

## College Lane/Grove End, Camden

in the London Borough of Camden

### 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 College Lane/Grove End.

### Recommendation

That Camden Council be advised that special circumstances in this case have not been demonstrated and that the holding of an inquiry is necessary.

### Context

1 Under Section 247(2A) of the Town and Country Planning Act 1990 ("the Act"), "*the council of a London borough may by order authorise the stopping up or diversion of any highway . . . if it is satisfied that it is necessary to do so in order to enable development to be carried out*" in accordance with any planning permission granted under Part III of the Act.

2 Under section 252(4)(b) of the Act if an objection is received from any local authority, National Park authority or undertakers or public gas transporter on whom a notice is required to be served or from any other person appearing to the council to be affected by the order and that objection is not withdrawn the council must:

- (i) notify the Mayor; and
- (ii) cause a local inquiry to be held

If however, none of the objections notified were made by a local authority or undertakers or transporters, under section 252(5A) of the Act the Mayor shall decide whether, in the "special circumstances of the case" the holding of such an inquiry is unnecessary, and if he decides that it is unnecessary he shall so notify the council which may dispense with the inquiry. The presumption is therefore that an inquiry will be held.

3 On 21 September 2011 Camden Council gave notice to the Mayor of London and requested a decision in respect of a proposed stopping up order in relation to College Lane/Grove End, Dartmouth Park in order to enable the provision of a private car park associated with the redevelopment of the Highgate Road Baptist Church.

4 This report sets out information for the Mayor's consideration in deciding whether an inquiry is unnecessary.

5 The Mayor of London's decision on this case will be made available on the GLA's website [www.london.gov.uk](http://www.london.gov.uk).

## **Site description**

6 The site is College Lane/Grove End which is a footpath and carriageway that is bound to the west by Highgate Road and public gardens, to the east by Highgate Road Baptist Church, to the north by Chetwynd Road and on the south by the 138-140 Highgate Road/College Lane footpath.

7 The site consists of a footpath that is a public right of way and a carriageway which is open and accessible to the public. It is thought that the carriageway may have acquired a public right of way over it due to its public use over time. The footpath provides a link that continues south towards Little Green Street via a subway under the railway bridge. The carriage way is a cul-de-sac and does not provide a through route. The surrounding area is predominately residential.

## **Details of the proposal**

8 The stopping up order is required to enable the creation of a car park with ten private spaces located on the carriageway to be associated with the planning permission 2005/0888/P granted on 23 June 2006, for the redevelopment of the Highgate Road Baptist Church. To enable this, the footpath is to be realigned by one metre eastwards to allow the carriageway to be widened to create space for the car park. The total area proposed to be 'stopped up' equals 235.34 sq.m.

9 As part of these proposals the existing area of public highway described in paragraph 7 will be incorporated into the development and reconfigured. This will result in the area ceasing to exist as public highway.

10 In such cases the developer must ask the local planning authority to make an appropriate Order under the Act to enable the development to take place. Such an Order is required to remove (or "stop up") the public's rights to use this area so that the development can be implemented in line with the approved planning permission.

## **Objections**

11 When Camden Council carried out the necessary consultation procedures on the proposed stopping up application, it received 16 letters and emails of objection. Two were from the utility companies Vodafone and National Grid. Vodafone withdrew its objection after access to their site was confirmed by the Council and National Grid withdrew its objection following negotiations with the developer.

12 The remaining objections comprised concerns over the following:

- Public access being removed between Chetwynd Road and College Lane.
- Harm to the historical value of College Lane/Grove End and the Dartmouth Park Conservation Area.

- The proposed 'stopping up' of the Carriageway is not necessary to enable the development permitted by Planning Permission 2005/0888/P.
- The highway is still required for its current use.
- The road is not called College Lane but Grove End.
- The plan attached to the original Section 106 Agreement depicting the area to be 'stopped up' included the footpath only and not the carriageway.
- Loss of access to Grove End Lodge.
- The land to be 'stopped up' is not owned by the developer.
- Loss of use by cyclists.

13 Once an objection is received, the legislation allows the developer or the Council to consult with objectors to seek to obtain a withdrawal of the objection. In this instance the Council responded by making some minor amendments to the draft stopping up order and sent a letter/e-mail to try and address the objections raised. The Council's response is summarised below.

- The proposed area to be 'stopped up' is privately owned but may have gained public rights of way because of its use over time. Whilst, the footpath is definitely a public right of way, the fact that the land registry title does not show ownership of the footpath does not automatically mean that it is not privately owned and it is not usual for the Council to own the subsoil of such a highway. In most cases the subsoil of most public rights of way is privately owned by the adjoining properties and it is suspected that the subsoil is almost certainly owned by the Church, even if the surface has been adopted as a public right of way.
- A public right of way fronting the Church and Grove End Lodge will be maintained in the form of a new realigned footpath, approximately one metre east from the existing footpath, and therefore it will still be possible to walk from Chetwynd Road through to little Green Street via College Lane.
- Planning permission 2005/0880/P granted the development of the forecourt area to provide ten parking spaces for use by the residential occupiers of the redeveloped Baptist Church, as the new residents are not entitled to an on street parking permit. As the Council are of the view that the area may have become a public right of way, in order to enable the development as permitted by permission 2005/0880/P, it is necessary for the area to be 'stopped up' to ensure that only cars connected to the development can use the car park.
- The proposed stopping up order does not permit the developer to close the entrance from Chetwynd Road and the erection of gates or a physical barrier would require planning permission and conservation area consent.
- Although the site is known by the Council as College Lane, it is recognised that it may have historically been known as Grove End and therefore the draft order was amended to reflect both names; 'College Lane/Grove End.'

- The draft order and new Section 106 Legal agreement is amended to ensure access is to be maintained for emergency vehicles and the servicing Grove End Lodge and that the realigned footpath be dedicated as a public right of way to the same standard as that which is stopped up.

14 Despite the Council's response, only one further objection from a local resident was removed. The remaining thirteen objections are still outstanding.

## Consideration

15 The planning process assessed the planning merits of the proposed scheme and concluded, taking the development plan and all material considerations into account, that planning permission should be granted in June 2006.

16 As a result of the realignment of the boundary wall on College Lane to allow the widening of the adjoining carriageway for the creation of the car park, the footpath will move eastwards by approximately one metre. As stated, planning permission 2005/0880/P approves the creation of a private car park accommodating ten spaces on the carriageway for use by the occupiers of the residential development. It is therefore considered by the Council necessary for the 'stopping up' of the carriageway to ensure that the developer can effectively restrict parking to the use of the residents of the development only, this would not be possible if it were to remain a public right of way. It is necessary to include the footpath in the area to be stopped up, to allow the minor realignment and widening of the carriageway to accommodate the ten spaces required by the conditions of the planning permission.

17 The effect of the altering of the layout of College Lane to reflect the historic value of the proposed area and the Dartmouth Park Conservation Area was considered as part of the approval of the planning application and was not deemed to be a reason for refusal.

18 However, the remaining objections detailed above raised during the four-week consultation period were not considered in the planning committee report drafted for the consideration of the planning permission.

19 As noted above, where there is an objection to a stopping up order a public inquiry should be held unless special circumstances exist.

20 Advice received from the Secretary of State, when he was the order-making authority, is that he would only find special circumstances if he was satisfied that no objections remained which could benefit from being heard at an inquiry. For instance, if objections had been made on non-highway grounds, or if objections had not been made in good faith. However, if objections remained relating to traffic, the Secretary of State considered that these should be heard at an inquiry, although not to permit a re-run of the essential planning merits of the development. This power now rests with the Mayor by virtue of the amendments to the 1990 Act by Schedule 22 of the Greater London Authority Act 1999.

21 Furthermore, guidance for Inspectors published by the Planning Inspectorate states 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 a stopping up or diversion, either 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.

22 In light of this legislative framework, the remaining objections to the 'stopping up' of the footpath and carriageway were not originally addressed in the planning applications committee

report when the planning application (2005/0880/P) for the redevelopment of Highgate Road Baptist Church was granted. Although the committee report addressed concerns over the historic value of the area and stated that a 'stopping up' order would be required in order to enable highway works to be included in the Section 106 Heads of Terms, officers note that the plan attached to the original Section 106 Agreement showed only the footpath to be 'stopped up' and was only later revised on the making of the draft order.

23 Therefore, whilst the revisions made to the draft stopping up order and a new Section 106 agreement have attempted to address the outstanding objections regarding the removal of the public right of way along the College Lane footpath and the removal of access to Grove End Lodge by securing them in the new heads of terms, they have not been withdrawn as objections, nor were they addressed in the committee report for the original planning application. Therefore, there are no special circumstances to justify the dispensing of a public inquiry.

## Financial Considerations

24 If the Mayor finds that no special circumstances exist the Council shall cause a Local Inquiry to be held. Where this happens section 525(6A) of the Act sets out that the costs incurred by the Council in relation to the Inquiry and the costs of the parties involved shall be paid by such party to the Inquiry as the Council acting with the Consent of the Mayor may direct."

## Conclusion

25 The planning process assessed the planning merits of the proposed scheme for the redevelopment of the Highgate Baptist Church and the provision of a private car park on College Lane/Grove End and concluded, taking the development plan and all material considerations into account, that planning permission should be granted in June 2006.

26 The stopping up of public highway is considered necessary to enable an acceptable development on the site to be carried out in accordance with the approved planning permission. The Order is therefore in accordance with the statutory requirements under Section 247 of the Act.

27 While the Council has sought to address some of the outstanding objections relating to highway matters through revisions to the draft order and a revised Section 106 agreement, the objections were not addressed in the original planning committee report and remain outstanding. Accordingly, it is considered that the special circumstances required to dispense with an inquiry have not been demonstrated.

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