

Re: CAH/37610 – Notice of Intention to Apply to Stop up Areas of Highway at
Portland Rd & School Rd, Hove

I wish to object to the above application for a stopping up order in areas of highway at Portland road and school road hove.

I also support the objection to the same application made by Mike Preston.

A stopping up order is in effect a passing of land, or a right of way over the land away from the public and is a very serious matter, not one to be taken lightly.

This proposed development has been a highly contentious one from the outset and was finally settled by the by the Planning Inspector in October 2010. I am very aware of the need in our city for more housing, in particular affordable housing, and welcome considered and sensitive developments. What worries me is developments that push the boundaries, inch by inch introducing changes that, on the face of it look innocuous, but have far reaching consequences. In this case the lives of very young children.

Since October 2010 there have been a number of requests by the developers to amend the plans. I am not privy to the developers' given reasons for this stopping up application but I cannot see that they can be sufficiently important, or in the interests of the wider community, to be acceptable or necessary and warrant the extinguishing of this acknowledged public right of way.

The stopping off of the pavement on school road in particular will affect not only the people living close to the site but the wider community who take there children to the primary schools.

Application 2

BHCC Highway authority have applied to stop up a strip running along the part of the highway boundary running diagonally on the eastern side of school road where school road and Portland Road meet. The width of the footpath on School Road is a minimum of approximately 4 metres (13 ft), of which 1.5 metres (5ft) is the area that is proposed to be stopped off.

This area is a very busy pedestrian and vehicle area. On the opposite side of school road there are two primary schools as well as Hopscotch and Young Sussex Nurseries and although there are two areas where the road is raised and narrows there are no pedestrian crossings, nor a traffic patrol officer. Parents with their small children and all that goes with them have to negotiate many hazards to cross the road. It becomes very congested with some 1000 plus children plus their parents/carers entering and leaving the school every week day, so the proposed reduction in area for the footpath would cause huge problems. Not only is there also a bus stop on the pavement on Portland Road, but it is a congregation point for the children of West Hove Junior school when they go on school trips. The loss of this area would mean there would be no safe area for them to stand and would also affect other members of the public trying to pass by whenever there are large numbers of children using it. This is such a busy footpath, particularly at school drop off and pick up times, that I feel any loss of pavement would have a detrimental impact on child safety

The proposed development will change the area adding to the footfall considerable. The new doctors surgery and the residential accommodation will inevitably lead to an increase in traffic. Another factor that will inevitably increase congestion is the proposal to replace the existing double yellow lines with parking bays, which will inevitably, mean the unloading of patients, doctors, nurses, visitors and residents with all that this entails!

The attached Fig 1 (see the objection submission by Mike Preston for attachment) highlights the proposed changes to the existing frontage use that includes the addition of four new access points within this frontage. Three of the new access points are between the existing crossing points on School Rd. Both crossing points serve as the main access points from the eastern catchment area to two schools (West Hove Infant & West Hove Primary Schools). The access points serve as an access to:

- The development's northern site pedestrian access to:
 - o The main amenity area and rear access to the affordable housing from the west;
 - o The doctors surgery rear access;
 - o 10 covered cycle spaces;
 - o Emergency Exit door to the upper floors on the northern end of the development;

It should be noted that this point is directly adjacent to the narrowest point of the pedestrian highway (2.2m) and the main pedestrian crossing point from the school's east catchment area to both schools;

- The refuse store serving all of the Block 1 flats together with 8 cycle spaces;
- The main entrance to all of the flats in Block 1 of the development, currently understood to be +9 flats.

The fourth access point is just round the corner of the frontage and directly opposite the main bus stop.

This is further compounded by the developments approach to parking that will remove the double yellow lines directly opposite the flat entrance and replaced them with 3 dedicated parking spaces. It was understood that this was a planning requirement of the development as no dedicated doctor's parking was provided in the gated court yard area. This will mean that trying to cross this busy road will be made more difficult because sight will be obstructed. It will also mean that walking on the pavement which will be narrower if the stopping up order is granted and because of car doors being opened to allow passengers to get out will be much more difficult. It is my understanding that the Highways Officers was not aware of the increased parking before she made this application.

In short this stopping up will remove land from the public highway which will make the area a much more dangerous place for the residents and parents.

Application 1. It does make sense for the rectangular area on Portland Road to be stopped up but unfortunately this application includes the triangular piece of land on the corner of Portland and School Roads, and I oppose this area being stopped off. It is worth noting that the current location of area 1 is within the proposed main surgery and pharmacy entrance to the development. It would appear, therefore that it could most probably be accommodated in the design with a recessed feature in the façade without extinguishing a public right of way.

I asked for legal advice from Brighton & Hove CC legal department but to date I have not received a response. I have therefore taken independent advice as to the legal position, which I have copied and pasted below.

Briefing Note for Councillor Pissaridou

Re: CAH/37610 – Notice of Intention to Apply to Stop up Areas of Highway at Portland Rd & School Rd, Hove

The following note is aimed to provide background information to the above application.

Highways Act 1980

In addition to the comments below attached is a summary of a seminar given by the Property Bar Assoc & Planning & Environmental Bar Assoc on The Stopping Up & Diverting of Highways that was found on the internet that makes interesting reading, in particular paragraph 35 is quite telling.

It is understood that the Council acting as the Highway Authority have or are intending to make an application to stop up the highway. The application is being made under Section 116 of the Highways Act to the magistrate following a request by Affinity Sutton, the site developer, to make this application under Section 117 of the Act.

“116 Power of magistrates’ court to authorise stopping up or diversion of highway.

(1) Subject to the provisions of this section, if it appears to a magistrates’ court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [F1highway] authority have made an application under this section—

(a) is unnecessary, or

(b) can be diverted so as to make it nearer or more commodious to the public,

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.”

In this case the highway authority has indicated it is “unnecessary”.

As part of this application the highway authority are required to give notice to the council of that district:

“116 Power of magistrates’ court to authorise stopping up or diversion of highway.

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to—

(a) if the highway is in a non-metropolitan district, the council of that district;

....

(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting;

.....

and the application shall not be made if within 2 months from the date of service of the notice by the authority notice is given to the authority by the district council [F5or Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.”

During the meeting held on site on 8th Jan 2013 attended by Christina Liassides, B&H Head of Highways Operations (Highway Authority) and Cllr Pissaridou with local residents, Christina indicated that she had provided a site briefing to explain the stopping up to Cllr Pissaridou some weeks before, at Cllr Pissaridou’s request.

Question?

Has the highway authority formally provided Cllr Pissaridou, as councillor to Wish Ward, notice of the proposal?

It would appear that as B&H have no parishes it is Wish Ward that is the local council and therefore the elected Councillor that the highway authority needs to give notice to. It would appear to be in the Wish Ward councillor's powers to veto the application, but at no stage was this brought to her attention. That is providing within 2 months of the formal notice the councillor objects to the application then the highway authority cannot make the application to the court.

This would therefore appear to explain the Council solicitor's eagerness to get the written objection to the current application as well as why you were specifically briefed by the Highway Authority earlier and separately.

It is offered that a clear briefing from the council's legal team should be provided to explain the roles expected of the parties. This was not done.

Question?

Has the highway authority actually given formal notice to any or either of the parties identified in Section 116.3.a&b above?

If a notice has been issued, to who and when was it issued?

When it was issued did the highway authority explain the significance of the notice and the 2 month time period for response?

Given the sensitivity of the development within the local community, it is extremely disappointing that the local community were not made aware of the application until the notice was formally posted in accordance with the minimum time periods stipulated in Schedule 12 of the Act. It would appear that the aim of the Section 116.3 notice is that it allows the community time to understand implications and make representation through their community representatives. This does not appear to have happened here.

It should be noted that under Section 130 of the Highways Act, the highway authority have a specific duty to protect the rights of way of the public.

"130 Protection of public rights.

(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

(3) Without prejudice to subsections (1) and (2) above, it is the duty of a council who are a highway authority to prevent, as far as possible, the stopping up or obstruction of—

(a) the highways for which they are the highway authority, and

(b)any highway for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area.”

The highway authority does not appear to be acting in the interest of the public on this occasion. This may be seen by the apparent lack of communication by the highway authority, through the community representatives (elected councillors). In addition their insistence of providing only the absolute minimum period of notice (28 days) as required under Schedule 12 Part 1 Section 2 of the Act, and then posting it some 18 weeks (4.5 month) after the date of the initial application (3rd Aug 2012). This notice was then posted 13th Dec 2012, the week before the Christmas holidays for a court date of 10th Jan 2013.

The highway authority has at no time explained to any of the parties that once a stopping order is made, the carriageway and or footway concerned ceases to be public highway and may be built upon. In addition they have not explained fully that the only way to object to the order is at the Magistrate Court, if an objection is not registered there and the order is subsequently passed there is no recourse to continue to object with the exception that the council has not carried out correct legal process. (Lambeth Council Web Page traffic orders)

It should be noted that the local community and Marmion Road residents did not fully understand the process for this stopping up order. Consultation with several neighbours has indicated that they are against the stopping up. It has been suggested that they make their feelings known directly to you as the Councillor for Wish Ward so that you may represent them.

Site Planning History

Attached is a tabulated summary of the planning history of the site together with my objection to the court.

The November 2008 (02586) application indicates where the developer originally wished to build i.e. right up to the boundary of their ownership. This was not approved.

The subsequent application in Dec 2009 (03154) that was eventually granted on appeal still demonstrates their desire to maximise the foot print of the building in that from the first floor up it over hangs the public highway. It also demonstrates that the developer recognises that it cannot build on the public highway in that the ground floor now mirrors the original Bingo Hall foot print.

The issue with this is that once a public right of way is extinguished then there is nothing stopping the developer from building on it apart from the council's planning powers.

These planning powers are exercised at council officer delegated level on a regular basis with regard to the development of this site, even for apparently significant decisions such as the May 2011 (01490) application that added 3 new

entrances and changed how the units would function as the 1st floor became a separate entity.

In short the local community would view the public highway and associated public right of way as its protection from the developer expanding out onto the street. It is only through this protection that it can maintain the space required to provide safe access to the schools particularly with regard to the increased usage on the School Rd frontage outlined in my objection. There are close to a total of 1000 pupils and staff at the two schools.

It should be noted that failure to secure the stopping up notice would not prevent the development and is not essential for the development to proceed. The developer has already secured a planning amendment in the September 2012 (02807) application that pulls the development off the public highway and would allow the development to commence when ever they wished.

Application 1 would merely make the developers construction cost cheaper as it reduces spans and entrance detailing, while Application 2 hands over 88 m² of public highway to the developer that can now be built upon. Noting that the market rent for office space in Brighton would appear to be in the order of £110 per m² per annum this would equate to a potential £10k per annum income. At a £1k single payment cost to get the highway department to put in the Application 2 order it would appear, quite reasonably, to make good business sense to a developer.

It is noted that the local highway authority “likes straight lines” for their inspectors to follow, as explained by Christina on the 8th Jan 2013 meeting, however there would appear to be no benefit what so ever for the local community and public at large in pursuing the stopping up order. Reducing the width of such a busy footway so close to a large infant school and a large junior school while increasing the number of exits accessing on to it and adding parking at the road side cannot be seen to be in the public interest at any level. End of Brief.

I, as a local Councillor did not understand the legal process involved in this application and my only information came from the officer on a site visit, at no point was I offered legal advice until I made my objections clear. I wish to exercise my right under the above legislation and object (veto?) to the extinguishing of this right of way. If my understanding is correct, under the legislation my objection should now be enough to cause the Highway Authority to withdraw their applications for this stopping up order.

I have now received a number of objections to this application from residents who would be affected if the application was upheld.

Councillor Anne Pissaridou

26th January 2013.

