

From: Family Preston <fmlpreston54@gmail.com>
Date: Tue, Feb 5, 2013 at 9:26 AM
Subject: Reply to Gala Bingo Hall Site Proposed Stopping Up Order
To: Carl Hearsurn <carl.hearsurn@brighton-hove.gov.uk>
Cc: Christina Liassides <Christina.Liassides@brighton-hove.gov.uk>, Anne Pissaridou <anne.pissaridou@brighton-hove.gov.uk>, Len.Batten@brighton-hove.gov.uk, Ian.Davey@brighton-hove.gov.uk, Abraham.Ghebre-Ghiorghis@brighton-hove.gov.uk

Dear Mr Hearsurn,

Thank you for your letter of 1st Feb 2013 outlining the Highway Authority's proposed reasoning and intentions to proceed or otherwise. Whilst the contents are noted I would offer the following comments and observations for consideration:

1. As clarification to your fourth paragraph with the sentence beginning "It has also been stated that the development could accommodate...". The current granted planning permission has now accommodated for the existing public right of way highway and therefore the developer does not need any of the proposed stopping off areas to proceed in order for the development to occur. This may be seen in the planning amendment BH2012/02807 granted under delegated powers on 26th Oct 2012 that has moved the building line off all public rights of way highway. It may be noted that there were no concerns raised by the crime prevention officer over this amendment. It may also be noted that a Section 116 notice was posted on 13th December 2012 approximately six weeks after the planning permission amendment had been granted.

2. Under paragraph 8 of the letter the council/highway authority's reasons are provided for not proceeding with the Application 2 stopping up order namely:

"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 has decided that it would not be appropriate to proceed with the application"

It is somewhat concerning that the apparent test as to whether to proceed or not is "will a Magistrates' Court grant an application?" Whilst I have found plenty of advice on policy and guidance published by other councils around the country there is very little advice available on the policy for stopping up public rights of way and highways from B&HCC. Does any advice or policy guidance exist as to the "tests" that need to be applied when the Highway Authority reviews a s117 application?

3. Whilst noting that the Highway Authority may consider a request to apply for a s116 stopping up order under s117, as you have stated the council's powers are discretionary in as much as "if the authority grant the request". It is understood that the authority is not obliged to make the application and the applicant has no right of appeal.

The highway authority would however appear to have an absolute duty to protect the public's right of way under s130 in as much as "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..."

4. When considering the Application 1 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. Therefore it would appear that when undertaking this consideration the Highway Authority should have its s130 statutory duty as the corner stone of their review, noting that the lawful and reasonable public use of the highway is not just one of "passage".

5. With that in mind the Highway Authority's decision to proceed with the Application 1 is still somewhat perplexing as a member of the public and a user of the highway. If the area at the corner of Portland / School Rd is considered as an example the following observations are made:

a. Prior to the demolition the area of highway was used. As any local will know this junction was a street focal point and meeting place. Even when a site meeting was held with respect to this order on 8th January with the Councillor of Wish Ward and Head of Transport, they naturally waited at that junction point. When waiting / meeting people or children from trips this was a recognised point of reference i.e. "at the bingo hall steps". If the council would care to peruse the Argus photo gallery you will find evidence of people gathering on the steps and footway that are considered "unnecessary".

With the new development this function would appear to remain, in that there are proposed entrances either side of the corner. The whole aim of the frontage put forward by the developer was to provide an imposing focal point for the street.

b. It is one of the features of this new frontage that also draws the local users to this very area. Whilst the building structure overhangs the footpath, its balconies will then hang out further over pavement outside the building line. Therefore once constructed, locally there is a real concern about walking under the overhanging balconies. As such there will be an increased desire to use the "sheltered" areas beneath the main structure. This would also be consistent with the desire lines travelled by the public users of the footway.

6. It is therefore somewhat perplexing that any of this highway and associated public right of way is considered "unnecessary" by the Highways Authority. What objective test has been applied? The highway was, is and would be used by the public if it was not built upon by the developer. How can this area of public highway be deemed "unnecessary" by an Authority that has a statutory duty to protect the public right of way?

7. Given that the developer has planning permission to build this development without affecting the existing public rights of way it should therefore follow that there is no need to even consider extinguishing public rights of way as there is no apparent advancement of public benefit. Please can you explain why this application is even being considered?

As I have had less than six days to consider the Highway Authority's reasons before the 7th Feb Court hearing (and none have been provided before then), I have little choice but to maintain my objection to the Application 1 as I cannot see any good reason why the Public Right of Way should be extinguished. I would however be happy to hear the Highway Authority's thoughts prior to that date. Please note however that I have exceedingly high work commitments at present.

Kind Regards

Mike Preston

From: Carl Hearsom <Carl.Hearsom@brighton-hove.gov.uk>
Date: Thu, Feb 7, 2013 at 10:33 AM
Subject: RE: Reply to Gala Bingo Hall Site Proposed Stopping Up Order
To: Family Preston <fmlpreston54@gmail.com>
Cc: Christina Liassides <Christina.Liassides@brighton-hove.gov.uk>, Anne Pissaridou <Anne.Pissaridou@brighton-hove.gov.uk>, Len Batten <Len.Batten@brighton-hove.gov.uk>, Ian Davey <Ian.Davey@brighton-hove.gov.uk>, Abraham Ghebre-Ghiorghis <Abraham.Ghebre-Ghiorghis@brighton-hove.gov.uk>

Dear Mr Preston

Thank you for your email. I have attached to this email a copy of the Council's guidance notes in relation to the stopping up process.

You have been provided with the Council's reasons for proceeding with the application, and you have explained why you consider the highway to be necessary. It is now for the Magistrates to hear all the evidence and arguments, and make an Order if they consider that the statutory tests are met.

Yours sincerely,

Carl Hearsom

Lawyer (Traffic, Highways and Rights of Way)
Environment Team
Legal Services
Brighton & Hove City Council
Room 218 King's House
Grand Avenue, Hove BN3 2LS
Email: carl.hearsom@brighton-hove.gov.uk
Tel: 01273 291523
www.brighton-hove.gov.uk