

## Proposed Stopping up of Highway at Former Gala Bingo Site Hove

### Reasons for Objection – Application 1:

The current reasons for the objection were first outlined in my email of 5<sup>th</sup> February 2013 (Appendix A) prior to the 7<sup>th</sup> February 2013 hearing. These were articulated in response to the first and only formal record of the Highway Authority's reasons provided at that time that were outlined in their letter of 1<sup>st</sup> February 2013.

As background to this it may be noted that a request for "...a copy of all correspondence together with copies of any meeting records; assessment papers and supporting evidence relating to this stopping up order to date.." was made to the Highway Authority on the 18<sup>th</sup> January 2013. The only response received from the Highway Authority's lawyer was that they had received "...confirmation from the developer's solicitor that they are willing to disclose correspondence with the Council in which they put forward the reasons for applying for the stopping up order, provided that they are also given the opportunity to comment on the objections received." No information was released by the Highway Authority's lawyer.

Following the court hearing of 7<sup>th</sup> February 2013 a formal request was made on 5<sup>th</sup> April 2013 for the following information:

- a. A copy of the BHCC report to either or both the Director of Environment or Members recommending that the Stopping Up order be progressed;
- b. A copy of the "detailed survey" undertaken as part of the BHCC processes outlined in the Stopping Up Order Guidance Note for Applicants required in support of the report;
- c. A list of all supporting evidence to the report under item a above;
- d. A copy of the BHCC solicitor's statement to the court and a list of supporting evidence.

The Highway Authority's lawyer confirmed on 11<sup>th</sup> April 2013 that:

- a. *"No such formal report exists. The background to the decision has been given to you in my letter of 1 February 2013 and the highway authority's reasons for pursuing the application are further detailed in the statements of Christina Liassides which I have sent to you today via first class post (see (d) below).*
- b. *No detailed survey was required in this case, given that the areas of highway to be stopped up are not small. Enquiries were made of utility companies, none of whom objected to the*

*proposed stopping up. (subsequently clarified in correspondence of the 10<sup>th</sup> May 2013 that a survey is not required as the areas are small)*

*c. See (a) above.*

*d. I have sent to you today copies of the statements of the Council's head of highway operations and of Mr John Escott, Planning Consultant, the witnesses to be called by the Council."*

The Highway Authority's lawyer has confirmed that there is no other evidence or statements, with the exception of the above, that currently exists in support of the s116 Application on the 10<sup>th</sup> May 2013.

Confirmation of the full extent of supporting evidence and "reasons" for Application 1 has now been provided by the Highway Authority Lawyer in their email of 10<sup>th</sup> May 2013. Having reviewed this information, the following specific points are offered for consideration for the objection to the proposed stopping up order for The Gala Bingo Hall site – Application 1:

1. The Highways Authority does not need to consider extinguishing public rights of way given that the developer has planning permission to build this development without affecting any of the existing public rights of way.
2. The Highway Authority does not appear to have followed its own Stopping-Up Order Guidance Notes.
3. The demonstration for s116 Highways Act 1980 of the use of the public right of way and highway in the past, present and future as being "unnecessary" does not appear to have been met.
4. It would appear that the Highways Authority has not acted in accordance with the spirit of the Highways Act and its actions appear to have demonstrated that it has not discharged its duties in accordance with s130 of the Highways Act 1980.
5. The current tests carried out by the Highways Authority for reviewing and approving a s116 would appear to set an extraordinary precedent for all future s117 and s116 applications within Brighton & Hove if successful at court.

On a more general note, the Gala Bingo Hall development has been a very sensitive site locally. This may be seen by the three planning appeals over a five year period that included objections over the

2008 planning submission due to obstruction of public rights of way. There has, is and shall be a huge amount of housing development within this local community.

In light of the above, the authority acting as a public body should be even more mindful of its statutory duties and that its actions should be clear, transparent and auditable.

Despite concerns being raised by members of the public prior to the 10<sup>th</sup> January 2013 court hearing; it is surprising that the only written record of the authority's reasons to proceed with both s116 Applications is the Head of the Highway Operations statement dated 7<sup>th</sup> January 2013. It was only after formal objections raised by the ward councillor and a member of the public at the court hearing did the authority consider it necessary to provide further written record of its reasons. This consisted of a letter to the objectors dated 1<sup>st</sup> February outlining the authority's reasons prior to the 7<sup>th</sup> February court hearing. Following the February hearing two further witness statements were obtained by the authority on 28<sup>th</sup> February and 4<sup>th</sup> March 2013. With the exception of the letter of 1<sup>st</sup> February, none of the above was released to the public until 11<sup>th</sup> April 2013 even though there were previous requests for information.

**1. The Highways Authority does not need to consider extinguishing public rights of way given that the developer has planning permission to build this development without affecting any of the existing public rights of way.**

- 1.1. It is offered that when reviewing an application related to a development the first test should be "Could the development be laid out in such a manner that the highway is accommodated in its existing position?"
- 1.2. The Highway Authority does not appear to have asked this question. If it had it would have noted that the current planning permission (BH2012/2807) does not require the extinguishment of the public right of way in order for the development to proceed.
- 1.3. The current planning permission at the time of the court hearing, on both the 10th January and 7th February 2013, has a footprint as outlined in developer's Proposed Ground Floor Plan (drawing No. PA-07 Rev -) dated 5th September 2012. (Appendix B). This plan was approved on 26th October 2012 under delegated powers by the council officers as part of planning application BH2012/2807 submitted on 6th September 2012.
- 1.4. Prior to the s117 developer's application, the Highway Authority has never given any indication as to its own intention or desire to apply for the extinguishment of this public highway which has had uninterrupted public rights of way for over 70 years.
- 1.5. Given that the developer has planning permission to build this development without affecting the existing public rights of way it should follow that there is no need to even consider extinguishing public rights of way.
- 1.6. The Highway Authority has given no reasons as to why the "do nothing option" was not considered when coming to its decision to proceed with a s116 for Application 1.

## 2. **The Highway Authority does not appear to have followed its own Stopping-Up Order Guidance**

### **Notes.**

- 2.1. The Highway Authority's Guidance Notes For Applicants are provided in Appendix C.
- 2.2. The Developer originally made two s117 applications (Application 1 and Application 2) for Stopping Up areas along Portland Road and School Road (Appendix D).
- 2.3. Application 1 submitted by Affinity Sutton Homes Limited solicitor on 3<sup>rd</sup> August 2012 confirms the location of highway to be stopped up as "Portland Road, Hove West Sussex". A plan showing the area to be stopped up indicates that the s117 application is for one small area along Portland Road only. A cheque for £2000 was made payable to the council in respect of the Council's legal and other expenses incurred in the process
- 2.4. Application 2 submitted by Affinity Sutton Homes Limited solicitor on 7<sup>th</sup> September 2012 confirms the location of highway to be stopped up as "Portland Road and School Road, Hove, West Sussex". A plan showing the areas to be stopped up indicates that the s117 application is for two areas, a small area along Portland Road that encompasses Application 1 and a much larger area along School Road/Portland Road. A cheque for £1000 was made payable to the council in respect of the Council's legal and other expenses incurred in the process. It may be noted that Application 2 was withdrawn at the hearing of 7<sup>th</sup> February 2013.
- 2.5. The following observations are made:
  - a) The Highway Authority current s116 Application 1 does not reflect the s117 application request of 3<sup>rd</sup> August 2012 as the areas to be stopped up differ.
  - b) The Highway Authority's advice is that the current cost for an application should be approx. £3300 and "in addition to this must be added the cost of the survey, which can be £500 to £800." The advice also confirms that "a detailed survey is also required before the Director of Environment gives formal authorisation."
  - c) The Highway Authority lawyer has confirmed that no surveys were undertaken for Application 1 this would appear to contradict the requirement for a survey in accordance with their own guidance notes.
  - d) The Highway Authority lawyer's assertion is that "*...the purpose of a survey is usually to ascertain whether there is any apparatus or highway infrastructure...*" and that "*... a survey may be required to clarify these issues*" therefore a survey would not be required as the areas considered were "small". This would appear to be at odds with the Highway

Authority's own Guidance. This is particularly evident given that as part of any s117 process the applicant must provide "written proof that all the Statutory Undertakers have been approached in respect of any apparatus in the highway together with evidence of their replies".

- e) It would appear that surveys should be considered an essential part of any formal court application as they confirm the exact location and size of areas to be stopped up in a court order. Even the authority's own guidance notes say surveys are also required before the Director of Environment gives formal authorisation.

**3. The demonstration for s116 Highways Act 1980 of the use of the public right of way and highway in the past, present and future as being "unnecessary" does not appear to have been met.**

3.1. When considering the s116 extinguishment areas one would hope that the Highway Authority would consider the public use of the highway in the past, current and future before permanently extinguishing any public rights of way on behalf of a developer through a court action.

3.2. In the authority's own guidance notes they confirm that "Applications may only go ahead if it is agreed by the highway authority that the land in question is not required for highway purposes. Any use by the public, even if it is unwelcome, makes this difficult to demonstrate."

**Test of "Unnecessary"**

3.3. The question for s116 is what is the test for "unnecessary" and for whom it is "unnecessary"?

3.4. The question of "to whom it is unnecessary to" was considered by the High Court in *Ramblers Association v Kent CC* (1990). It was held that the magistrates would need to bear in mind that the way had to be unnecessary for the public: the convenience of the landowner was not a relevant factor.

3.5. In the terms of the Highways Act 1980 when reviewing the public's use of a highway (a public right of way), it would appear that as a minimum the highway authority should take account of its statutory duties spelt out in s130 of the Highways Act when it is reviewing any application to extinguish such rights,

Article 1 of s130 states the following duty:

*"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."*

3.6. In applying the "test" of "unnecessary", it would appear reasonable that a Highway Authority, should assess whether the area of concern was required for the use and enjoyment of the public in the past (prior to application); the present (at the time of the application) and the future (i.e. if the s116 application were not made). (Appendix E)

**3.7.** If this "test" is now applied to the s116 areas of concern the following observations may be made:

**Past use "Test" – 1935 to 3rd August 2012**

Open Cinema / Bingo Hall (c1935 to 2003)

3.8. The cinema / bingo hall was understood to be constructed circa mid 1930s and was open for business until its closure in 2003. During this time the areas of s116 Application 1 would have been used by the public who had full and unrestricted access to them. This is over 65 years of the "public use and enjoyment of the highway".

Closed Cinema / Bingo Hall (2003 to February 2012)

3.9. In 2003 the Bingo Hall closed and the building remained closed to the public. Over the following 9 years, the highway areas of s116 applications remained unobstructed and fully open for the "public use and enjoyment of the highway" as demonstrated by Mr Escott's (the developer's representative) exhibited photographs.

3.10. The Highway Authority provides no evidence as to the lack of use of the areas concerned.

3.11. Mr Escott has also provided no evidence of the lack of use of the areas concerned. Instead he has made a statement that in his opinion he believed that the areas did not appear to be used. In the case of the School Road / Portland Road area, he asserts that due the presence of steps over part of the area "*..the public would have been deprived use of that highway land unless they exercise unusual behaviour in respect of use of highway land by climbing and then descending those steps.*" .

3.12. The public has had unrestricted "use and enjoyment" of the highway area at the School Road / Portland Road junction. This use includes and may be seen in Appendix F :

- a) A meeting point / resting place whilst waiting for a bus or rendezvous;
- b) Lawful assembly as a focal point for the community;
- c) Children's play area;
- d) A location to take photos.

3.13. This was and shall be a prominent focal point located right next to very busy schools (approx. 1000 pupils and staff). Therefore in all likelihood, the steps were enjoyed by a large number of passing children that do exhibit the "unusual behaviour" of play when enjoying the full use of the highway. My wife can remember that when our children were little they would run along the steps to go to the nearby bus stop and one of their favourite games was the "Grand Old Duke of York".

3.14. This is 9 years of unobstructed use and enjoyment of the public right of way. At no time during this period did the highway authority consider these areas as "unnecessary" to



the public thus requiring any extinguishment order. It may also be noted that the developer did not attempt to restrict use of the area or apply for any form of extinguishment of public rights of way.

Closed Site (February 2012 to 3rd August 2012)

3.15. As required under s172 of the Highways Act 1980 a temporary hoarding was erected to separate the building from the street prior to the demolition of the Cinema / Bingo Hall structure and the levelling of the site. This temporary hoarding obstructed both areas in Application 1 and also extended out over public rights of way not subject to the stopping up notice. The demolition works were fully completed by May 2012.

3.16. Clearly no use or enjoyment of the highway by the public was possible at this time as it was legally obstructed by temporary hoarding. It is recognised that this closure is in line with normal custom and practice for building works as required under the Highways Act. It is also recognised that the public right of way remained in situ throughout this temporary obstruction.

**Present "Test" (3rd August 2012 to Present)**

3.17. The developer made the application to the Highway Authority on 3rd August 2012. It may be noted that the original application does not reflect the current s116 application as the area at Portland Road / School Road junction is not included.

3.18. The areas of concern are obstructed as part of an on-going demolition and construction works by temporary hoarding.

3.19. Clearly over this time no use or enjoyment by the public is possible, however it is recognised that this closure is in line with normal custom and practice for building works as required under the Highways Act. Again it is also recognised that the public right of way remains in situ but is obstructed by the temporary hoarding.

3.20. The Highway Authority carried out a survey against the s172 temporary hoarding and has provided exhibited photographs of the obstructed highway within their supplementary statement of 4<sup>th</sup> March 2013.

**Future "Test" (Present to ??)**

3.21. The current planning permission at the time of the court hearings on the 10th January and 7th February 2013, has a footprint as outlined in developer's Proposed Ground Floor Plan (drawing No. PA-07 Rev - ) dated 5th September 2012. This plan was approved on 26th October 2012 under delegated powers by the council officers as part of planning application BH2012/2807 submitted on 6th September 2012.

- 3.22. The first area proposed to be stopped up is at the School Road / Portland Road is situated between the main entrance to 10 flats and their cycle/refuse store on School Rd and the entrance to a 1st floor medical centre. The footprint of the building at this location is straight, uninterrupted and the highway area represents the shortest route past the building at that point when entering Portland Road from School Road. The public right of way would not be affected by the development under this approved plan.
- 3.23. The second area under consideration in the court hearing is located along Portland Road. This area is to be a new entrance to a doctor's surgery and a retail outlet (Pharmacy). The area would clearly be used by the public to enter and exit the development. The area would also afford shelter to the public while waiting to be picked up by taxis from the taxi rank directly opposite on Portland Road.
- 3.24. The aforementioned recessed entrance for the new development is a common feature along Portland Road. (Appendix G). No crime statistics or evidence has been provided supporting the developer's concern over potential crime, antisocial behaviour and drug dealing for recessed areas in this neighbourhood. It may also be noted that the original building's main entrance along School Road/Portland Road was unobstructed and recessed throughout its lifetime. No evidence has been provided by the Highway Authority to demonstrate that historically the recessed main entrance area provided an opportunity for criminal or anti-social behaviour within the local community.
- 3.25. In both areas there would appear to be an enduring need for the public use and hence the public right of way. The Highway Authority has provided no evidence against the current approved development plans. They do not appear to have applied any test for the requirement of future public use against these plans.
- 3.26. It should be noted that the Highway Authority has demonstrated that it understands the legal s116 test of "public use" when considering "unnecessary" when it withdrew Application 2. It would appear not to have applied the same test when reviewing Application 1, particularly with regard to the future use of the area at the School Road / Portland Road junction.

**4. It would appear that the Highways Authority has not acted in accordance with the spirit of the Highways Act and its actions have demonstrated that it appears to have not discharged its duties in accordance with s130 of the Highways Act 1980.**

4.1. It would appear that the Highways Authority has not acted in accordance with the spirit of the Highways Act 1980. Its current actions have demonstrated that it would appear to have not discharged its duties in accordance with s130 or s116 of the Highways Act.

4.2. It seems that the Highway Authority has not asked for supporting evidence from the Developer on receiving the s117 application. The Highway Authority lawyer has confirmed that the supporting "evidence" to the case, from the developer to the Highway Authority, consists of a three page witness statement from the developer's planning consultant from Kent, which appears to be giving his "opinion" on use of the area. This statement is supported by three exhibited photographs of the site prior to demolition works, the date and source of which are unclear. This statement was written on the 28th February 2013, 29 weeks after the original s117 requests and 21 days after the 7th February 2013 court hearing

4.3. Instead the Highway Authority (email Head of Highway Operations dated 15<sup>th</sup> January 2013) appears to have relied upon "*all that the developer (or anyone else) needs to do to make an application is simply ask the highway authority to consider whether a piece of highway is necessary or not, and it is the Council itself that makes the application to the Magistrates' court. The council cannot unreasonably refuse to consider the application.*" as one of the main reasons that this application should be taken forward .

4.4. It is understood that case law is quite clear on the position that a Highway Authority should take when presented with a s117 request for an extinguishment under s116 of the Highways Act. In *R(Spice) v Leeds City Council (2006)* it was held that the authority was not bound to make an application to the magistrates' court under s116 when it received a request to do so under s117, instead the authority had to ask the same questions as it would if considering making such an application itself without any request being made.

4.5. Before agreeing to proceed with the s116 application the Highway Authority consulted internally with the council's Monitoring Officer and relevant Planning Officer from 24th August 2012 to 24th September 2012, as explained in the witness statement from Head of Highway Operations. The Head of Highway Operations' statement confirms that during this consultation 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...".* Given the lack of evidence from either the developer or the Highway Authority at this time, it seems that it was this consultation that persuaded the Highway Authority to proceed with the application. This is supported by the Head of Highways Operations statement of the 7<sup>th</sup> January that *"Following this internal consultation, the Highway Authority agreed to accept the applications to proceed with the stopping up order"* (at that time it refers to both Applications 1 & 2)

- 4.6. The Planning Authority, and therefore the Highway Authority, would have been fully aware that the developer had made Planning Application BH2012/2807 (subsequently approved on 26<sup>th</sup> October 2012) that completely accommodated the highway in its existing position. The development could proceed irrespective of any extinguishment application fully meeting the "public interest.... with the provision of housing, a modern surgery and contributions towards educational, open space and public transport improvements".
- 4.7. The Highway Authority would appear to have given undue provenance to the developer's preference for the extinguishment option when coming to their decision to proceed with the s116 Application 1. The benefit of this extinguishment appears primarily to be to the developer and is particularly evident at the proposed School Road / Portland Road public right of way extinguishment. Here the only benefit is to the developer as there is absolutely no benefit to the public users of the highway in the reduction of this highway footprint. At this location under the current approved planning permission the footprint of the building is straight, uninterrupted and the highway area represents the shortest route past the building at that point when entering Portland Road from School Road (see Point 1). The Highway Authority did not appear to gather any objective evidence when coming to its decision to proceed.
- 4.8. It is understood case law is quite clear. The meaning of "unnecessary" was considered by the High Court in *Ramblers Association v Kent CC* (1990). It was held that the magistrates would need to bear in mind that the way had to be unnecessary for the public: the convenience of the landowner was not a relevant factor. In addition it was not open to the magistrates to decide that a way was unnecessary because they held the view that it was in the public interest that the highway should be closed.
- 4.9. This would indicate that when the Highway Authority is reviewing as to whether to proceed with a s117 request, the relevance of the developer's "needs" or the Planning Officers

advice should not be given any undue weight when arriving at a decision to proceed, as the statutory authority to the Highways Act 1980.

4.10. The following is offered for consideration.

- a) Brighton & Hove City Council is a statutory authority and as such has a duty to administer an Act of Parliament; in this case the Highways Act 1980. It is understood that the Highway Authority must only have regard to relevant material, directing themselves as to whether the statutory tests are satisfied based upon the evidence and information submitted at the time of application. In doing so they should take account of case law when considering the relevance of such submissions.
- b) In this case the Highway Authority states *"Following this internal consultation, the Highway Authority agreed to accept the applications to proceed with the Stopping Up order process"*. This decision does not appear to have been based on statutory tests and evidence of use required to demonstrate "unnecessary" for a s116 application. Instead a decision seems to have been reached following a discussion over the merits of a planning permission together with other non-highway related provision and policy. This would appear to conflict with the authority's duties as a statutory Highway Authority.
- c) At this point the Highway Authority would appear to have made its decision to proceed and then embarked upon the process of finding reasons to support this action. The subsequent witness statements and exhibits appear to be supporting "reasons" for the decision, as opposed to the requirement of the evidence in coming to the decision. This may be seen in the lack of publicly available records and supporting evidence prior to this decision.
- d) It may also be noted that the Highway Authority did receive an objection in December 2012 from a resident who is registered as disabled and who informed the authority that he was unable to attend the Court Hearing in January 2013 due to ill health. Instead of formally recording this objection in any of the Highway Authority's proceedings, it was forwarded onto the developer.

In administering this Act of Parliament, the authority's actions should be clear, transparent and auditable. This would not appear to be the case here

It is offered that Parliament makes Acts for a reason – to protect the public. For local authorities to ignore such rules is to deny the public protection.

**5. The current tests carried out by the Highways Authority for reviewing and approving a s116 would appear to set an extraordinary precedent for all future s117 and s116 applications within Brighton & Hove if successful at court.**

- 5.1. Following the decision to proceed with the s116 extinguishment, the Highway Authority then undertook the minimum consultation required under the Schedule 12 of the Highways Act 1980. The notices were posted 11 days before Christmas Day (13<sup>th</sup> December 2012) with the court hearing set during the first full working week after the Christmas Holidays on the 10<sup>th</sup> January 2013.
- 5.2. However the Highway Authority posted notices with a plan that did not represent the proposed works in a manner that could be reasonably interpreted by the public. The plans posted on site related to a structure that no longer existed and did not represent the demolished site at the time of Application 1. It did not show the temporary hoarding as a visual reference and was also posted on a hoarding obstructing and obscuring the Application 1 areas. One would therefore question how these plans “embodied” the proposed extinguishment order and supported a meaningful public consultation process as outlined in Schedule 12 of the Highways Act 1980.
- 5.3. No other objective “tests” were carried out by the Authority prior to the 7<sup>th</sup> February 2013 hearing.
- 5.4. Following the 7<sup>th</sup> February hearing, the Highway Authority carried out its only formal “site survey”, as outlined in the Head of Highway Operations statement of the 4<sup>th</sup> March 2013. This consisted of the Head of Highways undertaking a 15 minute “survey” of pavement use against a s172 Highways Act 1980, temporary obstructed highway sometime in the week of a “half-term holiday”. This timing reference would appear to be made with respect to West Hove Junior & West Hove Infant Schools half term week commencing 18<sup>th</sup> February 2013. During this time both schools were shut and so the 1000 plus staff, pupils and parents would not have been going to or from school. No formal site records would appear to exist of this “survey” with the exception of the statement and the exhibited six photographs of the temporary hoarding obstructed highway. (It should be noted that the only licence to this temporary hoarding displayed at this time was License No. E037 which had expired on 1<sup>st</sup> February 2013.)
- 5.5. The Highway Authority (or any other party) could not undertake any survey or checks on the full use of the existing highway (public right of way) after February 2012 as it became

obstructed and subjected to demolition works. Instead, approximately a year later, after the 7<sup>th</sup> February 2013 hearing, they carried out a review of the use of the remaining area of unobstructed highway against the current vacant plot. They would appear to have then used this test as a demonstration that the Application 1 areas of obstructed highway are "unnecessary".

5.6. The actions of the Highway Authority would appear to set an extraordinary precedent when taken in the context of a Highway Authority's legal test of "unnecessary" under s116.

5.7. In short the authority's test would appear to be:

- a) A highway is legally obstructed under s172 of the Highways Act, as part of a construction project:
- b) If in the absence of recorded supporting evidence it would appear that in the opinion of the Highway Authority during a 15 minute visit the movement of pedestrians is "unaffected";
- c) The Highway Authority could then consider this sufficient to demonstrate that any area of public highway obstructed at the time by the s172 hoarding as potentially "unnecessary".

This would appear to set an extraordinary precedent.

5.8. Surely a Highway Authority should not consider instigating a s116 extinguishment application on the grounds of "unnecessary" on any public highway area that is legally obstructed by a s172 temporary hoarding for building works. An application should only be carried on an unobstructed highway where a proper test of "unnecessary" can be applied either before or after such building works.

5.9. Furthermore, in the absence of any other records, survey or evidence, a temporary hoarding obstructing the areas to be extinguished should not be considered as proof that the highway is unnecessary to the public.

5.10. In this case when objections were raised in court against this application, how can the Highway Authority continue to support its action by applying a test of "unnecessary" against the s172 temporary hoarding obstructed highway using it as "evidence" that the obstructed areas are "unnecessary"?

- 5.11. The consequences of such a precedent may be seen if applied to a hypothetical scenario for example at Hove Town Hall.

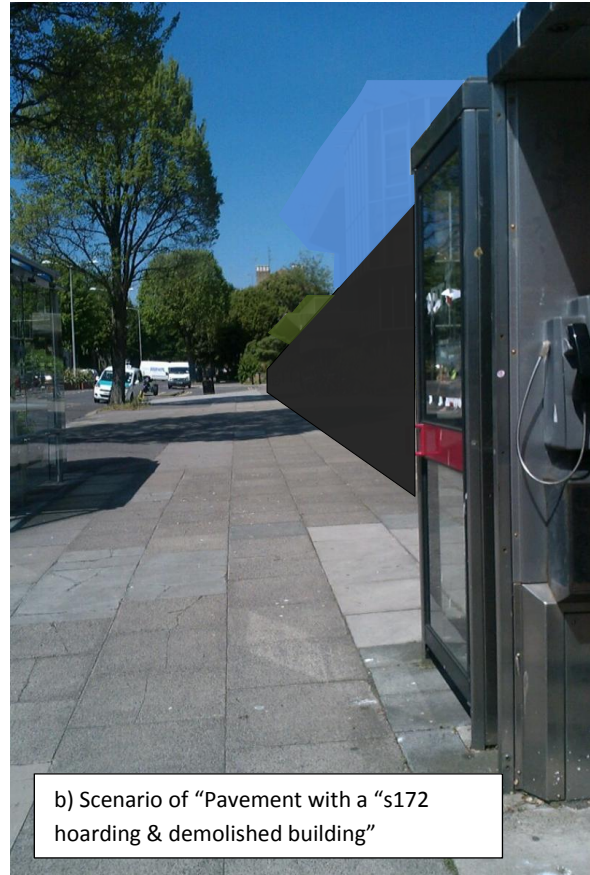


Existing Hove Town Hall pavement frontage along Norton Road  
(source Google Street View)





a) Photograph taken by Mrs P Preston  
5<sup>th</sup> June 2013 – 14:45 hrs



b) Scenario of "Pavement with a "s172  
hoarding & demolished building"

### The "Test"

Using a similar survey, as per the Head of Highway Operations (HHO) statement of 4<sup>th</sup> March 2013, photograph (a) was taken at 2.45pm on 5<sup>th</sup> June 2013 during which time Mrs Preston noted three pedestrians along Norton Road over an approximately five minute period.

If the Highway Authority's "test" is carried out on a scenario in photograph (b) based on the above survey, it would appear that the following extracts from the HHO statement could be used to demonstrate their interpretation of "unnecessary" for areas obstructed by a "hoarding". No other records or evidence would be required.

*"The pavement along ... Road is very wide and there is no need or reason for pedestrians to utilise the additional small strip to aid passage along ... Road".*

*"The hoarding currently covers the area proposed for Stopping Up.....The pavement is exceptionally wide at this junction and allows plenty of room for pedestrians to pass and repass."*

*"I have stood on this corner whilst the hoarding has been in situ during one of the busiest times of the day....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."*

*"The Highway Authority therefore considers there will be enough highway pavement width left to allow sufficient space for pedestrian passage of the area."*