact on local businesses,
- Impact on refuse and delivery vehicles,
- Loss of pedestrian routes,
- Phasing and timescales for development,
- Closing of Dock Road,
- Timing of public consultation on proposals.

12 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.

13 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.

14 The objections have been acknowledged by the Council, and the applicant has written to the objectors to address their concerns raised that are related the Stopping up Order in their representations. However, the objections have not been withdrawn and remain outstanding.

15 A summary of the themes of the representations received has been provided above. The majority of grounds for objection relate to the impact of the parent planning permission. As set out in paragraph 3 above, the principle of the mixed-use redevelopment of the site and its impacts were assessed as part of the planning process and these aspects of the objection 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. The parent application fully considered the potential highway impacts (including vehicle parking) arising from the scheme and concluded that any concerns raised as part of the consultation process were not sufficient in weight to refuse the application. Council officers commented that "The development would result in enhancement to the pedestrian environment".

16 In addressing the representations raised the applicant outlined in their letters to the objectors that BDL and Ballymore (the landowner of Dock Road and developer respectively) have agreed s106 agreement heads of terms securing; pedestrian right of way at all times over Dock Road, except in the case of emergency or during the carrying out of construction works, vehicular right of way over Dock Road to enable access service and emergency vehicles, if Augustus Close requires closure for any reason the Developer will provide pedestrian and vehicular access to BDL, its residents, and their visitors over Dock Road and Ballymore intend to keep the cobbled character of Dock Road, although during construction the cobblestones may be removed to allow the substructure to be renewed and strengthened.

17 The stopping up of the highway and footpath was noted as a component to the parent planning application and was thus considered as part of the planning application process with the associated issues being addressed within the Council's report. Notwithstanding the above, the applicant has since worked with the remaining objectors to address their concerns namely, maintaining rights of access as per the existing arrangement and ensuring local businesses servicing and refuse arrangements can be functionally maintained. As such the concerns raised in relation to business servicing and public rights of way resulting from the stopping up are considered to have been satisfactorily addressed by subsequent legal agreements.

18 The planning process has already assessed the planning merits of the proposed scheme, weighing up the advantages and disadvantages of the permission and concluded, taking the development plan and all material considerations into account that planning permission should be granted in April 2015. If the Mayor were to require an inquiry to be held on the basis of these objections, it would be revisiting the same issues that have already been discussed at the planning application stage where it was not deemed to be of sufficient weight to warrant a refusal of the planning application.

19 It is therefore considered that the concerns raised by the objectors to the stopping up of the highway and footway have previously been addressed as part of the planning process or resolved as part of the consultation to the stopping up.

Financial Considerations

20 There are no financial considerations at this stage.

Conclusion

21 The planning process assessed the planning merits of the development and concluded, taking the development plan and all material considerations into account, that planning permission should be granted in April 2015. The stopping up of the part of the carriageway and footway of Brent Way, Catherine Wheel Road, Boars Head Yard, Dock Road, and other unnamed roads and footpaths is necessary to enable the development to be carried out and is therefore in accordance with the requirements under section 247 of the Act.

22 Therefore, if an inquiry is heard it would be revisiting: issues which have already been considered at the planning application stage (amounting to a re-run of the planning merits, and the related need to stop up the highway and footpath); and, issues which have been addressed through the subsequent legal agreement.

23 Accordingly, in the special circumstances of this case, the holding of an inquiry is unnecessary.

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