

Subject:	Portland Road Development – Stopping Up order application		
Date of Meeting:	9 July 2013		
Report of:	Executive Director, Environment, Development and Housing		
Contact Officer:	Name:	Christina Liassides	Tel: 29-2036
	Email:	Christina.liassides@brighton-hove.gov.uk	
Ward(s) affected:	Wish		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report relates to the site of the former ABC Cinema/Gala Bingo hall on the corner of Portland Road and School Road, Hove. Planning permission for a new development (“the development”) for this site was granted to Affinity Sutton on 18 October 2010.
- 1.2 The developer has requested that areas of land which are currently public highway be stopped up. Two applications (“Application 1” and “Application 2”) have been made.
- 1.3 The highway authority considers the areas set out in Application 1 to be unnecessary as highway and has agreed to make an application to the magistrates’ court for a stopping up order.
- 1.4 The Committee has been asked to consider whether the decision of the highway authority made under officer delegated powers should be approved.

2. RECOMMENDATIONS:

- 2.1 That, having taken into account the objections and representations made by the objectors, the Committee agrees to proceed with an application to the magistrates’ court for the stopping up of the areas of highway set out in Application 1.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Legal context

- 3.1 The Council is under a duty under section 130 of the Highways Act 1980 (“the Act”) to assert and protect the rights of the public to the use and enjoyment of any highway for which it is the highway authority.

- 3.2 However in certain circumstances a highway authority may apply to a Magistrates Court under section 116 of the Act for a stopping up order. Such an order has the effect of removing the rights of the public to use the area of highway in question. A highway authority may only apply for such an order on the grounds that the highway is either unnecessary, or can be diverted to make it nearer or more commodious for the public. This application has been made on the basis that the highway is unnecessary.
- 3.3 A third party can request that the Council exercise its powers under section 116, and the developer has done so in this case. The developer has given an undertaking to pay the Council's reasonable costs incurred in connection with the application. The Council's policy on requests for stopping up orders is attached (Appendix 1).
- 3.4 If a stopping up order is made, highway rights over the relevant area cease to exist and the highway land becomes the property of the owner of the subsoil. In this case the subsoil is already owned by the developer.

Constitution

- 3.5 Under the Council's constitution, authority to make an application for a stopping up order is delegated to the Executive Director Environment, Development & Housing following consultation with ward Members and the Monitoring Officer. However that delegation is without prejudice to the relevant Committee's power to exercise the function itself. In this case the Committee is being asked to decide whether the decision taken under officer delegated powers should be approved.

Planning permission

- 3.6 The development has been granted planning permission where all relevant planning considerations, objections and support were taken into account.

Applications

- 3.7 Two separate applications for the council to exercise its right to apply for a stopping up order were made as follows. It should be noted that both applications involve two separate areas of land.
- 3.8 Application 1 relates to the following areas:
- (a) a small strip that was once a forecourt to the site, but was surrendered in the past to the Brighton Corporation.
- (b) a small section at the corner of Portland Road and School Road, which once included the steps to the Gala Bingo Hall.

These sections would enable the development to run in a continuous line along Portland Road and would provide an accessible entranceway. See Appendix 2: Application 1.

- 3.9 Application 2 related to the following areas:

(a) The small strip mentioned in (a) above; and

(b) A longer strip along the development's length in School Road and a larger section at the corner of Portland Road. These sections were requested because the upper storeys of the building are designed with an overhang that would jut out over what is currently public highway.

See Appendix 3 – Application 2. (NB: the council has now ceased to progress the second application, following public objection – see further below).

- 3.10 Following discussions internally and with the developer, and visits on site from 3 separate highway officers, the council agreed to proceed with the statutory process for both stopping up orders.
- 3.11 From 24 August 2012 to 24 September 2012, consultation on both applications took place internally with the council's Monitoring Officer and with the relevant Planning Officer for the development.
- 3.12 On 2 October 2012, consultation was begun with the Chair of the Transport Committee and with local ward members. This consisted of information outlining the legal process for a Stopping Up order and setting out the reasons. A plan was also sent.
- 3.13 Following discussion with a ward councillor, Councillor Pissaridou, further plans and drawings were obtained from the developer which better illustrated the impact on the public highway. The ward councillor and the Head of Highway Operations met on site to discuss the application.
- 3.14 No objections were raised by the Chair of Transport Committee or by ward members at that stage.
- 3.15 The council therefore proceeded to give notice of its intention to apply for the stopping up orders. Notices were posted on street and in the Argus and the London Gazette.
- 3.16 During the consultation period, an objection was received by a member of the public and was supported by Councillor Pissaridou. As a result, the hearing at the Magistrate's Court on 10 January 2013 was adjourned to give time for the objectors to prepare their information and statements. A new hearing date has been set for 2 September 2013.

Re-consideration of applications

- 3.17 Officers re-considered the stopping up order application in the light of the objections, and decided not to proceed with application 2 - the larger strip that would accommodate the building overhang. The developer and the objectors have been informed in writing that Application 2 will no longer proceed.
- 3.18 Although the developer stated that access will not be restricted to the larger area in application 2, there would be nothing to prevent that land being fenced or built upon in future if planning permission were obtained. There is clearly strong local

opposition to the stopping up taking place, and a Magistrates' Court would be unlikely to grant any application for stopping up in that situation where it relates to a piece of highway land that has been well used by the public. On balance the highway authority considers that it would not be appropriate to proceed with the application 2.

3.19 However, officers consider that application 1 – the small forecourt and the area that used to contain the Bingo Hall's steps – should proceed for the following reasons:

- The small area on Portland Road is part of a surrendered forecourt originally belonging to the property and according to the approved design plans would extend no further than existing private forecourts adjacent to this site. Appendix 4 - Reference Photo 001.
- The pavement along Portland Road is very wide and there is no need or reason for pedestrians to utilise the additional small strip to aid passage along Portland Road. Appendix 4 - Reference Photos 002 and 003.
- The Highway Authority considers it preferable that the footprint of the building follows a straight line in order that there is complete clarity about the dividing line between the public highway and the developer's land.
- The small area at the entranceway of the new development is also considered unnecessary. The previous building's entrance steps occupied much of this area and therefore there is no significant loss of pavement compared to what was there previously, and which had generated no complaints and no known access problems. The hoarding currently covers the area proposed for Stopping Up. Appendix 4 - Reference Photo 004.
- The pavement is exceptionally wide at this junction and allows plenty of room for pedestrians to pass and repass. The Head of Highway Operations has made site visits both during school term at 8.45 a.m. – 9.15 a.m. and during school holidays to witness the movement of pedestrians and can confirm that no access or congestion problems arose with regard to the amount of footfall. At other times of the day, the pavement at this junction does not experience heavy footfall. Appendix 4 - Reference Photos 005, 006 and 002.

3.20 The objectors have asked that their objections be placed before the Committee and these are included at Appendix 5.

3.21 The objectors have stated that the Council should have carried out a survey before taking the decision to apply for a stopping up order. It was not considered necessary for such a survey to be carried out in this case, given that the areas of highway are small and it has been confirmed that there is no highway authority or third party apparatus in those areas. There is no statutory requirement to carry out a survey and the Council is entitled to depart from its internal guidance where it considers that a survey is unnecessary.

3.22 Information has been provided relating to other forecourts in Portland Road, and showing people sitting or standing on the area of the steps. It is not considered that this evidence demonstrates that the areas of highway in question are

necessary as such. It is also not considered that the recent planning approval of an amended footprint for the building that would not entail building on these areas is a relevant consideration.

- 3.23 The Committee should bear in mind that it must decide whether an application to the Magistrates' Court should be made on the basis that the areas of highway set out in application 1 are unnecessary for public use. That is the only basis on which an order can be granted by the court.
- 3.24 The Committee should note that it is dealing only with the objections to Application 1, as Application 2 is not being proceeded with.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 In accordance with the requirements of Schedule 12 to the Highways Act 1980, notices and maps in respect of both Application 1 and Application 2 were displayed on street for a 28 day period. The notices were affixed on 13 December 2012 to nearby posts and on the hoarding at Portland Road and School Road during the morning school start time. A copy of the notice relating to application 2 was also affixed to the gate giving access to the alleyway behind numbers 70 to 82 Marmion Road. Notices were also sent directly to those properties.
- 4.2 The site notices were checked regularly throughout the consultation period to make sure they were still in situ.
- 4.3 The notices appeared in the Argus and in the London Gazette on 13 December 2012.
- 4.4 The Council's Monitoring Officer, the ward councillors and the Chair of Transport Committee were consulted prior to the public notice period.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There will be some costs in terms of advertising, court costs and officer time but the Developer has agreed to meet these.

Finance Officer Consulted: Jeff Coates

Date: 07/06/13

Legal Implications:

- 5.2 The Council as highway authority has made the application to the Magistrates Court having considered the evidence available to it, and has concluded that an application should be made on the basis that the highway is unnecessary. The application was made under officer delegated powers in accordance with the Council's constitution. The Council's view that the highway is unnecessary has been communicated to the developers and applicants.

A decision to withdraw application 1 at this stage in the absence of clear and justifiable reasons could be open to a challenge from the developer by way of judicial review. This would be on the basis that the Council has acted in an irrational way by going back on its decision without any new relevant considerations to take into account.

Further legal implications are dealt with in the body of the report.

Lawyer Consulted:

Carl Hearsum

Date: 06/06/13

Equalities Implications:

- 5.3 As part of the original highway assessment of the request, accessibility was taken into account. The pavements are very wide on both Portland Road and School Road. The site assessment considered that sufficient accessibility remained if the stopping up order was approved.

Sustainability Implications:

- 5.4 There are no sustainability implications arising from this report.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications arising from this report. The stopping up of the portion of the old forecourt may prevent anti-social behaviour taking place by removing an inset alcove along the frontage of the building.

Risk and Opportunity Management Implications:

- 5.6 There is a risk that the development cannot go ahead in its current form without the stopping up order. The council must decide only on the grounds of whether the highway is necessary.

Public Health Implications:

- 5.7 There are no public health implications arising from this report

Corporate / Citywide Implications:

- 5.8 The Planning Officer's advice is very clear that the development is considered to be in the public interest by the Council as planning authority due to the provision of housing, a modern surgery and contributions towards educational, open space and public transport improvements.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Having received the request, the council did not feel that there were sufficient grounds to refuse to progress this to public consultation and ultimately for decision by the Magistrate's Court. The only alternative option is not to proceed with the stopping up order for the smaller portions of public highway. However, this decision must be made based on genuine highway considerations.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The report is recommended proceeding with the stopping up application for the smaller portions of the public highway because officers' assessment is that the public rights and access are not disrupted, and because one portion of the stopping up will make ownership and maintenance much clearer for all parties.

SUPPORTING DOCUMENTATION

Appendices:

1. Information on the Stopping Up process
2. Area 1 Stopping Up request
3. Area 2 Stopping Up request (now withdrawn by the council)
4. Photographs

Documents in Members' Rooms

1. None

Background Documents

1. None