

73-75 Avenue Road: Stopping Up Statement of Case

On behalf of Queens Grove Residents

16 October 2024



DEPARTMENTAL/NW/JMa
32958971v1

Contents

1.0	Introduction	1
2.0	Scope of Evidence	2
	Retrospective Stopping Up	2
	Procedural Concerns	2
	Other Matters	3

1.0 Introduction

1.1 Lichfields is appointed to appear at the Public Local Inquiry to be held into the proposal to make an Order under Section 247 of the Town and Country Planning Act to authorise the stopping up of part of the footway at the side of 73-75 Avenue Road London NW8 in the London Borough of Camden in order to enable development to be carried as permitted by the London Borough of Camden on 3 March 2021 under reference 2020/3796/P.

1.2 Lichfields appears at the inquiry to represent the following residents of Queens Grove [“the residents”]:

- Stuart Levy, 45 Queens Grove
- Sir Stuart Lipton, 40 Queens Grove
- Irene Hatter, 38 Queens Grove
- Nick Ritblat, 37 Queens Grove

1.3 All of the residents live within close proximity of the application site and object in the strongest possible terms to the stopping up application.

1.4 The residents will be represented at the Inquiry by Neil Westwick, a Senior Director of Lichfields. Mr Westwick is a member of the Royal Town Planning Institute, rather than a lawyer and will not have legal representation.

2.0 **Scope of Evidence**

2.1 The evidence of Neil Westwick will deal with 2 key matters:

- The fact that the application to stop up is being made retrospectively; and
- Procedural concerns about the application upon which the stopping up application is based which cast doubt upon its necessity.

Retrospective Stopping Up

2.2 The stopping up being considered at this inquiry is required in relation to application Ref. 2020/3796/P for:

“Replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and substation to rear garden and bin store to front garden (both adjoining Queen's Grove)”.

2.3 The Council proposes to make a stopping up order pursuant to Section 247 of the Town and Country Planning Act 1990 on the basis that it is satisfied that this is necessary to enable the consented development to be carried out and in particular:

“to allow the boundary wall adjacent to Queen’s Grove to be moved 0.5m further into the existing footway to safeguard the existing mature trees (and their roots) which are subject to a Tree Preservation Order (‘TPO’).”

2.4 Mr Westwick’s evidence will demonstrate that the construction of the new wall adjacent to Queens Grove has already been substantially completed. Since the Secretary of State does not have the power to stop up highways retrospectively it will be concluded that the opportunity to secure the stopping up by means of section 247 has been lost and the stopping up application must fail.

Procedural Concerns

2.5 Mr Westwick’s evidence will also identify a number of concerns about the validity of the application on which the Stopping Up application is based, primarily relating to actions undertaken by the applicant but also highlighting matters which should have been addressed by the Local Planning Authority. The matters to be covered in evidence are as follows:

- Inappropriate use of Householder Application form for a site which proposed the change of use of highway land outwith the applicant’s control.
- Misleading and inaccurate description of development, which failed to reference the change of use of highway land to accommodate a bin store and substation.
- Failure to acknowledge on the householder application form that the application required extinguishment of a section of a public right of way.
- Incorrect ownership certificate completed and no notice served on Highway Authority as owner of land within the application site.
- Breach of owner’s obligations (relating to clauses 4.1.3 and 4.1.7) in the Section 106 Agreement which accompanied the planning application for the replacement wall.

Other Matters

- 2.6 Mr Westwick's evidence will also touch upon the wider planning history of the site at 73-75 Avenue Road which provides an important context for the Inspector. This will demonstrate that two of the protected trees on the Avenue Road elevation had already been felled, following a successful application in 2019 and that whilst the decision notice required replacement tree planting to be carried out before March 2021, there is no evidence that this planting has taken place.
- 2.7 Reference will also be made to the number of other protected trees located in close proximity to site boundaries in the immediate area and that fact that in no other cases has it been necessary to stop up highway land in order to accommodate them.
- 2.8 It will be shown that both the substation and bin store enclosures are located within the area to be stopped up suggesting that this was potentially as much a driver for the stopping up as the protection of the trees as it enabled these elements to be pulled further back away from the main house.
- 2.9 Finally, it will be shown that the stopping up process would result in an unnecessary increase in the size of the residential curtilage of 73-75 Avenue Road, the consequence of which would be a measurable uplift in the applicant's land value as a result of the Stopping Up.