



# **ENGINEERING SERVICE**

**SECTION 247 OF THE TOWN & COUNTRY PLANNING ACT 1990**

**STOPPING UP OF PART OF FOOTWAY AT THE SIDE OF  
73-75 AVENUE ROAD LONDON NW8 (ON QUEEN'S GROVE)**

**STATEMENT OF CASE  
of the London Borough of Camden**

**COUNCIL REFERENCE: ES/I&M/ED/1/22/S247**

**DATE: 22 OCTOBER 2024**

## CONTENTS PAGE

<b>Section</b>	<b>Page</b>
<b>1. Proposal and Description of Land to be Stopped Up</b>	<b>3</b>
<b>2. The Planning History</b>	<b>3</b>
<b>3. Stopping Up Legislation</b>	<b>5</b>
<b>4. Referral of Objections to the GLA</b>	<b>5</b>
<b>5. Points Made in Objection to the Stopping Up</b>	<b>7</b>
<b>6. The Council's Response</b>	<b>7</b>
<b>7. Conclusion</b>	<b>9</b>
<b>8. Evidence Bundle</b>	<b>9</b>

## **1. PROPOSAL AND DESCRIPTION OF LAND TO BE STOPPED UP**

- 1.1. 73-75 Avenue Road is a corner plot at the junction with Avenue Road and Queen's Grove. Along the boundary of the site on Queens Grove are mature trees, many of which are protected by a Tree Preservation Order.
- 1.2. Queen's Grove is a quiet residential street with large houses. The area proposed to be stopped up is not located in a conservation area but the St John's Wood Conservation Area lies to the south-west of 38 and 37a Queen's Grove and the corner of the Elsworthy Conservation Area lies to the east of the junction of Elsworthy Road with Avenue Road diagonally opposite the site.
- 1.3. The proposed stopping up order is required in order to enable development to be carried out at 73-75 Avenue Road in accordance with planning permission granted by the London Borough of Camden on 3 March 2021 under reference 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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).*

- 1.4. This permission approved the moving of the boundary wall on Queen's Grove further into the existing footway. The replacement wall narrows the footway by 0.5 metres to leave a width of approximately 3.2 – 3.45 metres.

## **2. THE PLANNING HISTORY**

- 2.1. Planning permission was granted in 2012 under application ref. 2011/2388/P for the erection of a single-family dwelling house comprising basement, lower ground and three upper levels; erection of a new boundary wall; new hard and

soft landscaping; and associated works following demolition of the existing building.

- 2.2. A subsequent permission was granted on 6 April 2020 under application ref. 2019/1366/P for a variation of Condition 1 (approved plans) of the earlier permission relating to changes to the detailed design and materials of the new dwelling house and other changes including alterations to the basement, an additional lightwell and relocation of the car lift.
- 2.3. The boundary wall to Queens Grove was removed some years ago in accordance with the 2012 permission and the new dwelling has now been built.
- 2.4. Permission was granted on 3 March 2021 under application ref. 2020/3796/P to amend the previously approved boundary treatment and to move the previously approved boundary wall on the Queen's Grove frontage further into the existing footway by 0.5 metres, to safeguard existing mature trees with tree preservation orders and their roots.
- 2.5. The officer report recommending approval of the permission under application ref. 2020/3796/P referred to the need for a stopping up order, and noted at paragraph 1.15:

*The application seeks to move the boundary wall adjacent to Queen's Grove 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots. This would involve the narrowing of the existing footway. The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway. Therefore the loss of 0.5m of footway is considered acceptable in this instance*

- 2.6. The permission under application ref. 2020/3796/P was granted subject to a Section 106 Agreement that required public access to the highway not to be restricted until the stopping up order has been made.

### **3. STOPPING UP LEGISLATION**

- 3.1. The Highway Authority and Planning Authority within the Council are to an extent separate bodies. Planning permission does not automatically confer Highway approval for a scheme that has an impact on the public highway. As such, although the Highways Authority was consulted on the proposal to move the boundary wall on Queen's Grove and considered this acceptable, a separate stopping up order is required in order to allow the consented development to encroach onto the highway.
- 3.2. The stopping up is being processed under Section 247 of the Town and Country Planning Act 1990. The procedure for stopping up is outlined in Section 252 of the Town and Country Planning Act 1990. The purpose of the legislation is to allow a London Borough to stop up a section of highway if it is necessary to do so to enable a development that has been granted planning permission to be carried out.
- 3.3. If objections are received that are not withdrawn, the London Borough has to notify the Mayor of London of the objections and cause a local Public Inquiry to be held unless the Mayor of London decides that, in the special circumstances of the case, the holding of such an Inquiry is unnecessary.

### **4. REFERRAL OF OBJECTIONS TO THE GREATER LONDON AUTHORITY**

- 4.1. The owner of 73-75 Avenue Road applied to the Council for a stopping up order on 17 November 2021. The Council arranged for notices of the intended stopping up order to be advertised on 28 July 2022 in the Camden New Journal

and the London Gazette, put up on site and sent to neighbouring properties.

- 4.2. Four objections were received. These comprised three objections from individuals and one from Thames Water. The objection from Thames Water was subsequently removed on 14 March 2023 following confirmation that rights of access to their apparatus would not be impeded. The Council proposed an amendment to the draft stopping up order to include a requirement that the order would not change the rights of any statutory utilities to access and maintain their plant.
- 4.3. The outstanding objections to the stopping up were forwarded to the Greater London Authority with a covering letter dated 13 March 2023 seeking the Mayor of London's approval to dispense with the need for an Inquiry. The GLA initially responded on 9 May 2023 that in special circumstances of the case the holding of an Inquiry was unnecessary, with the officer report concluding that the concerns raised by the objectors to the stopping up of footway having previously being considered and addressed as part of the planning process.
- 4.4. However, the Council subsequently noticed that further correspondence from one of the objectors was inadvertently missed from the letter sent to the Mayor on 13 March 2023. The further correspondence was sent to the Mayor and the GLA sent an updated report dated 3 August 2023. The report noted that the further correspondence raised uncertainty about whether the works have been substantially completed such that section 247 of the Town and Country Planning Act would not be the appropriate power to stop up the land. The GLA officers concluded the further correspondence raised some questions and a technical legal point that would benefit from some further consideration and that there were therefore no special circumstances to dispense with the holding of an Inquiry.
- 4.5. The Council has since made arrangement for the holding of an Inquiry into the proposed stopping up order and three further objections have so far been

received, including objections from two further objectors.

## **5. POINTS MADE IN OBJECTION TO THE STOPPING UP**

In summary, objections have been raised on the following grounds:

- The permitted development has been substantially completed and thus it is not possible to make a stopping up order under the powers of Section 247 of the Town and Country Planning Act 1990
- narrowing of the footway
- the wall does not need to extend into the highway for the full width along the boundary of Queen's Grove
- the materials used in the wall and the new doorways
- part of the wall has not been built back in brick
- breach of the Section 106 Agreement

## **6. THE COUNCIL'S RESPONSE**

### **Development is still being carried out**

- 6.1. A 3 metre gap has been left in the new boundary wall along Queens Grove, covered in a temporary hoarding. The Council will demonstrate that, having regard to *Ashby v Secretary of State for the Environment* [1980] 1 WLR 673, this is sufficient to ensure that the development is still being carried out. The Council is satisfied that the powers under section 247 Town and Country Planning Act can be employed. The Council will make further submissions on the relevant legal principles in advance of the opening of the inquiry.

### **The effects on the footway have already been considered**

- 6.2. The Council will demonstrate that the planning process has already assessed the planning merits of the proposed scheme including the narrowing of the footpath. The Queen's Grove frontage requires the stopping up to prevent trees with tree preservation orders being damaged should the wall be replaced in its

original location. Queen's Grove is a quiet residential street with large houses. As such it does not have a high numbers of pedestrians using the footway. The reduction of the footway to leave a width of approximately 3.2 to 3.45 metres will still leave a footway significantly wider than the standard width required for a residential street with low to medium pedestrian numbers, and would allow enough space for two wheelchair users to pass and allow space for families with prams etc.

- 6.3. The footway in front of the application site on 73-75 Avenue Road was repaired by the Council in April/ May 2022 using s106/s278 funds received by the Council in respect of the development of the new dwelling approved by the Council under application ref. 2011/2388/P.
- 6.4. The Council still holds £34,000 which will be used to carry out repair works to the footway on Queens Grove once the boundary wall has been completed to ensure it remains in good condition for users of the footway.

**The extent of the wall which should encroach onto the highway has already been assessed through the planning process**

- 6.5. The Council will demonstrate that the planning process has already assessed the planning merits of the proposed scheme including extending the wall along the full extent of the boundary on Queen's Grove.

**The materials used for the boundary wall and the new doorways accord with the planning permission**

- 6.6. The Council will demonstrate that the materials used in the boundary wall, including the use of brick, louvred access doors for the substation housing and two pedestrian access gates along the Queen's Grove frontage, are in accordance with the planning permission.
- 6.7. Temporary hoarding, decorated with a "brick" pattern, covers a 3-metre gap that has been left in the boundary wall. The gap has been left by the developer to ensure that the development is incomplete and the stopping up powers under section 247 of the Town and Country Planning Act 1990 can be used. Following



the making of the stopping order the Council expects the boundary wall to be completed in brick and the temporary hoarding to be removed.

### **Breach of the Section 106 Agreement**

- 6.8. The Council's view is that it is not expedient or a reasonable or proportionate use of Council time and resources to enforce the Section 106 Agreement whilst the stopping up Inquiry is progressing.

## **7. CONCLUSION**

- 7.1. The Council will demonstrate that all of the concerns raised by the objectors, apart from the issue of whether the development is still being carried out, have previously been considered and addressed as part of the planning process. It considers that the section 247 procedure is still available as the development is still being carried out. The Council's position will be supported by legal submissions on the relevant tests to be applied.
- 7.2. The benefits of allowing the Stopping up Order to be made and the development to proceed are not outweighed by any of the objections raised or disadvantages or loss likely to arise as a result of the stopping up.
- 7.3. The Council's view is that it is necessary for the stopping up to be allowed in order to enable the development permitted by the planning permission to be complied with and the completed.

## **8. EVIDENCE BUNDLE**

This Statement of Case is accompanied by an evidence bundle comprising the following documents:

### **Planning Application ref. 2020/3796/P Documents**

Application Form dated 20.08.20

Approved Plans  
Planning Statement  
Boundary Wall Design Statement  
Method Statement for the avoidance of physical damage to roots  
Consultation response from Highways dated 17.09.20  
Officer Delegated Report  
Decision Notice dated 3 March 2021  
S106 Agreement dated 3 March 2021

### **Stopping Up Order Documents**

Plan showing area to be stopped up  
Original Draft Stopping Up Order  
Amended Draft Stopping Up Order (following Thames Water Objection)  
Photos showing the Wall and Temporary Hoarding (attached to letter to Mayor dated 13.03.23)

Site photos taken on 21.10.24

### **Objections which are withdrawn**

Correspondence with Thames Water

### **Remaining Objections**

Objection dated 25.08.22

Objections from Town Legal LLP on behalf of Sir Stuart Lipton, 40 Queens Grove

- a) Letter dated 08.08.22
- b) Letter dated 16.08.22
- c) Letter dated 24.08.22
- d) Email with photos sent 10.10.22

Objection from Nick Ritblat, 37 Queens Grove

- a) Email sent 24.08.22
- b) Email sent 30.09.24

Objection from Lady Irene Hatter, 38 Queens Grove – email sent 26.09.24

Objection from Stuart Levy, 45 Queens Grove – email sent 11.10.24

### **Correspondence with the GLA/ Mayor of London**

Letter dated 13.03.23

Email sent 08.06.23

Email sent 13.06.23

### **The Mayoral Decision/ Reports**

Letter from GLA dated 9.05.23

GLA Report dated 9.05.23

GLA Report dated 3.08.23

### **Notices**

Notice of Draft Stopping Up Order sent to adjoining land owners and utilities on 25.07.22 and displayed on Site

Notice published in Camden New Journal and London Gazette on 28.07.22

Correspondence to Interested Parties in relation to Local Inquiry

Notice of Local Inquiry displayed on Site on 21.10.24

### **Legislation, Case Law and Guidance**

s.247 and s.252 Town and Country Planning Act 1990

Ashby v Secretary of State for the Environment [1980] 1 WLR 673

Relevant Extracts from Camden Streetscape Design Manual

Relevant Extracts from Camden Transport CPG

Relevant Extracts from Department for Transport Inclusivity Mobility a Guide to Best Practice on Access to Pedestrian and Transport Infrastructure

Relevant Extracts from TfL Pedestrian Comfort Guidance for London

