

Queen's Grove: part of the footway at the side of 73-75 Avenue Road

Local Planning Authority: Camden

Local Planning Authority reference: ES/I&M/ED/1/22/S247

Stopping up order

Section 247 of the Town and Country Planning Act 1990 (as amended) by Schedule 22 of the Greater London Authority Act 1999.

The proposal

The stopping up of part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

Recommendation

That Camden Council be advised that in the special circumstances of this case, the holding of an inquiry is unnecessary.

Context

1. On 3 March 2021, Camden Council ('the Council') granted planning permission (LPA ref. 2020/3796/P) for the replacement of all boundary walls including side boundaries with 77 Avenue Road and 38 Queen's Grove (following demolition of existing walls) and erection of generator and substation to rear garden and bin store to front garden (both adjoining Queen's Grove).
2. As part of the planning process, the planning merits of the development described above were assessed, and the Council concluded – after taking all the material considerations into account – that planning permission should be granted for the proposed development, subject to planning conditions and a S106 Agreement.
3. The stopping up is required in order to enable the consented development, namely to allow the boundary wall adjacent to Queen's Grove to be moved 0.5m further into the existing footway to safeguard the existing mature trees (and their roots) which are subject to a Tree Preservation Order ('TPO').
4. The Council proposes to make a stopping up order pursuant to Section 247 of the Town and Country Planning Act 1990 ('the Act') on the basis that it is satisfied that this is necessary to enable the consented development to be carried out.
5. As set out below, there are two outstanding objections to the stopping up order

and therefore ordinarily the Council is required to hold a local inquiry. However, in accordance with section 252 of the Act, the Council has notified the Mayor of the objections and seeks his decision whether, in the special circumstances of the case, the holding of an inquiry is unnecessary.

6. The Mayor of London's decision on this case will be made available on the GLA's website www.london.gov.uk

The proposed stopping up order

7. The proposed site plan, illustrating the red line boundary of the approved application (LPA ref. 2020/3796/P) is shown in Figure 1 below.

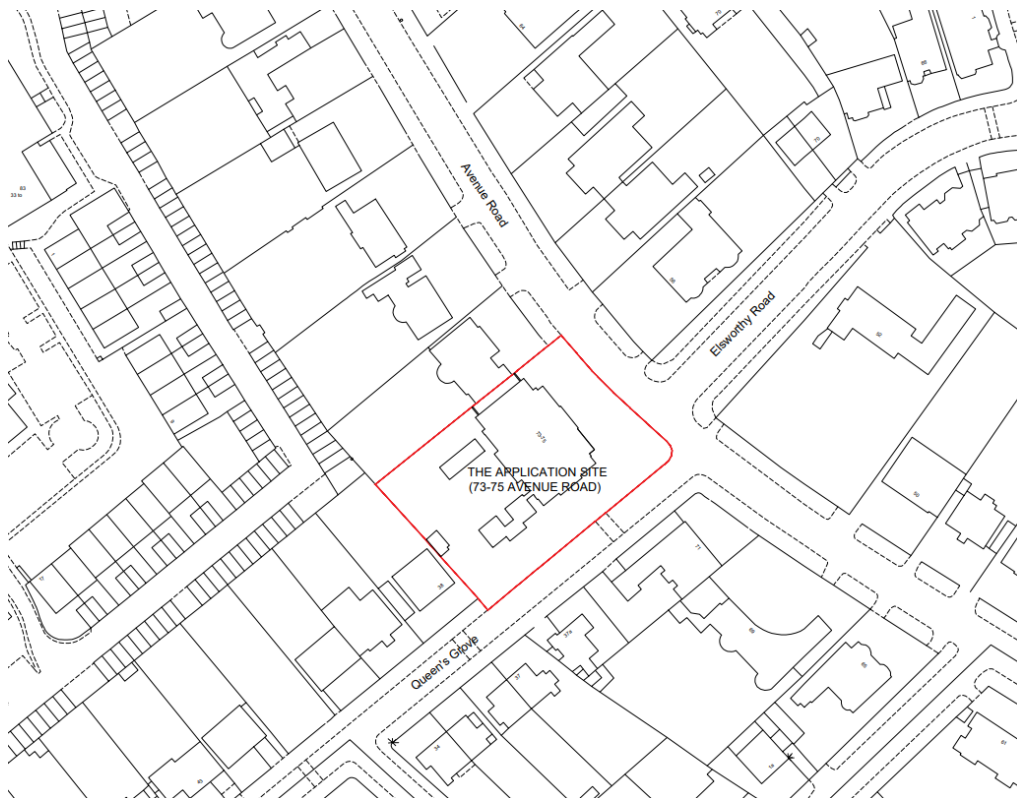


Figure 1: The approved site plan

8. The purpose of the stopping up is to allow the deviation of the boundary wall adjacent to Queen's Grove (at the side of 73-75 Avenue Road) 0.5m further into the existing public footpath in order to safeguard the existing mature trees (TPO), in accordance with planning permission ref. 2020/3796/P. The extent of the area to be stopped up is shown in Figure 2 below.

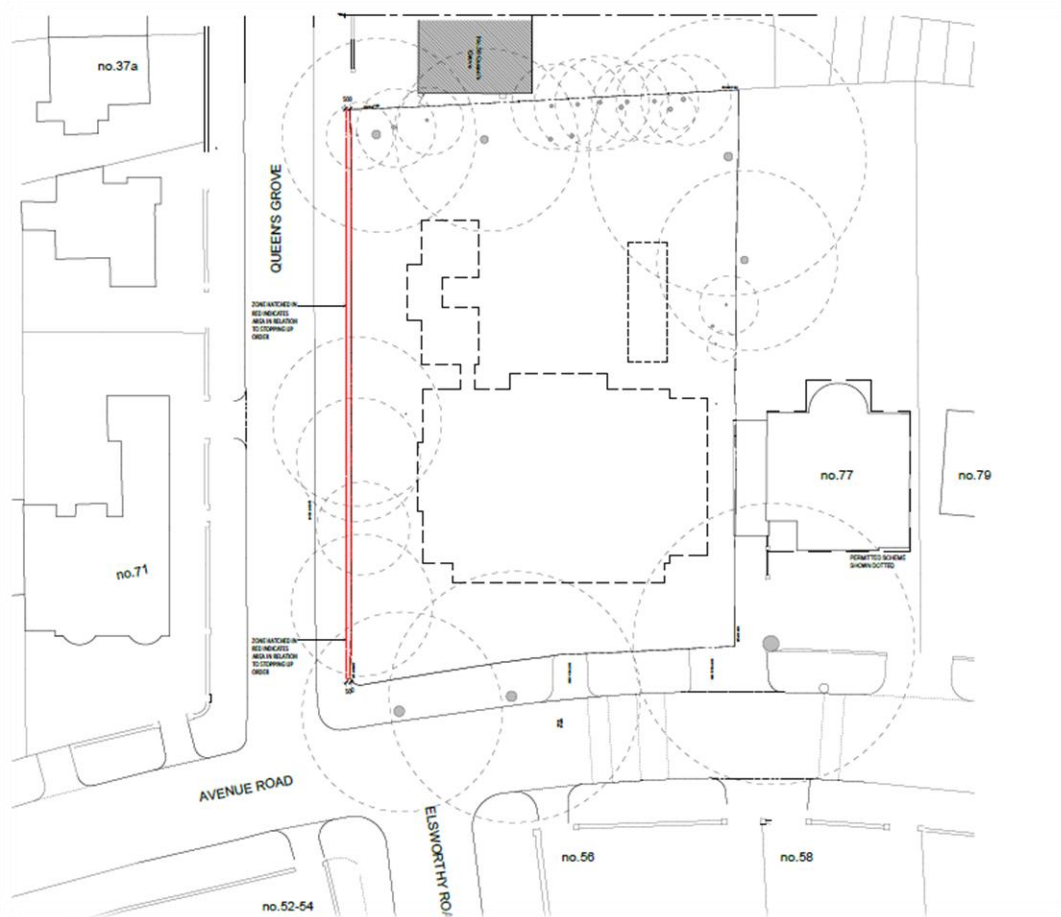


Figure 2: Area to be stopped up

Consideration of the need for a local inquiry

9. Section 252(4) (b) of the Act provides that if an objection to a proposed stopping up is received from any local authority, National Park Authority or undertaker or public gas transporter, or from any other person appearing to the relevant council to be affected by the order and that objection is not withdrawn the council must notify the Mayor and ordinarily it must cause a local inquiry to be held.
10. The only exception to the usual requirement to hold a local inquiry arises under section 252(5A) of the Act whereby, provided that none of the outstanding objections is from a local authority or undertaker or transporter, the Mayor shall decide whether, in the special circumstances of the case, the holding of such an inquiry is unnecessary.
11. Between 28 July - 24 August 2022, the Council undertook a public consultation regarding the proposals as detailed at para. 7-8 of this report. Following the consultation, the Council received three objections – two from members of the public and one from Thames Water. The grounds for objection are summarised as follows:
 1. The Wall has been completed and thus not eligible to make an order under S247 of the Town and Country Planning Act 1990.

2. Objection to the narrowing of the footway
 3. Thames Water requested that the order be amended to ensure their access to the plant.
12. Following the objection from Thames Water, amendments to the proposals were made, and subsequently the objection was removed.
 13. On 13 March 2023, the Council notified the Mayor that two of the objections (nos. 1 and 2 above) were still outstanding
 14. For the purposes of section 252 of the Act, the objectors are not a local authority, undertaker, or transporter. Accordingly, the Mayor can decide whether the holding of a local inquiry is unnecessary.
 15. Advice received from the Secretary of State when he was the order-making authority is that he would only find special circumstances if satisfied that no objections remained which could benefit from being heard at an inquiry. If objections remained relating to traffic issues, the Secretary of State generally considered that these should be heard at an inquiry, although not to permit a re-run of the planning merits of the development.
 16. Furthermore, guidance for Inspectors published by the Planning Inspectorate states that, when considering objections to a stopping up order, there is a need to weigh the disadvantages or loss likely to arise as a result of the stopping up, whether to members of the public generally or to persons whose properties adjoin or are near the existing footway, against the advantages to be conferred by the proposed order.
 17. The first outstanding objection refers to the works to the boundary wall being completed which would deem the development not eligible for a stopping up order under S247 of the Town and Country Planning Act 1990. The Council has provided photographs showing that the works to the boundary wall have not yet been completed, and therefore it is satisfied that the S247 procedure has been employed adequately.
 18. The second outstanding objection refers to the narrowing of the public footway. As detailed in the Officer Report (LPA ref. 2020/3796/P), moving the boundary wall adjacent to Queen's Grove 0.5m further into the existing public footpath is required in order to safeguard the existing mature trees (TPO) in accordance with the consented development. This has been considered during the determination of the application, and the officers concluded that given the width of the existing footpath (approximately 3.6 metres), the loss of 0.5 m would leave the footpath at a comfortable width for pedestrian use.
 19. In conclusion, the planning process has already assessed the planning merits of the proposed scheme, weighing up the advantages and disadvantages of the development and concluded, taking the development plan and all material considerations into account that planning permission should be granted.
 20. If the Mayor were to require an inquiry to be held on the basis of these objections, it would be revisiting the same issues that have already been

discussed at the planning application stage where it was not deemed to be of sufficient weight to warrant a refusal of the planning application.

21. It is therefore considered that the concerns raised by the objectors to the stopping up of footway proposed have previously been considered and addressed as part of the planning process.

Financial considerations

22. There are no financial considerations at this stage.

Conclusion

23. The planning process assessed the planning merits of the development (including the proposed stopping up of footway) and concluded, taking the development plan and all material considerations into account, that planning permission should be granted. The stopping up of the land is necessary to enable the development to be carried out and is therefore in accordance with the requirements under section 247 of the Act.
24. Therefore, if an inquiry is heard it would be revisiting issues which have already been considered at the planning application stage (i.e. the planning merits of the proposals, the related need to stop up the public footway in relation to the preservation of the TPO trees). Accordingly, in the special circumstances of this case, the holding of an inquiry is not necessary.

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