

**PROPOSED STOPPING UP ORDER UNDER SECTION 247 OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

PROOF OF EVIDENCE OF COLIN MORRIS Bsc MRICS AAIA MCI Arb

On behalf of Wei-Lyn Loh (the Interested Party/Promoter)

IN RESPECT OF

Land at Queens Grove, NW8 6JD

October 2024

Reference: ES/I&M/ED/I/22/S247

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1. INTRODUCTION

- 1.1 I am Colin David Morris Bsc MRICS AAIA MCI Arb. I am a Member of the Royal Institution of Chartered Surveyors, an International Associate of the American Institute of Architects and a Member of the Chartered Institute of Arbitrators.
- 1.2 I founded CDMA LLP in 1986 to offer Project Management and Quantity Surveying Services on developments in a variety of sectors, and since 2000 I have specialised in the project management of ultra prime residential properties in London and the Home Counties as well as New York, France, Ireland and South Africa.
- 1.3 I was recommended to Wei-Lyn Loh (the "**Applicant**") by previous Clients of her acquaintance. In October 2016, I was appointed by the Applicant as Project Manager for the redevelopment of the Applicant's home at 73-75 Avenue Road (the "**Project**"). I was appointed to put together various members of the professional team and to manage the full process from purchase of the property through to move-in. I have remained the Project Manager throughout. The professional team appointed for the Project comprises, inter alia:
 - 1.3.1 Planning Consultant (including the stopping up application): TJR Planning; and
 - 1.3.2 Arboriculturalist: Arbortrack Systems Ltd
- 1.4 All works at the site are complete, other than the boundary wall fronting Queen's Grove which remains to be completed, subject to the grant of the Stopping Up Order.

2. TIMELINE OF WORKS

- 2.1 The site was purchased by the Applicant in 2018 with the benefit of a planning consent (on the basis it was lawfully implemented by the previous owner in 2015), granted on 28 March 2012 (reference 2011/2388/P), for the demolition of the existing house, and the construction of a new house with double basement (the "**Original Consent**").
- 2.2 In March 2018, TJR Planning were appointed to manage the planning process to update the Original Consent to secure the Applicant's proposed redevelopment of the property.
- 2.3 Works under the Original Consent started again in June 2018 on site including demolition of the existing buildings, enabling works and works to the basement.
- 2.4 Demolition of the original boundary wall fronting Queen's Grove took place from February to April 2019, and hoarding was erected all along the Queens

Grove elevation for security purposes (see Google Streetview at paragraph 3.1 below) (the "**Knightbuild Hoarding**").

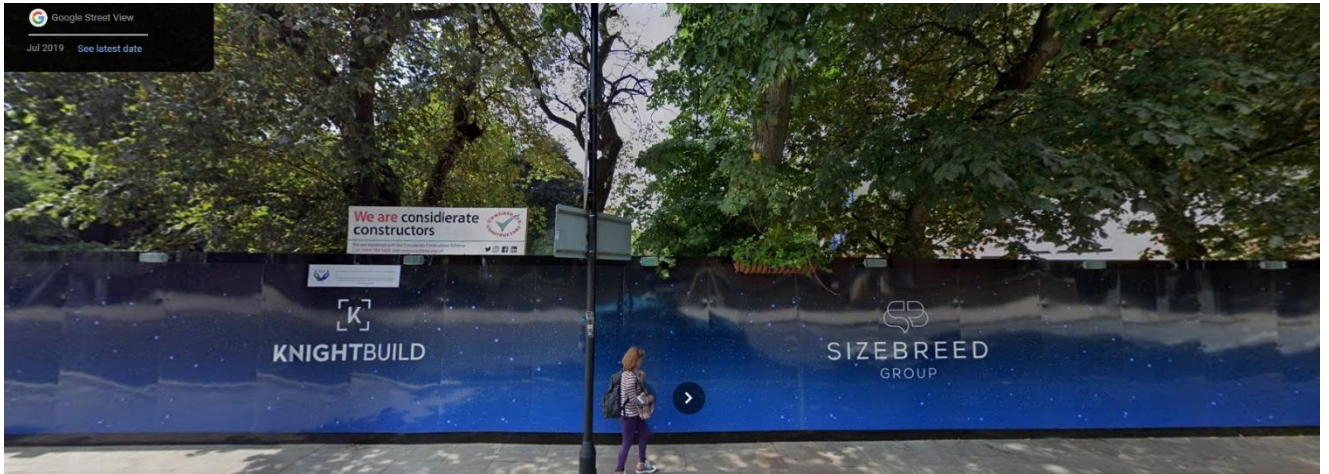
- 2.5 In June 2019, a Section 73 application (reference 2019/1366/P) was submitted to the Council to vary the Original Consent for changes to the design of the main dwelling, in anticipation of a separate application being submitted at a later date for other elements of the Project. Planning permission was granted on 6 April 2020 pursuant to the above application (the "**S73 Consent**").
- 2.6 Works to construct the replacement dwelling and associated works, started in October 2019, initially under the Original Consent and subsequently under the S73 Planning Permission.
- 2.7 In August 2020, a further planning application (reference 2020/3976/P) was submitted 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)". This was granted planning permission under delegated authority on 3 March 2021 (the "**Boundary Wall Consent**").
- 2.8 I was informed by TJR Planning that the stopping up application had been submitted on 17 November 2021.
- 2.9 During the stopping up application process, TJR Planning advised that the wall must not be completed until the Stopping Up Order has been made. I therefore instructed the contractors to ensure that a 3 metre gap was preserved and maintained in the boundary wall.
- 2.10 UK Power Networks carried out works to the services running under the pavement in July and August 2021.
- 2.11 Piling, foundations and ground beams for the new wall fronting Queen's Grove were constructed in November and December 2021 under the Boundary Wall Consent, and construction of the replacement wall commenced around February 2022 behind the Knightbuild Hoarding, all whilst the house was being constructed under the S73 Consent. Stone coping was added to those parts of the wall which were built in March 2022. As noted above, the location of the 3m gap left in the wall on the Queen's Grove frontage was used as a dedicated material deliveries point. Although this gap will eventually be filled, as noted previously, we were advised by TJR Planning that the wall should not be completed until the Stopping Up Order was made and confirmed, and so this part of the wall was (and has been) deliberately left unfinished.
- 2.12 As the works progressed on the boundary wall, the existing Knightbuild Hoarding was removed and replaced with stepped out hoarding which covered the remaining wide gap.

- 2.13 As we approached practical completion of the works to the house, pavilion and external works around August 2022, this stepped out Knightbuild hoarding was replaced with narrower temporary hoarding covering the 3m gap (**see paragraph 3.2 below**).
- 2.14 Between August and October 2022, this was subsequently replaced by flush temporary hoarding to fill in the gap. Finally, given that this flush hoarding was originally painted black (**see paragraph 3.3 below**), a dibond brick effect finish was applied between those months for temporary security, and to make the wall more aesthetically pleasing (**see paragraph 3.4 below**).
- 2.15 The form of the temporary hoarding shown at paragraph 3.4 below is what remains on site today.
- 2.16 Given that objections were received to the proposed Stopping Up Order, I made security arrangements for Elliott Della (a Senior Engineer of Camden Council) to visit the site on 9 August 2022. Following the visit, the Council concluded the following in a response letter dated 17 August 2022 to an objection letter dated 8 August by Town Legal LLP: *“In this case, the building of the new wall is partially complete, with a gap left for construction traffic into the garden. The Council is satisfied that the Development has not as yet completed and the stopping up order is necessary to enable the development to be completed in accordance with planning permission.”*
- 2.17 I was copied into correspondence regarding Mr Della's further site visit on Wednesday 2 November 2022. It was during this site visit that Mr Della took the photos which were eventually submitted by the Council to the GLA in their report pack of 13 March 2023 (Page 93 of the Applicant's Evidence Bundle).
- 2.18 In order to complete the works under the Project, the current temporary disguised hoarding would need to be removed, the brickwork panel (3m wide and approximately 3m high) infilled, and the stone coping introduced. At present, the brickwork required to infill the gap is stored off site in one of the sub-contractors' yards. The original contractor in respect of the wall is on a retainer to maintain the Property and will be instructed to complete the works once the Stopping Up Order has been confirmed.

3. **CURRENT STATUS OF WORKS**

I refer to the photographs below to illustrate the evolution of the status of works and temporary hoarding in respect of the boundary wall fronting Queen's Grove:

- 3.1 Google Streetview Image (July 2019) showing the Knightbuild Hoarding erected along the length of the Queen's Grove elevation of the property:



3.2 Temporary Hoarding of the 3m gap, stepped out with gates for material deliveries/access (approximately August 2022-October 2022)

<u>View from outside (cropped from Town Legal letter to the Council dated 24 August 2022)</u>	<u>Internal view</u>

3.3 Flush temporary hoarding painted black, external photo taken by Town Legal LLP in email to the Council dated 10 October 2022 (approximately August 2022-October 2022)



3.4 Dibonded and current temporary hoarding (approximately between August and October 2022)

External View



Internal View (photo taken by the Council on site visit (2 November 2022))



4. **RESPONSE TO OBJECTIONS**

- 4.1 I comment on the photographs in the letter from Town Legal LLP to the Council dated 24 August 2022, and email dated 10 October 2022. In my view, to the extent that they are relevant, these photographs confirm that the wall was not complete when these photographs were taken.

Letter dated 24 August 2022 (see Appendix 1)

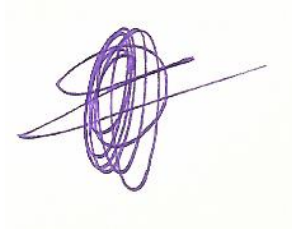
- 4.1.1 The only photograph used in this letter is shown at paragraph 3.2 above. This clearly shows the unfinished section of the boundary wall.

Email dated 10 October 2022 (see Appendix 1)

- 4.1.2 Photographs 4, 5, and 6 are of the Avenue Road elevation which are not relevant to the Stopping Up application which relates to Queens Grove.
- 4.1.3 Photograph 3 is not from a relevant angle as it does not show the unfinished section which is to the right of the photographed section.
- 4.1.4 Photographs 1, 2, and 7 clearly show the unfinished section of the wall.

5. **CONCLUSION**

5.1 In conclusion, I can confirm that the 3m section of the wall which is shown in the above photographs and for which permission was granted above has never been completed, and is yet to be completed.



Colin Morris
29 October 2024

**APPENDIX 1 - Town Legal LLP Letter dated 24 August 2022 and Email Dated
10 October 2022**

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By email: jennifer.lunn@camden.gov.uk

Your ref: Legal/JL
Our ref: EPGR
24 August 2022

Dear Ms Lunn

Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD

Thank you for your letter of 17 August 2022, in response to my earlier letters.

I enclose a photograph taken at the end of last week of the southern part of the development facing onto the pavement at Queen's Grove. It appears that there is one small gap in the wall behind the black boarding, where the coping stones and door surround have not been finally completed. The remaining wall that can be seen in the photograph has been complete for some time. The size of the gap suggests that it is intended for pedestrian access only – and may simply be awaiting the installation of joinery.

Could you please indicate where the gap "left for construction traffic into the garden" is situated?

Could I also ask you please to look again at the Court of Appeal's 1980 *Ashby v Secretary of State for the Environment* case. As you point out, Eveleigh LJ expresses the view that an order authorising stopping up *can* be made retrospectively.

It is however critical to understanding the decision (which has stood unchallenged for over forty years and on the strength of which stopping up orders have been made since that time), to study the Judgments of the majority of the Court. The opening sentence of Goff LJ is instructive:

"I much regret that I am unable to accept Eveleigh LJ's conclusion that section 209 of the Town and Country Planning Act 1971 [now section 247 TCPA 1990] includes power for the Secretary of State to make a completely retrospective order..."

He continues in the next paragraph:

"I feel the force of his argument and I would like to adopt it, or any other process of reasoning which would enable me to arrive at the conclusion that the Secretary of State's powers under section 209 are fully retrospective, since that would avoid a possible anomaly which will arise if (ignoring de minimis) an order may be made where the work is nearly finished, although not if it has been completed."

Jenny Lunn

- 2 -

24 August 2022

He also states:

“However, I am driven to the conclusion that this is not possible in view of the words of futurity “to be carried out”... The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply...”

The third Judge, Stephenson LJ begins his Judgment as follows:

“I am attracted by the construction put by Eveleigh LJ on section 209 of the Town and Country Planning Act 1971, but I agree with Goff LJ that it does violence to the language of the section and, for the reasons he gives, I cannot accept it.

Sections 209 and 210 require the Secretary of State or the planning authority to be satisfied that to authorise a diversion order is necessary in order to enable development in his Judgment to be carried out in accordance with planning permission granted under Part III of the Act. They do not require, or permit, either to be satisfied that it was necessary to authorise a diversion order, or that it is necessary to authorise one ex post facto, in order to enable development to have been carried out...”

Since it would appear that the unfinished element of the wall can be considered to be de minimis or token only, it is difficult to see how one can escape the conclusion that an order made under section 247 is not available to legitimise the infringement on the public highway that has taken place here. On the facts of the case it would seem that development is not still being carried out – which differentiates it from the facts found by the Court in the Ashby case.

On this basis, our client maintains his objection to the proposed order.

I would be grateful for your comments in reply.

Yours sincerely



Patrick Robinson
Partner
Town Legal LLP

Encs



Blue street sign with a circular logo and text, likely indicating a bus stop or a specific street name.

From: [Patrick Robinson](#)
To: [Jenny Lupton](#)
Subject: Avenue road and tree
Date: 18 October 2022 22:08:42
Attachments: [image001.png](#)

[EXTERNAL EMAIL] Beware - This email originated outside Camden Council and may be malicious. Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.

Jenny

Please could you forward these photos (and this message) on to the Mayor's office as part of the submission of objections on the Queen's Grove/ Avenue Road stopping up order, and confirm when that has been done.

I reserve the right for my client, Sir Stuart Lipton, to make express further representations on the matter. There is significant disquiet over this issue, and a real concern that legal process has been totally disregarded and flouted. It should not be possible that the facts can be stretched to permit (or more accurately, for a blind eye to be turned to) a breach of the rules, as appears to have happened here.

Thanks

Patrick

Patrick Robinson

Town Legal LLP

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tn.









Stuart

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