

Queen's Grove: part of the footway at the side of 73-75 Avenue Road

Local Planning Authority: Camden

Local Planning Authority reference: ES/I&M/ED/1/22/S247

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

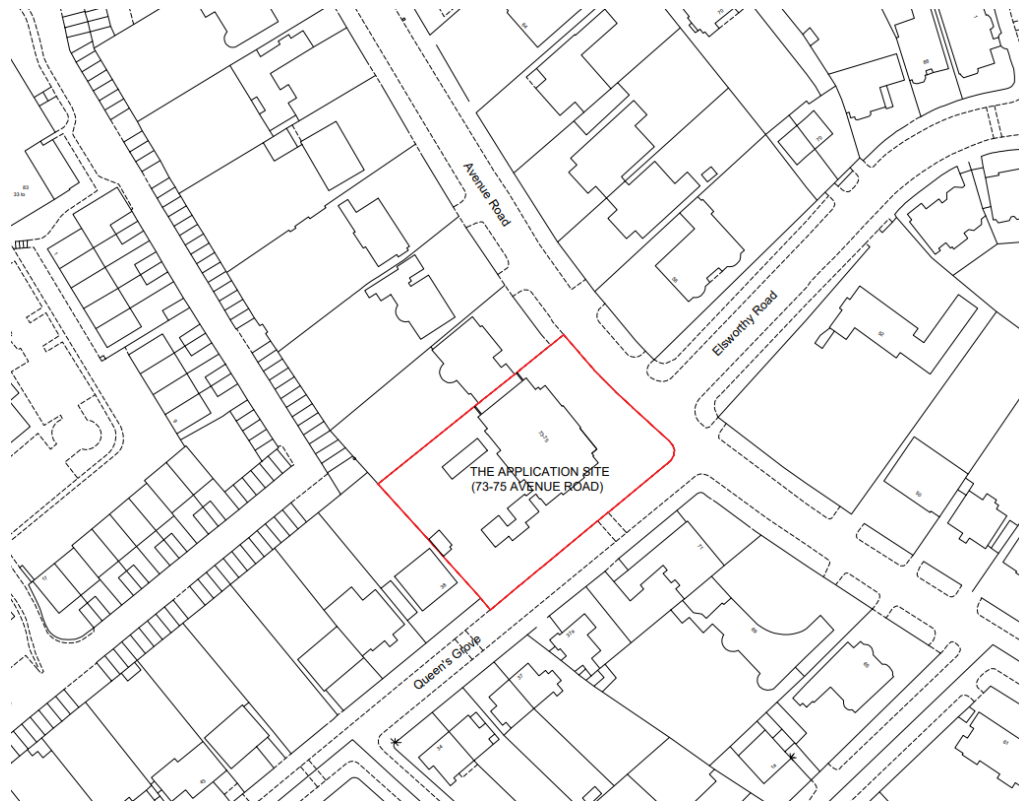
The stopping up of part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

Recommendation

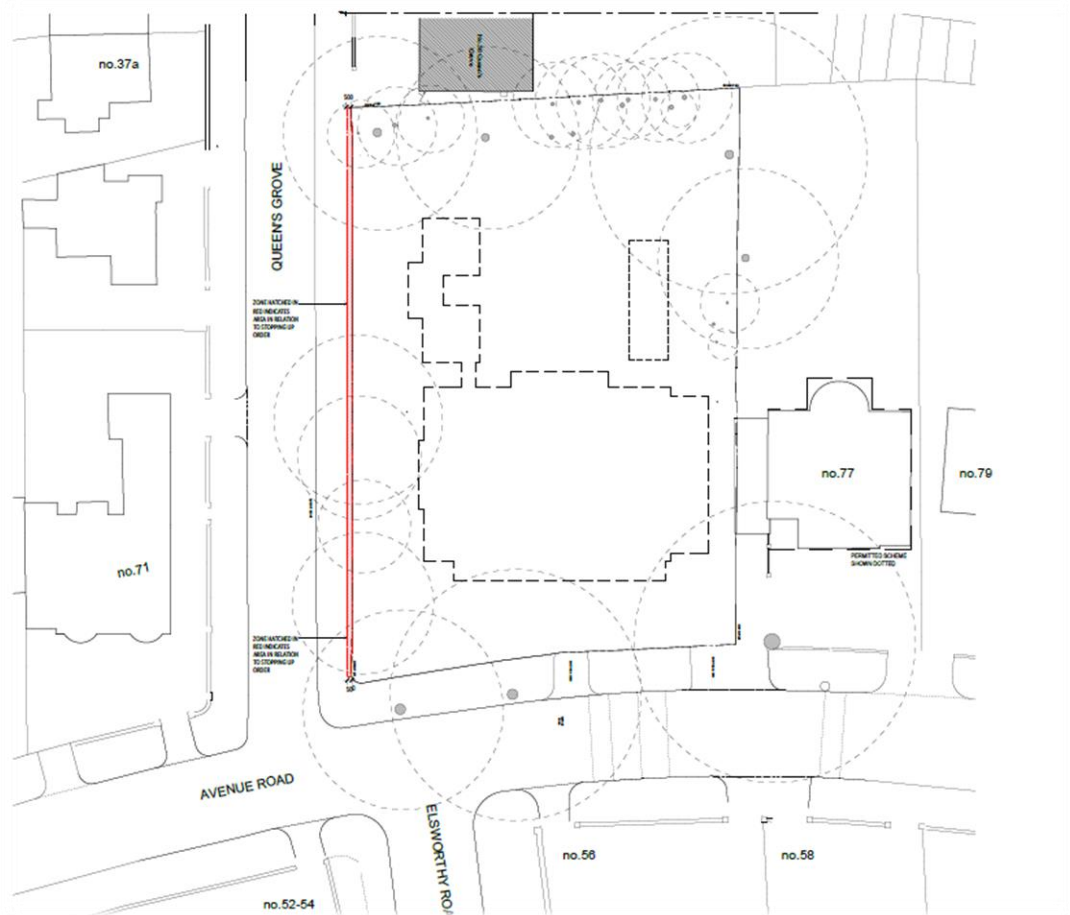
That the Deputy Mayor's decision of 9 May 2023 be set aside in light of the further information notified to the GLA on 8 June 2023 and that Camden Council be notified that there are no special circumstances to dispense with the holding of an inquiry.

Context

1. On 3 March 2021, the Council granted planning permission (LPA ref. 2020/3796/P) for the 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). The proposed site plan, illustrating the red line boundary of the approved application (LPA ref. 2020/3796/P) is shown in Figure 1 below.



2. As part of the planning process, the planning merits of the development described above were assessed and the Council concluded – after taking all the material considerations into account – that planning permission should be granted for the proposed development, subject to planning conditions and a Section 106 Agreement.
3. A stopping up was deemed necessary by the Council to enable this consented development to be carried out in accordance with planning permission ref. 2020/3796/P and to allow the boundary wall adjacent to Queen's Grove (at the side of 73-75 Avenue Road) 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') pursuant to Section 247 of the Town and Country Planning Act 1990 ('the Act'). The extent of the area to be stopped up is shown in Figure 2 below.



4. On 13 March 2023, Camden Council notified the GLA that there were two outstanding objections to the stopping up order made by members of the public. The grounds for objection were summarised as follows:
 1. Objection to the narrowing of the footway.
 2. Objection that the wall had already been completed and as such section 247 of the Act was not the appropriate legal power to use to Stop Up the land.
5. 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 of those objections and ordinarily it must cause a local inquiry to be held.
6. The only exception to this is set out within section 252 (5A) of the Act which allows the Mayor once he has been notified of the objections and as long as none of those objections are made by a local authority, undertaker or transporter to decide whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary. If he decides that it is unnecessary,

he must notify the Council of this decision who may then dispense with the inquiry although not required to do so.

7. While the Deputy Mayor considered a report on whether there were special circumstances under section 252 (5A) of the Act to dispense with the holding of an inquiry on 9 May 2023 in which he decided there were special circumstances, on 8 June 2023 Camden Council notified the Mayor that it had come to their attention that they had inadvertently missed from their letter of 13 March 2023 some further objection correspondence. These included an additional objection letter (dated 24 August 2022), photos sent by Town Legal LLP and their subsequent response (dated 4 October 2022) relating to the objection regarding the use of section 247 of the Act to Stop Up the land and whether the works had actually already been substantially completed.
8. As the Council is required under section 252 of the Act to notify the Mayor of the objections before the Mayor can consider the question of whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary and given they failed to notify the Mayor of all the objections received, the Deputy Mayor's decision of 9 May 2023 can therefore be set aside. This report therefore reconsiders whether, in light of all the information notified to the Mayor, special circumstances exist under section 252 (5A) of the Act.
9. The Council have confirmed to the GLA that they have not yet made the Stopping Up Order. They have also confirmed that they do not consider that the further information notified to the GLA raises any new points not already considered by the Mayor in the report of 9 May 2023.
10. The Mayor of London's decision on this case will be made available on the GLA's website www.london.gov.uk

Consideration of the case for special circumstances

11. 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. If objections remained relating to traffic issues, the Secretary of State generally considered that these should be heard at an inquiry, although not to permit a re-run of the planning merits of the development.
12. 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 footway, against the advantages to be conferred by the proposed order and these matters are most appropriately assessed by Inspectors as part of the usual inquiry process.
13. The report considered by the Deputy Mayor on 9 May 2023 considered carefully the two objections sent to the Mayor on 13 March 2023. In relation to the

objection relating to narrowing the public footpath by 0.5m by moving the boundary wall adjacent to Queen's Grove in order to safeguard the existing mature trees (TPO), GLA officers concluded that as the planning process has already assessed the planning merits of the proposed scheme including the narrowing of the footpath and given that even after this reduction there would still be a width comfortable for pedestrian use, there would be no benefit in rerunning the planning merits of this objection at an inquiry. The further information provided by the Council on 8 June 2023 does not alter GLA officers' assessment of this objection.

14. The other outstanding objection notified to the Mayor on 13 March 2023 queried whether section 247 of the Act was the appropriate power to stop up the land. At this time the Council had responded by providing photographs showing clearly that these works have not yet been completed and that they were therefore satisfied that the correct legal power was being used. Having considered the Council's representations and other material information before him within the report of 9 May 2023, the Deputy Mayor was satisfied at that time that there were special circumstances under section 252 (5A).
15. The further documentation provided by the Council on 8 June 2023, however, shows further photos of completed works to the boundary wall provided by the objector, disputing the Council's photographs accompanied by a letter from Town Legal LLP raising questions about whether these works have already been substantially implemented such that section 247 of the Act would not be the appropriate power to use to stop up the land. This information raises uncertainty about whether the works have been substantially completed. When considering the question of whether there are special circumstances under section 252 (5A) of the Act, the Mayor is not required to make a judgement on whether the works have been substantially completed or whether the correct powers are being used by the Council to stop up the land and no such judgements should be inferred by this decision. However, GLA officers conclude, following legal advice, that whilst GLA officers acknowledge that the Council have reiterated their position on 13 June 2023 that the works to the boundary wall have not yet been completed, this further objection information provided to the Mayor raises some questions and a technical legal point that would benefit from some further consideration by the Council and have not previously been considered by the planning process. There are therefore no special circumstances to notify Camden Council that the holding of such an inquiry is unnecessary.

Financial considerations

16. There are no financial considerations at this stage.

Conclusion

17. Further to the decision of the Deputy Mayor on 9 May 2023 and following the consideration of all the information notified to the Mayor by Camden Council, GLA officers conclude that an objection remains that raises a technical legal point, not assessed at the planning stage and accordingly it is recommended that:

- the decision on 9 May 2023 is set aside as there was a failure by Camden Council to notify the Mayor of all the objections received; and
- Camden Council is notified that there are no special circumstances to notify them that they may dispense with the holding of an inquiry under section 252 (5A) of the Act.

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