

Email to GLA from the Council dated 8 June 2023

Further email to GLA dated 13 June 2023

Further objection from Town Legal LLP dated 24 August 2024

Response from Camden Legal Service dated 4 October 2022

Further email from Town Legal LLP attaching photos dated 04 October 2022

From: [Jennifer Lunn](#)
To: ["Planning Support"](#)
Cc: [Elliott Della](#); [Planning Support](#); [Carmen Campeanu](#)
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order
Date: 08 June 2023 18:21:13
Attachments: [RE Stopping up proposal in Queens Grove 73-75 Avenue Road NW8 6JD.msg](#)
[Avenue road and tree.msg](#)
[Ltr from Town Legal LLP - 24 August 2022.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image009.png](#)
[image011.png](#)
[image013.png](#)

Hi Gill,

Thanks very much for getting back to me. Here's the additional objection letter and emails, as below:

- Additional letter of objection from Town Legal LLP dated 24 August 2023
- Email in response from Camden Legal dated 4 October 2023
- Email from Town Legal LLP dated 10 October 2023 attaching photos

Hopefully these should come through ok but can you please confirm?

Many thanks

Jenny Lunn
Lawyer

Telephone: 020 7974 6007



From: Planning Support <planningsupport@london.gov.uk>
Sent: 08 June 2023 17:56
To: Jennifer Lunn <jennifer.lunn@camden.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>; Planning Support <planningsupport@london.gov.uk>; Carmen Campeanu <Carmen.Campeanu@london.gov.uk>
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order

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Dear Jenny

We don't seem to have received your email of 17/05/23, consequently, we haven't received the attachments mentioned. It may be that the total size of the attachments was too large to allow us to receive the email.

We definitely have a copy of the Council's letter on 13 March 2023, but I don't think we have a copy of the other documents, so could you send these again, please?

Regards

Gill Lawton
Technical Support Co-ordinator, Planning
Good Growth
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gill.lawton@london.gov.uk

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From: Jennifer Lunn <jennifer.lunn@camden.gov.uk>
Sent: 08 June 2023 15:09
To: Planning Support <planningsupport@london.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order

Dear sirs,

I write further to my email below and would be grateful for an update as to whether you have had a chance to consider this or when you think you may be able to respond.

Many thanks

Jenny Lunn
Lawyer

Telephone: 020 7974 6007



From: Jennifer Lunn
Sent: 17 May 2023 12:19
To: 'planningsupport@london.gov.uk' <planningsupport@london.gov.uk>
Cc: Elliott Della <Elliott.Della@camden.gov.uk>
Subject: FW: Report for 2023/0183 75 Avenue Road Stopping Up Order

Dear sirs,

Thank you very much for forwarding the attached decision letter and report in this matter.

Unfortunately, it has come to our attention that the Council inadvertently missed from its letter of 13 March 2023 an additional objection letter and photos sent from Town Legal LLP and response from the Council.

We do not consider that the additional letter from Town Legal LLP raises any new points, and refer in particular to the photos provided by the Council at appendix 6 of its letter of 13 March. However, we consider that we should bring this to your attention.

Please therefore find attached a copy of the following:

- A further copy of the Council's letter sent on 13 March 2023 (for reference)
- Additional letter of objection from Town Legal LLP dated 24 August 2023
- Email in response from Camden Legal dated 4 October 2023
- Email from Town Legal LLP dated 10 October 2023 attaching photos

We are very sorry for the inconvenience this will cause, but we would be grateful if you can please confirm whether the GLA's decision letter and report still stand in light of this further information.

Kind regards

Jenny Lunn
Lawyer

Telephone: 020 7974 6007



From: [Jennifer Lunn](#)
To: ["Carmen Campeanu": Planning Support](#)
Cc: [Elliott Della; Planning Support](#)
Subject: RE: Report for 2023/0183 75 Avenue Road Stopping Up Order
Date: 13 June 2023 15:28:07
Attachments:

Hi Carmen,

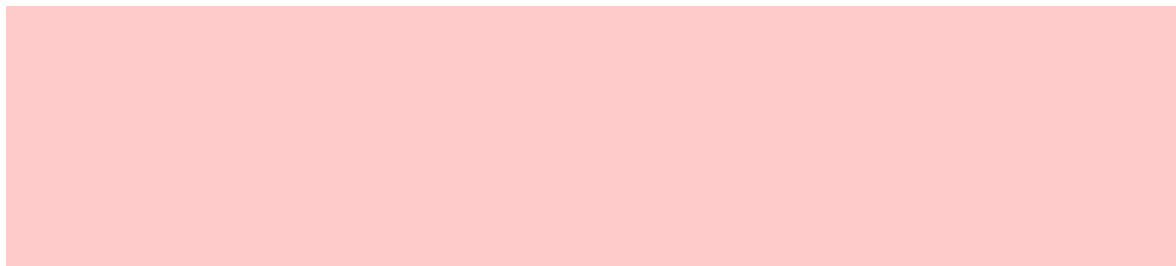
I confirm that the Council is satisfied that the works to the boundary wall have not yet been completed, and the S247 procedure has therefore been employed adequately.

(We checked on site today, and there remains a 3 metre gap in the boundary wall which has temporary hoarding, the same as shown in the photos attached at appendix 6 of our letter of 13 March).

Many thanks

Jenny Lunn
Lawyer

Telephone: 020 7974 6007



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D: 020 3893 0385

E: patrick.robinson
@townlegal.com

By email: jennifer.lunn@camden.gov.uk

Your ref: Legal/JL
Our ref: EPGR
24 August 2022

Dear Ms Lunn

Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD

Thank you for your letter of 17 August 2022, in response to my earlier letters.

I enclose a photograph taken at the end of last week of the southern part of the development facing onto the pavement at Queen's Grove. It appears that there is one small gap in the wall behind the black boarding, where the coping stones and door surround have not been finally completed. The remaining wall that can be seen in the photograph has been complete for some time. The size of the gap suggests that it is intended for pedestrian access only – and may simply be awaiting the installation of joinery.

Could you please indicate where the gap "left for construction traffic into the garden" is situated?

Could I also ask you please to look again at the Court of Appeal's 1980 *Ashby v Secretary of State for the Environment* case. As you point out, Eveleigh LJ expresses the view that an order authorising stopping up *can* be made retrospectively.

It is however critical to understanding the decision (which has stood unchallenged for over forty years and on the strength of which stopping up orders have been made since that time), to study the Judgments of the majority of the Court. The opening sentence of Goff LJ is instructive:

"I much regret that I am unable to accept Eveleigh LJ's conclusion that section 209 of the Town and Country Planning Act 1971 [now section 247 TCPA 1990] includes power for the Secretary of State to make a completely retrospective order..."

He continues in the next paragraph:

"I feel the force of his argument and I would like to adopt it, or any other process of reasoning which would enable me to arrive at the conclusion that the Secretary of State's powers under section 209 are fully retrospective, since that would avoid a possible anomaly which will arise if (ignoring de minimis) an order may be made where the work is nearly finished, although not if it has been completed."

Jenny Lunn

- 2 -

24 August 2022

He also states:

“However, I am driven to the conclusion that this is not possible in view of the words of futurity “to be carried out”... The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply...”

The third Judge, Stephenson LJ begins his Judgment as follows:

“I am attracted by the construction put by Eveleigh LJ on section 209 of the Town and Country Planning Act 1971, but I agree with Goff LJ that it does violence to the language of the section and, for the reasons he gives, I cannot accept it.

Sections 209 and 210 require the Secretary of State or the planning authority to be satisfied that to authorise a diversion order is necessary in order to enable development in his Judgment to be carried out in accordance with planning permission granted under Part III of the Act. They do not require, or permit, either to be satisfied that it was necessary to authorise a diversion order, or that it is necessary to authorise one ex post facto, in order to enable development to have been carried out...”

Since it would appear that the unfinished element of the wall can be considered to be de minimis or token only, it is difficult to see how one can escape the conclusion that an order made under section 247 is not available to legitimise the infringement on the public highway that has taken place here. On the facts of the case it would seem that development is not still being carried out – which differentiates it from the facts found by the Court in the Ashby case.

On this basis, our client maintains his objection to the proposed order.

I would be grateful for your comments in reply.

Yours sincerely



Patrick Robinson
Partner
Town Legal LLP

Encs



From: [Jennifer Lunn](#)
To: ["Patrick Robinson"](#)
Cc: [Elliott Della](#)
Subject: RE: Stopping up proposal in Queen's Grove: 73-75 Avenue Road, NW8 6JD
Date: 04 October 2022 07:52:58
Attachments: [image010.png](#)
[Screenshot Google Maps August 2022.PNG](#)
[image001.png](#)
[image003.png](#)
[image004.png](#)
[image005.jpg](#)

Dear Patrick,

Sorry for the delay in responding to your letter of 24 August.

I have attached a further screenshot taken from google maps in August 2022 that shows the gap in the wall more clearly. This gap has been left for access onto the site to enable the construction of the generator and sub-station to the rear garden in accordance with the planning permission.

Whilst the development under planning permission ref. 2020/3796/P has commenced, the Council contends that section 247 remains the appropriate power in this case.

In the Court of Appeal's 1980 *Ashby v Secretary of State for the Environment* case, Goff LJ put it this way;

'Can it be said that if development on the highway has not been completed, then what remains to be done does show that it is necessary to make an order to enable development to be carried out, none the less so because the order will as from its date validate the unlawful exercise?' In my judgment, the answer to that question should be in the affirmative, on the simple ground that what remains to be done cannot be carried out so long as what has already been done remains unlawful and liable to be removed, at all events where the new cannot physically stand alone.....If necessary, I would say that any further building on the site of the highway, even although it is physically stopped up by what has been done already, is itself a further obstruction which cannot be carried out without an order.'

Stephen LJ indicated: *'I agree with the deputy judge that on the Inspector's findings of fact it was then still necessary to enable a by no means minimal part of the permitted development to be carried out' and 'In my judgement, development which consists of building operations....is a process with a beginning and an end; once it is begun, it continues to be carried out until it is completed or substantially completed'.*

In that case, it was decided that although the highway had already been blocked, the development was still being carried out and was not yet completed. Thus, the Secretary of State had power to authorise diversion of the footpath although the diversion order would validate the unlawful development which was already carried out.

In this case, the Council is satisfied that the development is still being carried out and has not yet been substantially completed, and the stopping up order is necessary to enable the development to be completed in accordance with planning permission granted under reference 2020/3796/P.

Further, the Council considers that the purpose and need for the stopping up have been addressed in the officer's delegated report for the planning application.

However, as objections have been received, the Council must now notify the Mayor of London of the objections who will decide whether to hold an inquiry or whether in the special circumstances of the case the holding of such an inquiry is unnecessary.

Your objection will be forwarded to the Mayor as part of his consideration.

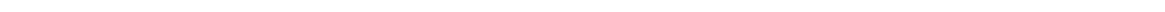
Kind regards

Jenny Lunn
Lawyer

Telephone: 020 7974 6007



:



From: [Patrick Robinson](#)
To: [Jenny Lupton](#)
Subject: Avenue Road and tree
Date: 10 October 2022 22:08:42
Attachments: [image001.png](#)

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Jenny

Please could you forward these photos (and this message) on to the Mayor's office as part of the submission of objections on the Queen's Grove/ Avenue Road stopping up order, and confirm when that has been done.

I reserve the right for my client, Sir Stuart Lipton, to make express further representations on the matter. There is significant disquiet over this issue, and a real concern that legal process has been totally disregarded and flouted. It should not be possible that the facts can be stretched to permit (or more accurately, for a blind eye to be turned to) a breach of the rules, as appears to have happened here.

Thanks

Patrick

Patrick Robinson

Town Legal LLP

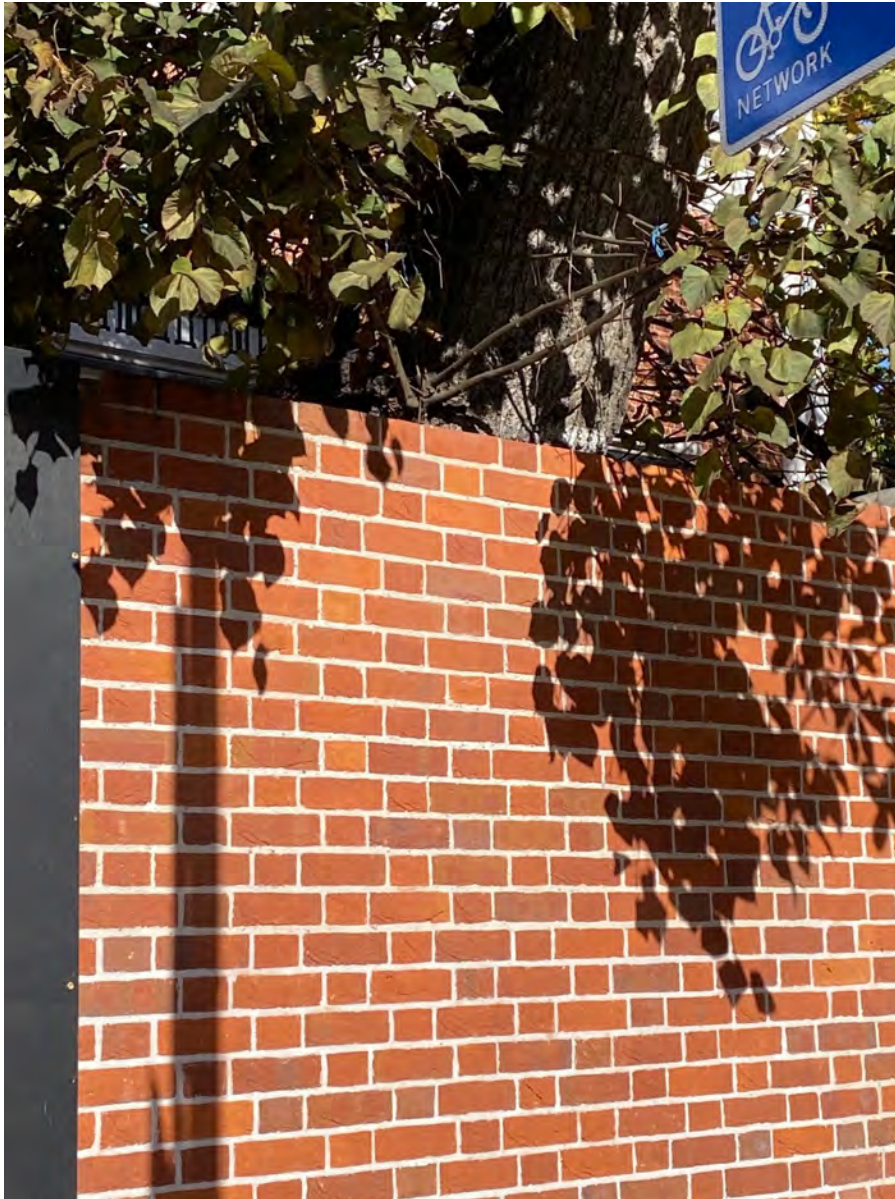
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tn.









Stuart

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