

**Date:** 13 March '23  
**Our reference:** ES/I&M/ED/1/22/S247

**Engineering Service**  
Supporting Communities  
London Borough of Camden  
Room 4N/5PS  
Town Hall  
Judd Street  
London  
WC1H 9JE  
Phone: 020 7974 4444  
camden.gov.uk

Planning Support <planningsupport@london.gov.uk>

Dear Sir / Madam,

**STOPPING UP ORDER OBJECTIONS - QUEEN'S GROVE:**  
**PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD NW8 6HP**

The council under took a stopping up consultation for a development at 75 Avenue Road corner of Queen's Grove.

We have received two objections which has not been removed.

We request that the mayor to investigate this application and to decide if a public enquiry is required in this case or if the order can be made with out the need for a public enquiry.

Attached you will find a pack containing:

1. A copy of the stopping up order consultation pack
2. A copy of the objection from Town Legal LLP and response from Camden Legal Service.
3. A copy of the objection from [REDACTED]
4. A copy of the Officer Report from planning application 2020/3796/P
5. A copy of the S106 agreement from planning application 2020/2796/P
6. Copy of photos of the wall/ site of the stopping up order.
7. Copy of the Objection from Thames Water and subsequent removal of the objection.

The main points of the objections include:

- The wall has been completed and thus not eligible to make an order under S247 of the Town and Country Planning Act 1990.

**Councils Response:** Please see Appendix 6 (Photos) showing that the wall is not yet complete, the order can be made as long as not all of the works are complete.

In *Ashby v Secretary of State for the Environment* [1980] 1WLR 673 it was held that a stopping up order could be confirmed if the decision making body is satisfied that it is necessary to enable completion of the development to be carried out in accordance with the planning permission (*per Stephenson and Goff L.JJ.*) or in order to enable the development that has been carried out on the ground to be authorised (*per Everleigh L.J.*)

- Objection that the narrowing of the footway.

**Council's Response:** Appendix 4 (The Planning Officer's Report) clearly shows in Paragraphs 1.1, 1.16 and 1.19 that the proposal to narrow the footway was due to the existing trees.

- Thames Water has requested that the order is amended to ensure that they will have access to the plant the applicant has agreed to this. An amended version of the order can be found in appendix 7, thus removing the objection.

**Council Response:** An amended version of the order can be found in appendix 7, thus removing the objection.

The Council would like to confirm that paragraphs 1.1, 1.15, 1.16 and 1.22 show that the need for a stopping up order was discussed during the planning process. This therefore gives good reason not to require a public enquiry in this case.

If you have any questions please contact me on the number below. If you require any further information, please do not hesitate to contact, Elliott Della, on 020 7 974 5138.

Yours faithfully



Elliott Della  
Senior Engineer  
Environment and Transport

## **Appendix 1**

**A copy of the consultation pack**

**Date:** 25 July 22  
**Our reference:** ES/I&M/ED/1/22/S247

**Engineering Service**  
Supporting Communities  
London Borough of Camden  
Room 4N/5PS  
Town Hall  
Judd Street  
London  
WC1H 9JE  
Phone: 020 7974 4444  
camden.gov.uk

Dear Sir / Madam,

**QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD**

**IMPORTANT- THIS COMMUNICATION AFFECTS YOUR PROPERTY**

Attached you will find a copy of the official notice, plans and draft orders detailing the closure of the above site.

The closure is required to allow the re-development of the 75 Avenue Road to take place.

The proposal is as follows:

**Areas of Highway to be Stopped Up**

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

We enclose a copy of the notice and draft order in respect of the order to be made by the Council for your attention. Please read the notices and draft orders carefully. If the order is made the land will cease to be a public right of way. Please note that the closed section of footpath will result in a slightly narrower footway.

Could you kindly reply to Elliott Della by e-mail to [engineering@camden.gov.uk](mailto:engineering@camden.gov.uk) or to Engineering Service, Room 4N/5PS, Town Hall, Judd Street, London WC1H 8EQ by 24 August 2022 and confirm as to whether or not you have any objections to the proposed order.

**PLEASE NOTE RESPONSES ARE REQUESTED TO BE BY E-MAIL**

If you require any further information, please do not hesitate to contact, Elliott Della, on 020 7 974 5138.

Yours faithfully



Elliott Della  
Senior Engineer  
Environment and Transport

Reference: ES/I&M/ED/1/22/S247

**Section 247 of the Town and Country Planning Act 1990**

**QUEEN'S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD**

The London Borough of Camden being satisfied that it is necessary to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 hereby gives notice that it proposes to make an Order under Section 247 of the Town and Country Planning Act 1990 (as amended) to authorise the stopping up of the highway described in the First Schedule, namely the part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

If the Order is made, the stopping-up will solely be authorised in order to enable the development described in the Second Schedule to this notice to be carried out in accordance with the planning permission granted by the London Borough of Camden on the 3<sup>rd</sup> March 2021 under reference 2020/3796/P and for no other purpose.

Copies of the draft Order and relevant plan may be inspected during normal opening hours for a period of 28 days commencing on **28 July 2022** at St Pancras Library, 1<sup>st</sup> Floor, 5 Pancras Square, Kings Cross, London N1C 4AG or [www.camden.gov.uk/stopping-up](http://www.camden.gov.uk/stopping-up)

Any Person may object to the making of the proposed Order by writing to the Director of Environment & Sustainability, London Borough of Camden, Room 4N/5PS Town Hall, Judd Street, London, WC1H 8EQ or [engineering@camden.gov.uk](mailto:engineering@camden.gov.uk) quoting reference ES/I&M/ED/1/22/S247. The departmental contact for any queries relating to this publication is Elliott Della telephone number 020 7974 5138.

**PLEASE NOTE RESPONSES ARE REQUESTED TO BE BY E-MAIL**

**IN PREPARING AN OBJECTION IT SHOULD BE BORNE IN MIND THAT THE SUBSTANCE OF IT MAY BE IMPARTED TO OTHER PERSONS WHO MAY BE AFFECTED BY IT AND THAT THOSE PERSONS MAY WISH TO COMMUNICATE WITH THE OBJECTOR ABOUT IT.**

**THE FIRST SCHEDULE**

**Areas of Highway to be Stopped Up**

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

**THE SECOND SCHEDULE**

**The Location**

73-75 Avenue Road NW8 6JD

**The Development**

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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).

Richard Bradbury  
Director of Environment & Sustainability

DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT  
**LONDON BOROUGH OF CAMDEN  
TOWN AND COUNTRY PLANNING ACT 1990  
SECTION 247  
GREATER LONDON AUTHORITY ACT 1999**

**THE STOPPING UP OF HIGHWAYS  
(LONDON BOROUGH OF CAMDEN) (NUMBER 1) ORDER 2022  
MADE:**

**QUEEN’S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD**

The London Borough of Camden makes this order in the exercise of its powers under Section 247 of the Town and Country Planning Act 1990 as amended by Section 270 and Schedule 22 of the Greater London Authority Act 1999 and of all other enabling powers: -

The London Borough of Camden authorises the stopping up of the areas of highway described in the First Schedule to this Order and shown on the attached drawing solely in order to enable the development described in the Second Schedule to this Order, to be carried out in accordance with the planning permission, granted under Part III of the Town & Country Planning Act 1990, by the London Borough of Camden on the 3<sup>rd</sup> March 2021 under reference 2020/3796/P, for the works described in the Second Schedule to this Order.

1. This Order shall come into force on \_\_\_\_\_ and may be cited as the Stopping Up of Highways (London Borough of Camden) (Number 1) Order 2022.

**THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF CAMDEN was hereunto)  
Affixed by Order:- )**

.....  
**Authorised Signatory**

**DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT**  
**THE FIRST SCHEDULE**

**Areas of highway to be Stopped Up**

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

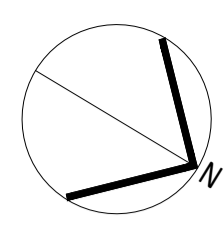
**THE SECOND SCHEDULE**

**The Location**

73-75 Avenue Road NW8 6JD.

**The Development**

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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).



ZONE HATCHED IN RED INDICATES AREA IN RELATION TO STOPPING UP ORDER

ZONE HATCHED IN RED INDICATES AREA IN RELATION TO STOPPING UP ORDER

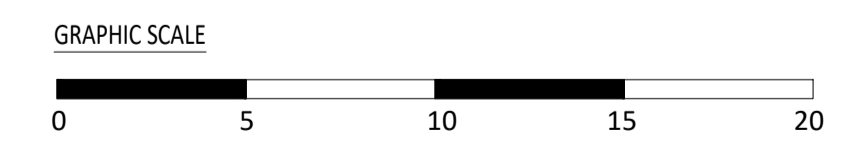
PERMITTED SCHEME SHOWN DOTTED

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**Notes**



**Client**  
 PRIVATE CLIENT  
**Address**  
 73 - 75 AVENUE ROAD, NW8 6JD

**Drawing Title**  
 PROPOSED SITE PLAN

**Date**  
 NOVEMBER 2020  
**Scale**  
 1:200 @ A1 & 1:400 @ A3

**Dwg By**  
 AN

**Studio Indigo Ltd**  
 ARCHITECTS & INTERIOR DESIGNERS

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 Registered Office | 37 Warren Street | London | W1T 6AD  
 Registered in England and Wales | Ltd no: 06005991

**PLANNING ISSUE**

P1 18.11.2020 AN ISSUED TO PLANNING CONSULTANT

Rev	Date	Issuer	Notes

**Project Number**  
 3680

**Drawing Number**  
 A1-021

**Revision**  
 P1



## **Appendix 2**

**A copy of the objection from Town Legal LLP and  
response from Camden Legal Service.**

**From:** [Sean Mclean](#)  
**To:** [Elliott Della](#)  
**Subject:** FW: 73-75 Avenue Road  
**Date:** 25 August 2022 12:37:52  
**Attachments:** [Letter to Elliott Della at Camden.pdf](#)  
[\[1980\] 1 W.L.R. 673.pdf](#)  
[image001.png](#)  
[image002.png](#)  
[image003.png](#)

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Hi Elliott

Hope your well,

FYI

Kind regards.

Sean Mclean  
Business Support Apprentice

Telephone: 020 7974 2181



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**From:**  
**Sent:** 25 August 2022 11:45  
**To:** Engineering Service - Public Email Address <engineeringsservice@camden.gov.uk>  
**Subject:** FW: 73-75 Avenue Road

**[EXTERNAL EMAIL]** Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.

Dear Sirs

I refer to the letter from Town Legal on behalf on Mr. XXXXXXXXXX objecting to the narrowing of the pavement on Queen’s Gove and confirm my objection s to this as well.

XXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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**From:**  
**ent:** Tuesday, 23 August 2022 8:48 pm  
**To:**  
**Subject:** 73-75 Avenue Road

Dear Neighbour

You might like to see the objection I've made to Camden in regard to 73-75 Avenue Road.

If you are so minded, you might like to email Camden confirming your objection on the basis of the letter from Town Legal.

Regards

XXXXXX

**XXXXXXXXXX**

XXXXXXXXXX

XXXXXXXXXXXXXXXXXX

PA: JXXXXXXXXXXXXXXXXXX

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Elliott Della  
Director of Environment and Sustainability  
London Borough of Camden  
Room 4N/5PS  
Judd Street  
London  
WC1H 8EQ

10 Throgmorton Avenue  
London  
EC2N 2DL

townlegal.com

T: 020 3893 0370

D: 020 3893 0385

E: patrick.robinson  
@townlegal.com

**By email: [engineeringsservice@camden.gov.uk](mailto:engineeringsservice@camden.gov.uk)**

Your ref: ES/I&M/ED/1/225247  
Our ref: EPGR  
8 August 2022

Dear Mr Della

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

We act for the owners of XXXXXXXXXXXX, who have received a communication from you, informing them of your proposal to make an Order under section 247 of the Town and Country Planning Act 1990, in order to close part of the footway in Queen's Grove at the side of 73-75 Avenue Road.

On behalf of our clients, please record this as a formal objection, both on the encroachment, and to the improper use of a statutory power which is unavailable in the circumstances of this case. The encroachment that has occurred constitutes an illegal trespass on and obstruction of the highway, which is a criminal offence. How the highway authority has stood by and allowed this to happen warrants further investigation.

Before turning to the substance of the matter, may we point out that the letter you have sent is highly confusing, and will puzzle recipients, if the same form has been used with all parties notified. Whereas the draft Order correctly identifies what we assume to be the site of the proposed closure, the covering letter refers to a site in Cypress Place from Maple Street to Howland Street as shown on drawing CA4312/SK003/B – whatever that may be. We assume, but please confirm, that the reference to Cypress Street is a straightforward error. It risks making a nonsense of the public consultation.

As to the proposed narrowing of the footway purely to benefit the private interests of the householder of the double plot, our client takes strong exception to the form of the design, which entirely unnecessarily encroaches over the boundary. The elements of the development that have been located on the public highway could have been effortlessly positioned within the plot. It creates a wholly unwarranted and undesirable precedent that your authority will have difficulty resisting in other comparable situations.

Furthermore, there is an unsurmountable legal obstacle to your proposed use of the section 247 procedure, in a situation where, as is the case here, the works have been carried out and completed. We refer you to the attached Court of Appeal decision in **Ashby v Secretary of State for the Environment [1980] 1WLR 673**.

Partners: Elizabeth Christie, Mary Cook, Duncan Field, Clare Fielding, Michael Gallimore, Raj Gupta, Meeta Kaur, Simon Ricketts, Patrick Robinson, Louise Samuel

Town Legal LLP is an English limited liability partnership authorised and regulated by the Solicitors Regulation Authority. Its registered number is OC413003 and its registered office is at 10 Throgmorton Avenue, London EC2N 2DL. The term partner refers to a member of Town Legal LLP. See [www.townlegal.com](http://www.townlegal.com) for more information.

Elliott Della

- 2 -

5 August 2022

There the Court of Appeal decided – and this is still the law – that where works have been finished, the power (in 1979, the provision was section 209 of the 1971 Act) is no longer available. The point is expressly addressed by a majority of the Court of Appeal. Your attention is also drawn to para P247.05 of the Planning Encyclopaedia, Vol 2.

On the basis that the works project out onto the public highway, would you care to explain under what power the trespass could be considered lawful in its current condition ?

We look forward to your response.

Kindly acknowledge receipt.

Yours faithfully

Town Legal LLP

Town Legal LLP

1 W.L.R.

In re A Debtor (No. 44 of 1978) (D.C.)

Fox J.

A time and place for hearing the application. In *In re Marende* the registrar refused to fix the time and place for hearing. The debtor appealed against that. The appeal was not heard until after the receiving order. At the time the receiving order was made therefore, the application to set aside the bankruptcy notice had never been heard at all. The refusal to fix a hearing was effected merely by the registrar indorsing the affidavit "No cause shown," or some similar words, and without a hearing. Rule 179 prohibits the making of a receiving order until the application to set aside the bankruptcy notice has been heard. As I have said, when the receiving order was made in *In re Marende*, the application had not been heard, the registrar having refused to fix a date and time for hearing. Thus the issue in *In re Marende* was whether the application could be said to have been heard prior to the determination of the appeal by the Divisional Court. That being said, and although we have only a very brief note of the judgment in *In re Marende*, I think it is very probable that my observations were on any view too widely expressed, having regard in particular to *In re A Debtor* (No. 10 of 1953), *Ex parte the Debtor v. Amptill Rural District Council* [1953] 1 W.L.R. 1050 which was not cited to the court in *In re Marende*. I agree with Browne-Wilkinson J. that the latter case, *In re A Debtor* (No. 10 of 1953), is directly in point in the present case and covers the present point.

In the circumstances, I agree that the appeal must be dismissed.

*Appeal dismissed with costs.*

E Solicitors: *Adlers and Aberstones*.

[Reported by MISS HILARY PEARSON, Barrister-at-Law]

F

[COURT OF APPEAL]

\* ASHBY AND ANOTHER v. SECRETARY OF STATE  
FOR THE ENVIRONMENT AND ANOTHER

G 1979 Oct. 31; Stephenson, Goff and Eveleigh L.JJ.  
Nov. 1;  
Dec. 11

*Highway — Public path — Diversion order — Housing development obstructing footpath begun before diversion order published—Whether Secretary of State empowered to confirm order—Town and Country Planning Act 1971 (c. 78), ss. 209 (1), 210 (1)*

H

In 1962 outline planning permission was granted to a developer for a housing development of 40 houses on a plot through which a public footpath ran. When detailed approval was sought, consideration was given to diverting the footpath. Permission was given to the developer and work commenced in 1976. A diversion order was made in respect of the footpath under sections 209 (1) and 210 (1) of the Town and Country Planning Act 1971. That was confirmed by the Secretary of State after a public inquiry in 1977. The applicants applied to

**Ashby v. Environment Secretary (C.A.)****[1980]**

the Queen's Bench Division for an order quashing the Secretary of State's decision on the ground that some of the houses were nearly complete and it was not within his powers under section 209 (1) to validate development that had begun. After finding that some permitted development remained to be completed, the deputy judge refused to quash the decision, holding that the diversion order was necessary to enable the remaining work to be completed and that the Secretary of State could confirm the diversion of a footpath under section 209 (1) if he were satisfied that it was necessary to enable the development to be carried out in accordance with planning permission.

On appeal by the applicants:—

*Held*, dismissing the appeal, that the confirmation of the diversion order was valid as (*per* Eveleigh L.J.) on the true construction of section 209 (1) of the Town and Country Planning Act 1971 the Secretary of State might confirm the order stopping up or diverting the footpath if he were satisfied that it was necessary in order to enable development which had been carried out on the ground to be legalised (post, pp. 678 D-F, 679H) or (*per* Stephenson and Goff L.JJ.) the development on the footpath not having been completed, what remained to be done showed that it was necessary for the purposes of section 209 (1) to make an order to enable the development to be carried out (post, pp. 681E-G, 683A-B).

Decision of Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division affirmed.

The following case is referred to in the judgment of Goff L.J.:

*Wood v. Secretary of State for the Environment* (unreported), June 27, 1975.

The following additional cases were cited in argument:

*Jones v. Bates* [1938] 2 All E.R. 237, C.A.

*Lucas (F.) & Sons Ltd. v. Dorking and Horley Rural District Council* (1964) 62 L.G.R. 491.

*Reg. v. Secretary of State for the Environment, Ex parte Hood* [1975] Q.B. 891; [1975] 3 W.L.R. 172; [1975] 3 All E.R. 243, C.A.

*Thomas David (Porthcawl) Ltd. v. Penybont Rural District Council* [1972] 1 W.L.R. 1526; [1972] 3 All E.R. 1092, C.A.

APPEAL from Sir Douglas Frank Q.C. sitting as a deputy judge of the Queen's Bench Division.

The applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, by a notice of motion dated March 9, 1978, sought an order to quash and set aside the order of the Secretary of State for the Environment dated November 2, 1977, whereby he confirmed the order of the planning authority, the Kirklees Metropolitan District Council, made under section 210 of the Town and Country Planning Act 1971, known as the Kirklees (Broad Lane Estate, Uppertong) Public Path Diversion Order 1976. The grounds of the application were: (1) that the Secretary of State's decision was not within his powers under the Act of 1971; (2) that, the footpath being obstructed so as to be impassable, the Secretary of State and the planning authority could not be satisfied that it was necessary to divert the footpath in order to enable development to be carried out in accordance with planning permission under Part III of the Act; (3) that the Secretary of State and the planning authority were wrong in holding that they could be so satisfied if any development remained to be completed; (4) that they should have held that, once development had taken place to an extent that it

**1 W.L.R. Ashby v. Environment Secretary (C.A.)**

A obstructed the footpath, then they could not be so satisfied; (5) that, alternatively, the Secretary of State wrongly held that the permitted development had not been completed by reason of the internal works to some of the houses and the layout of land in curtilages; and (6) that there was no evidence on which the Secretary of State could reasonably conclude that the layout of the land in curtilages formed any part of the permitted development which remained to be completed.

B The deputy judge dismissed the application on July 13, 1978, holding, inter alia, that the Secretary of State could authorise the diversion of a footpath under section 209 (1) of the Act if he was satisfied that it was necessary to enable development to be carried out lawfully in accordance with planning permission and that the order had been properly confirmed by the Secretary of State. The applicants appealed against the deputy  
 C judge's decision on the grounds that (1) on a proper construction of section 209 (1) of the Act of 1971, the power to authorise the diversion of a public footpath was to facilitate the proposed development and that the powers created under sections 209 and 210 of the Act could not be exercised so as to validate development already carried out; (2) the deputy  
 D judge was wrong in holding that he was entitled to consider another part of the development, not directly affected by the footpath, in deciding whether the development had been carried out; and (3) the proper  
 E procedure should have been an application under section 111 of the Highways Act 1959, in which case objectors would have been entitled to invite the Secretary of State to consider other criteria; whereas the procedure adopted effectively encouraged developers to carry out unlawful development, thereby prejudicing the objectors' rights and the consideration of the merits of their objections.

The facts are stated in the judgment of Eveleigh L.J.

*Barry Payton* for the applicants.

*Jeremy Sullivan* for the Secretary of State.

The planning authority was not represented.

F *Cur. adv. vult.*

December 11. The following judgments were read.

G STEPHENSON L.J. I will read first the judgment of Eveleigh L.J. who is not able to be here this morning.

EVELEIGH L.J. This is an appeal against the refusal of the deputy judge to quash a decision by the Secretary of State concerning a footpath diversion order made by the Kirklees Metropolitan District Council, the planning authority under section 210 of the Town and Country Planning Act 1971.

H In 1962 outline planning permission was granted for housing development on an area of land through which ran a public footpath. Approval of the details of residential development for 40 houses was given on September 5, 1975, to a Mr. Woodhead, a builder. The proposed development involved obstruction of the footpath at a number of points and so the question of diversion arose. On September 4, 1975, the advisory panel on footpaths of the planning accepted a proposed route for the diversion. In January 1976 the builder laid out an alternative



Evelcigh L.J.

Ashby v. Environment Secretary (C.A.)

[1980]

footpath and started work on a house, No. 25, which obstructed the footpath before the planning authority had published a diversion order and of course before any application was made to the Secretary of State. For that he was fined £80 and ordered to pay £100 costs. A

On March 15, 1976, the planning authority made a diversion order in respect of a new route. After objections had been received and a public meeting had rejected this diversion, the planning authority devised another route for the footpath which became the subject of the Kirklees (Broad Lane Estate, Uppertong) Public Path Diversion Order 1976. After a local inquiry, the Secretary of State confirmed the order. It is this decision which is the subject of the present appeal. B

Section 210 (1) of the Town and Country Planning Act 1971 reads:

“Subject to section 217 of this Act, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied as mentioned in section 209 (1) of this Act.” C

Section 217 (1) reads:

“An order made under section 210 . . . of this Act shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it.” D

As the order made under section 210 was opposed, confirmation by the Secretary of State was required. Section 217 (2) reads:

“The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 210 . . . to be satisfied.” E

Thus, the planning authority and the Secretary of State have to be satisfied of the matters referred to in section 209. Section 209 (1) reads:

“The Secretary of State may by order authorise the stopping up or diversion of any highway if he is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act, or to be carried out by a government department.” F

It is on the interpretation of this subsection that this appeal depends. For the applicants, Kenneth Ashby and Andrew Dolby, suing on their own behalf and on behalf of the Ramblers' Association, emphasis is placed upon the words “to be carried out.” It is said that these words relate to the future and cannot apply where development has begun or, alternatively and a fortiori, where development has been completed. It is argued that there is no power to ratify past activities which would only encourage developers to “jump the gun.” The whole of Part X of the Act in which the relevant sections are contained and provisions in Schedule 20 and section 215 of the Act for objectors to be heard and inquiries to be held indicate that the purpose of those provisions is to prevent premature unlawful development where a highway will be obstructed. In the present case, therefore, the order and the Secretary of State's decision were invalid and the developer's only course is to apply under section 111 of the Highways Act 1959 for an order for the diversion of the highway. G H

The Secretary of State (the planning authority does not appear) claims that section 209 of the Act of 1971 on its proper construction does give

1 W.L.R.

Ashby v. Environment Secretary (C.A.)

Eveleigh L.J.

A power to the Secretary of State to act although development has been completed and although the highway has already been obstructed. Alternatively, it is claimed that all of the permitted development had not been completed, that development in accordance with planning permission remained to be done and that, consequently, there was a situation where the Secretary of State's decision could enable development to be carried out in the future.

B The alternative submission makes it necessary to see what work had actually been done. Work on house, No. 25, was begun in January 1976 and part of the house went over the footpath. Two houses, Nos. 20 and 21, were about 18 feet apart and one was on the east of the footpath and the other on the west. The tarmac drives to the garages of these houses were linked or merged and between them covered the line of the footpath over the distance from the pavement to the garages. The footpath crossed the gardens of these houses and also the plots of two further houses, Nos. 34 and 36, which were to the north of Nos. 20 and 21. Although the public could still walk along the footpath line, save that No. 25 encroached over it, the path would be totally isolated from public use when the various plots were fenced.

D The house numbered 25, appeared to have been completed externally but inside it had not been decorated. A floorboard 14 feet long was missing and some cupboards had not been completely installed in the kitchen. The houses numbered 20 and 21 also appear to have been completed from the outside but inside neither had been decorated. Radiators and sanitary fittings had not been installed in house, No. 21, and floorboards had not been nailed down in the larder of house, No. 20.

E In his report to the Secretary of State the inspector remarked that the footpath had not yet been legally diverted and said:

F “For this reason Mr. Woodhead [the builder] is unable to sell the three plots and houses and to complete the development so far as he is concerned and so to enable the buildings to be occupied as dwelling-houses. So long as the public has a right to walk through these plots people are not likely to buy the houses. The development permitted on plan C, away from the line of the path, is also incomplete and cannot be completed until the alternative route is known along which the path will be diverted.”

G He went on to say that he considered that it would be unfair to the developer to require him to pull down house, No. 25, (and possibly another house).

An application to stop up or divert a highway may be made with the Secretary of State's consent to a magistrates' court under sections 110 and 111 of the Highways Act 1959.

H Part X of the Town and Country Planning Act 1971 contains provisions for stopping up and diverting highways and provisions for safeguarding the public interest before a final order is made. The considerations governing the making of an order are not precisely the same as those under the Highways Act 1959, although in some situations the order might well be obtainable under the procedure of either Act. The effect of Part X of the Town and Country Planning Act 1971 is to provide a comprehensive scheme in that Act for the development of land and the consequential interference with highways under the supervision of the Secretary of State. It is tidy and logical and ensures a consistent approach in deciding the merits of conflicting interests.

Evelcigh L.J.

Ashby v. Environment Secretary (C.A.)

[1980]

I turn now to consider the construction of section 209. The Secretary of State is empowered to “authorise the stopping up or diversion of any highway.” Stopping up or diversion may refer to the past or the future. The words are as applicable to a highway which has already been diverted as to one which it is intended to divert. I cannot accept the argument that the word “authorise” is inappropriate to something already done. The first meaning in the *Shorter Oxford Dictionary* 3rd ed. (1944) vol. 1, p. 125, for the verb “to authorise” is given as “To set up or acknowledge as authoritative. To give legal force to; to sanction, countenance.” Where “authorise” embodies the idea of future conduct, it is defined in the second meaning in that dictionary. I read section 209 as saying that the Secretary of State may acknowledge as authoritative or give legal force to or sanction the stopping up and, consequently, he may deal with a highway that has been stopped up or one that will be stopped up. Indeed, the above meaning of the word is borne out by section 209 (4), which provides:

“An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment.”

The Secretary of State has to be “satisfied that it is necessary to do so.” This means that it is necessary to authorise the stopping up or the diversion. We then come to the words so strongly relied on by the applicants “in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act,” etc. Mr. Payton for the applicants would have us read this as though “carried out” were equivalent to “begun.” I cannot so read it. For something to be carried out it must of course be begun, but bearing in mind the use of the past participle it must also contemplate completion. Section 209 of the Act is not concerned with the possibility of the works being carried out from a physical or practical point of view. It is an enabling section and is concerned to remove what would otherwise be a legal obstacle (not a physical obstacle) to development. In other words, the authorisation has to be necessary in order to enable development to be carried out lawfully. If it has not yet been carried out lawfully, the purpose for which the Secretary of State is given power to “authorise” is still there as the basis for the exercise of that power. Thus far, then, I see nothing in the words of the section themselves to prevent the Secretary of State from authorising an already existing obstruction of the highway caused by development already carried out to completion. Mr. Payton, however, says that Parliament must be taken to have intended to discourage unlawful development and furthermore to deny assistance in any way to a developer who, as he put it, “has jumped the gun.”

The development covered by the section is “development . . . in accordance with planning permission granted under Part III” of the Act. It is relevant therefore to see what development may be permitted under Part III. Section 32 (1) reads:

“An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether—(a) the buildings or works were constructed or carried out, . . . or (b) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous planning permission was granted.”

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- A Clearly the legislature did envisage the possibility of legalising that which had already been done without permission. There is, however, no reference in section 32 to the obstruction of a highway. As the Act of 1971 envisages authorisation by the Secretary of State for development purposes and provides a comprehensive scheme (as I have already stated), it seems to me illogical that in a particular case where planning permission may be granted, namely under section 32, the Secretary of State should
- B have no power to authorise the stopping up. This would presumably be the case if "to be carried out" made authorisation impossible when the work had already obstructed the highway.

If the construction of section 209 is in any way ambiguous, I would resolve the ambiguity in favour of consistency in the operation of the scheme for every kind of permitted development envisaged by the Act.

- C Developers who act unlawfully would have to be dealt with by the penal provisions applicable to their conduct.

The matter does not stop there, however. Section 32 (2) reads:

- D "Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1) of this section; and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly."

- E The words "and references in this Act to planning permission to develop land or to carry out any development of land," etc., are of importance. The references are not limited to the sections contained in Part III of the Act. It is true that "applications for such permission" will be made under Part III, but there are references to "planning permission to develop land" and to "the carrying out of any development of land" elsewhere than in Part III. Section 209 refers to "development to be carried out in accordance with planning permission granted under
- F Part III"; that is to say, "planning permission to develop land," the expression used in section 32. Putting it another way, "planning permission granted under Part III of this Act" (the words of section 209) is "planning permission to develop land." Consequently, by virtue of section 32 (2), the words in section 209 must be construed to include
- G planning permission for the retention on land of buildings or works constructed or carried out, etc., as mentioned in subsection (1) of section 32. This makes it quite clear to my mind that Parliament cannot be said to have intended that there should be no authorisation when a highway had already been obstructed or when the development had already been carried out. In other words, it emphasises that what is being applied for is an order to enable development to be carried out lawfully. This must be so because ex hypothesi in a case to which section 32 refers,
- H the development has already been carried out on the ground. It is perfectly permissible, consequently, to read section 209 as saying that the Secretary of State may authorise the stopping up of any highway if he is satisfied that it is necessary to do so in order to enable development which has been carried out on the ground to be legalised.

I appreciate that it can be argued that the power of the Secretary of State to authorise development ex post facto should be limited to a case where planning permission has been applied for by virtue of section 32

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itself. However, once one recognises that section 209 can apply to an application under section 32, the future tense as contended for by Mr. Payton cannot be upheld. An argument seeking to limit retrospective authorisation to the section 32 case can only be based on the argument that the developer who "jumps the gun" must be denied the procedure under section 209 if it is conceivably possible to do so. Such an argument really rests on an inferred intention to penalise such a person by forcing upon him the procedure provided by the Highways Act 1959. While the conditions for the exercise of the power to make an order under the Highways Act 1959 are not the same as those contained in the Town and Country Planning Act 1971, there are many cases where an order could be made under either Act.

Mr. Payton has contended for the applicants that in this present case the application falls to be dealt with under section 111 of the Highways Act 1959. I do not see that any worthwhile advantage is to be obtained in this way. It is surely better for the Secretary of State who may have to consider the merits of the development permission, to consider at the same time the highway question. Moreover, it does not always follow that the developer is blameworthy. Genuine mistakes can occur. A builder might be prepared to say that he will pull the house down and start again. Why should not the Secretary of State give his authority in such a case? I regard section 209 as saying that if development is of the kind which involves obstruction of a highway, then the Secretary of State can give his authority so that the development can be carried out legally. Until his authority is given development, although carried out on the ground, has not been carried out legally. The Secretary of State is concerned to give legal status to a development of which he approves. He is not concerned to inquire how far, if at all, the work has been done.

I would dismiss this appeal.

GOFF L.J. I much regret that I am unable to accept Eveleigh L.J.'s conclusion that section 209 of the Town and Country Planning Act 1971 includes power for the Secretary of State to make a completely retrospective order, although on a more restricted construction of the section which I am prepared to adopt, I agree that this appeal should be dismissed.

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 the 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. It would also protect an innocent wrongdoer, as in *Wood v. Secretary of State for the Environment* (unreported), June 27, 1975, where an order had actually been obtained before work started, but it was void for a technical irregularity and it was assumed that a further order could not be made under section 209 or 210.

However, I am driven to the conclusion that this is not possible in view of the words of futurity "to be carried out" which occur in section 209 (1), and I think this is emphasised by the sharp contrast with the expression in section 32 (1) "constructed or carried out, or a use of land instituted, before the date of the application."

Moreover, with all respect, I do not think that any anomaly is involved, in that if the work be started without planning permission, the

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A developer will have to have recourse to section 32, and that contains no provision for authorising work upon the highway. The answer, to my mind, is that if the work has been finished sections 209 and 210 do not apply, whether or not planning permission was obtained before the work was done or started, and if it has not been finished the permission granted would have to be not only under section 32 to retain the work so far done, but also to authorise the rest, and that would bring in sections 209 and 210. I do not see how the planning authority or the Secretary of State can be satisfied that an order is necessary "in order to enable development to be carried out" without ascertaining the factual situation in order to see whether there is in fact any part of the relevant permitted development left to be carried out or whether it has all been completed.

Moreover, one cannot escape this difficulty by holding that in law there has been no development until the work is completed, because development occurs as soon as any work is done, and to say otherwise for the purposes of sections 209 and 210 would be inconsistent with the definition of development in section 22 (1), and with section 23 (1). Any work is a development, even if contrary to planning control: see section 87 (2). It cannot be any the less a development because it is unlawful for an entirely extraneous reason, namely, that it is built upon the highway. Nor, I think, can it be said that the planning authority or the Secretary of State has to perform a paper exercise, looking only at the plan and ignoring the facts. This is possibly what the legislature ought to have said, but it has not said it. It would be necessary to do unwarranted violence to the language. One would have to read the section as if it said "to be carried out or remain," or "it is or was necessary."

So I turn to the more limited alternative. 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. It would be a very narrow distinction to draw between that kind of case, for example, building an upper storey or putting on a roof, and a case where what remains to be done can stand alone but is only an adjunct, for example, a garage, of what has to be removed, the house.

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.

Much reliance was placed by the applicants on paragraph 1 (2) (c) of Schedule 20 to the Town and Country Planning Act 1971, but I do not think that that presents any unsurmountable difficulty. The words "is to be stopped up, diverted or extinguished" clearly refer only to the effect of an order, because the paragraph reads on "by virtue of the order." So it is in no way inconsistent with an order being made to give validity to what remains to be done and indirectly to what has been done in fact but unlawfully. The positioning of the notice is a little more difficult, because the ends or an end of the relevant part of the highway may already have disappeared, but the notice can still be given on the face of whatever

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obstruction has been constructed. The general sense of the paragraph is perhaps against my construction, but it is only an administrative provision and certainly does not, in my view, exclude it. A

Section 90 (1), which draws a distinction between carrying out and continuing, has caused me some difficulty, but this distinction is not repeated in the final provision in subsection (5) and I do not feel driven by this section from the alternative construction which I have proposed, which is beneficial and which I would adopt. B

When it comes to the exercise of discretion, in my view the planning authority or the Secretary of State should disregard the fact that the highway has already been obstructed, for he ought not on the one hand to make an order he otherwise would not have made because the loss to the developer if no order be made would be out of all proportion to the loss to the public occasioned by the making of the order, for that loss the developer has brought upon himself, nor on the other hand should the planning authority or the Secretary of State, in order to punish the developer, refuse to make an order which he otherwise would have made. Punishment for the encroachment, which must in any event be invalid for the period down to the making of the order, is for the criminal law. C

I should add finally that Mr. Payton for the applicants made much of the public policy of preserving amenities for ramblers; but in many cases this is not the point, because even if no order be made the developer may well, either before or after development starts, be able to obtain planning consent for revised plans and develop the site, so making the highway no longer a place for a ramble. The relevant considerations will be the desirability (if any) of keeping any substituted way off the estate roads, and the convenience of the way as a short cut, whether or not to a place where one can ramble, and if a diversion is proposed the relative convenience of the old and the new way, whether any different diversion would be better and whether in suitable cases diversion is necessary or whether the way may simply be stopped up. D

For these reasons, I agree that this appeal should be dismissed. E

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

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 *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*. I cannot give what seem to me reasonably plain words that strained meaning unless it can be confidently inferred from their context or other provisions in the Act that that meaning would express Parliament's intention. And I do not find in any of the provisions of this Act to which we have been referred, including section 32, or in the provisions of the Highways Act 1959, any clear indication that what appears to be a requirement that the Secretary of State or a planning authority should be satisfied on the facts that something cannot be done in the future without a diversion order is G

H

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**A** intended to be a requirement that the Secretary of State or a planning authority should be satisfied on paper that something done in the past unlawfully needs to be legalised by a diversion order.

I am, however, in agreement with the view that, on the facts of this case, development was still being carried out which necessitated the authorisation of a diversion order at the time when the diversion order was authorised and confirmed. I agree with the deputy judge that on the **B** 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.

In my judgment, development which consists of building operations—and it may be development which consists of change of use, as to which I express no concluded opinion—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. That fact of life may produce the deplorable **C** result that the earlier the developer “jumps the gun” the better his chance of completing the development before the Secretary of State or the planning authority comes to consider whether it is necessary to authorise a diversion order. But it may not save the developer from unpleasant consequences and it does not enable me to attribute to the legislature an intention which it has not expressed.

**D** I agree that the appeal fails.

*Appeal dismissed.  
Secretary of State's costs to be paid  
by applicants.*

**E** Solicitors: *Franks, Charlesly & Co. for Pearlman Grazin & Co. Leeds: Treasury Solicitor.*

[Reported by MISS HENRIETTA STEINBERG, Barrister-at-Law]

**F** [CHANCERY DIVISION]

\* WESTMINSTER CITY COUNCIL v. HAYMARKET PUBLISHING LTD.

**G** [1979 W. No. 1223]

1979 Oct. 17, 18

Dillon J.

**H** *Rating—Unoccupied hereditament—Surcharge—Commercial building unoccupied for more than six months—Legal charge in favour of mortgagee prior in time to rating authority's charge—Whether rating authority's charge on all interests in land—Whether binding on purchasers from mortgagee—General Rate Act 1967 (c. 9), s. 17A (as amended by Local Government Act 1974 (c. 7), s. 16)*

On January 3, 1974, a company acquired certain commercial premises, which it charged by way of legal mortgage in favour of a bank, to secure all moneys and indebtedness present and future owing by the company to the bank. The premises remained empty and unused for a period extending beyond October 24, 1975, and a rating surcharge amounting to £16,940.93 became



**Date:** 17 August 2022  
**Our Reference:** Legal/JL  
**Enquiries to:** Jenny Lunn

**Law and Governance**  
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Patrick Robinson  
Town Legal LLP  
10 Throgmorton Avenue  
London EC2N 2DL

By email to: [patrick.robinson@townlegal.com](mailto:patrick.robinson@townlegal.com)

Dear Mr Robinson

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

Thank you for your letter of 8 August 2022 addressed to Elliott Della of the Council's Engineering Service and your further letter of 16 August 2022 addressed to Jenny Rowlands, Chief Executive, which have both been passed to me to respond to.

In terms of your points raised, I comment as follows:

- The cover letter is simply to enclose the draft stopping up order. The draft stopping up order itself is correct and refers to the correct plan. Notice of the proposed order has also been published in the Camden New Journal and London Gazette and displayed on site, in accordance with the relevant statutory requirements.
- The purpose of the stopping up is to allow the boundary wall adjacent to Queen's Grove to be moved 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots, in accordance with planning permission reference 2020/3796/P. This is clearly set out in the officer's delegated planning report.
- The form of design was approved under planning permission reference 2020/3796/P. This is a planning issue and was dealt with as part of the planning process.
- In *Ashby v Secretary of State for the Environment* [1980] 1WLR 673 it was held that a stopping up order could be confirmed if the decision making body is satisfied that it is necessary to enable completion of the development to be carried out in accordance with the planning permission (*per Stephenson and Goff L.J.J.*) or in order to enable the development that has been carried out on the ground to be authorised (*per Everleigh L.J.*).
- In this case, the building of the new wall is partially complete, with a gap left for construction traffic into the garden. The Council is satisfied that the Development has not as yet completed and the stopping up order is necessary to enable the development to be completed in accordance with planning permission.

**Andrew Maughan**  
**Borough Solicitor**

Any representations received into the proposed stopping up order during the consultation process (including your letters) will of course be fully considered by the Highway Authority before any decision is made on whether the order should be made. With this in mind, the Council has also forwarded your concerns to the applicant.

As you will be aware, if any objections cannot be resolved, the Highways Authority must notify the Mayor of London of the objections. The Mayor of London may require a local inquiry to be held to fully consider the objections, unless the Mayor of London decides, in the special circumstances of the case, the holding of such an inquiry is unnecessary.

I therefore look forward to hearing from you as to whether your objections still stand.

Yours sincerely,



**Jenny Lunn**  
**Lawyer, Law and Governance**

## **Appendix 3**

**A copy of the objection from xxxxxxxx**

**From:** [Sean Mclean](#)  
**To:** [Elliott Della](#)  
**Subject:** FW: 73-75 Avenue Road, Attn. Elliot Della  
**Date:** 24 August 2022 14:57:50  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

---

Hi Elliot

Please see email below.

FYI

Kind regards.

Sean Mclean  
Business Support Apprentice

Telephone: 020 7974 2181



---

**From:**  
**Sent:** 24 August 2022 10:51  
**To:** Engineering Service - Public Email Address <engineeringsservice@camden.gov.uk>  
**Subject:** Re: 73-75 Avenue Road, Attn. Elliot Della

**[EXTERNAL EMAIL]** Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.

Please now, see the attached photographs, one taken from my first floor window, the other from my front door, today. In the first, the red circle only the left picks out the "summer house" mentioned in my first email. When I look properly at it, it's even worse. Size, footprint, detailing, finishes, height. The second photo is further illustration of all this. Does it really conform to a planning consent?

In the first photo, the red circle on the right shows a new building being constructed to the right of the first. Thus already looks like a repeat of the summer house, just smaller. Does it conform to a consent?

I look forward to hearing from you..

Regards

XXXXXX

07714 222890

On Wed, 17 Aug 2022, 13:35 wrote:

Dear Elliot

I hope you are well - it's been a while since we were in touch and with all the turnover in the Planning department I'm delighted that you've stuck it out.

In case you've forgotten I live at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, UK, which is immediately across the road from the area in dispute, and we have the whole plot as our view to the north.

You have already received the attached letter from XXXXXXXXXX and his advisers, but this is to endorse, support and add my voice to everything in the letter.

We have watched the development over 4 (?) years and while we have no complaints about the way the site has been managed, the disruption has been, and remains, considerable. To watch part of the pavement being taken over, which we had assumed was with consent, was an extremely peculiar moment. I'm very glad it has now come back to Camden, and hope you will not agree to this highly unusual and wholly unnecessary annexation of public space.

I would note that since the rest of the very substantial development has been carried out meticulously and highly professionally, it's very difficult to believe that the decision by the owners not to apply for consent before these pavement works were undertaken was an accident, it seems more likely to have been a calculated ploy. I'm sure it's not in your remit to punish such arrogance, but by the same token I hope that considerations of the cost and disturbance to remove and relocate the perimeter to its original position will play no part in your determination.

Separately, and in light of this breach of Planning Law and regulations, can you please confirm the following items are in accord with consents: (1) the bright red brick for the external facades of the building, and for all the perimeter walls, which is highly unusual and not at all in keeping with either the architecture of the building itself, or with its location in or bordering on the Conservation Area; and (2) the unbelievably grotesque metal and glass black over-sized "summer house" which sits squarely in our view in the garden of the plot.

I cannot believe the Council could have consented to this latter, have you seen it as built? Or is it meant to be cloaked in some other material, or hidden by new landscaping or trees, or located somewhere more out of sight, or should it be much smaller?

I look forward to your responses.

Kind regards



## **Appendix 4**

**A copy of the Officer Report from  
planning application 2020/3796/P**

<b>Delegated Report (Members Briefing)</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	<b>15/10/2020</b>
		N/A	<b>Consultation Expiry Date:</b>	<b>22/10/2020</b>
<b>Officer</b>			<b>Application Number(s)</b>	
David Peres Da Costa			2020/3796/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
73-75 Avenue Road London NW8 6JD			Refer to Draft Decision Notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).				
<b>Recommendation(s):</b>		<b>Grant conditional planning permission subject to s106 legal agreement</b>		
<b>Application Type:</b>		<b>Householder application</b>		



<b>Conditions or Reasons for Refusal:</b>	Refer to Draft Decision Notice					
<b>Informatives:</b>						
<b>Consultations</b>						
<b>Adjoining Occupiers:</b>	No. notified	<b>00</b>	No. of responses	<b>00</b>	No. of objections	<b>00</b>
<b>Summary of consultation responses:</b>	<p>A site notice was displayed from 09/09/20 to 03/10/20.</p> <p>No comments have been received.</p>					
<b>CAAC/Local groups* comments:</b> <small>*Please Specify</small>	<p><b>Elsworthy Residents Committee – object</b></p> <p>It seems perverse to consider allowing the pavement in Queens Grove to be reduced by moving the position of the brick wall 500 mm. This at a time when Camden, and indeed all over the country, pavements are being widened to allow greater numbers of pedestrians to pass freely on the footpath.</p> <p>In order to protect the valuable trees there could be breaks in the brick wall and railings around the trees. The introduction of access gates for the bin store etc that open out onto the pavement of Queens Grove will be a hazard as has proved already elsewhere locally. They are left open for the bin collection, the bins are then left on the pavement and the doors remain open until it is remembered to come out, put the bins away and close them. All this will be out of sight for the occupants of the property but will be dangerous and an eyesore for those passing by, especially if the width of the footpath has been reduced. Please remember that the black and white tiled road sign ‘Queen’s Grove’ (No doubt not saved when the wall was demolished) should be replaced on the new wall.</p> <p><i>Officer’s comment: The application has been revised and the bin store amended so that the doors would not open onto the pavement but rather would open onto the front garden. An email was sent to the Elsworthy Resident’s Committee advising of this revision and the following additional comment was received.</i></p> <p>I’m glad my comment regarding the hazard of the bin store has been understood and an effort has been made to effect a solution. However I still object to the pavement being narrowed by moving the wall out and the bins will still sit on the narrowed pavement, unseen from the house, being unsightly and blocking passage for passers-by until taken back in through the gate. I suggest that the bin store be incorporated in the front driveway.</p> <p><i>Officer’s comment: The reason for the location of the bin store on the side is to minimise its visual impact when viewed from principal rooms. The side elevation houses secondary accommodation where the view is not so important. It is understood that the bins would be taken out through the vehicular gates and placed on Avenue Road. However, should the bins be</i></p>					

*put out onto Queens Grove it is noted that this road is no different from any other street in the borough in that on waste collection days all bins are put out on to the public highway, emptied and then taken back in again. There is no reason to suggest the application site will be any different from any other property and even more so with a house such as this where staff will be present to ensure these matters are dealt with in a timely manner.*

*The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway.*

*The erection of road signs is not a planning matter.*

## Site Description

The application site is located on the corner of Avenue Road and Queen's Grove. Planning permission was granted 28/03/2012 (planning ref: 2011/2388/P) for a two storey dwelling with lower ground floor and basement. Construction of this is nearing completion.

The site is not located in a conservation area but the St John's Wood Conservation Area lies to the south-west of 38 and 37a Queen's Grove and the corner of the Elsworthy Conservation Area lies to the east of the junction of Elsworthy Road with Avenue Road diagonally opposite the site.

## Relevant History

**2011/2388/P:** Erection of single-family dwellinghouse comprising basement, lower ground, ground, first and second floor level, erection of a new boundary wall, hard and soft landscaping and associated works (following demolition of existing building). Granted Subject to a Section 106 Legal Agreement 28/03/2012

**2019/1366/P:** Variation of condition 1 (approved plans) of planning permission 2011/2388/P dated 28/03/2012 (for erection of single-family dwellinghouse comprising basement, lower ground, ground, first and second floor level, erection of a new boundary wall, hard and soft landscaping and associated works (following demolition of existing building)), namely changes to detailed design and materials on all elevations including stone balustrade at roof level, stone finish to central bay and replacement of sash window with garage door (all to front elevation) including relocation of car lift; replacement of 2 storey bay on Queen's Grove elevation with single storey structure with terrace above; alterations to footprint and location of basement including additional lightwell and relocation of garden lightwell; replacement of orangery with contemporary pavilion with flat roof; new French doors to side elevation (north elevation); and erection of pergola in rear garden. Granted Subject to a Section 106 Legal Agreement 06/04/2020

## Relevant policies

### NPPF 2019

### The London Plan March 2016, consolidated with alterations since 2011

Intend to Publish London Plan 2019

### Camden Local Plan 2017

Policy A1 Managing the impact of development

Policy A3 Biodiversity

Policy A4 Noise and vibration

Policy D1 Design

Policy D2 Heritage

Policy T1 Prioritising walking, cycling and public transport

Policy T3 Transport infrastructure

### Camden Planning Guidance

Design (adopted March 2019)

Amenity (adopted March 2018)

Transport (adopted March 2019)

Trees (March 2019)

## Assessment

### 1. Proposal

- 1.1. The application seeks amendments to the approved boundary treatment along Avenue Road and Queen's Grove and also the replacement of the boundary treatment at the rear with no. 38 Queen's Grove and the side boundary with 77 Avenue Road. The proposal also includes the erection of a brick building to house an emergency generator and sub-station to the rear garden and a bin store to front garden. In detail, the following is proposed:
- Erection of a new boundary wall on the Avenue Road frontage with stone piers and timber clad gates. This is an amendment to the boundary treatment previously approved under planning reference 2011/2388/P as amended by 2019/1366/P.
  - Erection of a new boundary wall on the Queen's Grove frontage. This would be moved 0.5m further out to safeguard the existing mature (TPO) trees (and their roots) along Queen's Grove and would include timber louvred access doors for the substation housing and two pedestrian access gates at either end of the frontage.
  - Replacement of the boundary treatment where the site abuts adjoining properties consisting of erection of a new brick boundary wall at the rear with no. 38 Queen's Grove and new side wall with no. 77 Avenue Road; and
  - Provision of a brick housing for a generator and substation and brick bin store in the garden curtilage.

## Assessment

- 1.2. The main issues for assessment are design, amenity, transport and trees.

### 1.3. Design

- 1.4. The approved boundary treatment to Avenue Road would be amended and the vehicle gate flanked by a large pedestrian gate would be replaced by a vehicle gate flanked by two narrower pedestrian gates. The material of the approved piers on either side of the vehicle and pedestrian gates would be amended from brick to Portland stone. This would match the detailing of the main house. The height of the wall would be increased in height (by a maximum of 0.5m) close to the corner with Queen's Grove. The changes to the appearance of the Avenue Road boundary are considered minor and would be sympathetic to the host property and the streetscape.
- 1.5. The height of the approved Queen's Grove boundary would be increase by approximately 0.89m and would range in height from approx. 2.8m to 3m (the approved wall ranged in height from approx. 1.9m to 2.24m. While this is a significant increase in height, the height of the existing wall and trellis (now demolished) was 2.67m and therefore the increase in height would be relatively small when compared to the pre-existing wall and trellis. Furthermore, the proposed building housing the substation and generator would sit just below the height of the wall. Therefore if the wall were lower, the substation would be visible. The height of the wall is therefore necessary to ensure sure there is no adverse visual impact from the proposed sub-station and to safeguard the visual appearance of the local area. In this context, the height of the boundary wall is considered acceptable.
- 1.6. The boundary walls would be constructed from red handmade brick to match the main house. This would ensure consistency between the two elements.
- 1.7. The submission states that the existing walls with the neighbouring properties (no.38 &

no.77) are structurally unsound with large cracks. The proposal seeks to demolish the existing walls with trellis and rebuild, raising the wall height to just below the existing trellis height. This would provide a more secure boundary between adjoining properties and provides aesthetic consistency between all four boundary lines. The replacement boundary walls are therefore considered acceptable.

- 1.8. The generator and substation enclosure will be below the proposed boundary wall height so will not be visible from the street level. The detail design of the generator and substation enclosure is considered acceptable. The substation would be accessed from the Queen's Grove footway with doors which open onto the pavement. This is a requirement of UKPN. The double doors would be for any large plant that may be needed at any given time in the future and the single door would be for maintenance access. The Council's planning guidance advises that while doors that open onto footways are generally resisted an exception is made for doors required for electricity sub-stations. Therefore, in this instance the doors opening onto the footway are considered acceptable. The bin store would be a relatively small enclosure positioned next to the side boundary wall and would not be visible from the public realm.

### **1.9. Amenity**

- 1.10. The height of the proposed walls between the application site and the neighbouring properties to the rear and the side (no.38 & no.77) would be the same height as the existing wall with trellis. Therefore there would be minimal impact on neighbouring amenity in terms of daylight and sunlight or overbearing. The increase in the height of the boundary wall to Queen's Grove would likewise have minimal impact on neighbouring amenity as this wall is adjacent to the pavement and road. Likewise there would be no impact on neighbouring amenity from the bin store or the building housing the generator and sub-station.

### **1.11. Noise**

- 1.12. The application proposes a brick building to house an electricity substation and emergency generator adjacent to the boundary wall with Queen's Gove. A noise report has been submitted to support the application and has been reviewed by the Council's noise officer. The lowest background noise level was 36dB. The Council's noise policy states that emergency equipment such as generators which are only to be used for a short period of time will be required to meet the noise criteria of no more than 10dB above the background level (L90 15 minutes). During standby periods, emergency equipment will be required to meet the usual criteria for plant and machinery. The noise report confirms that mitigation will be required to comply with the Council's noise criteria. A condition will be included to ensure the mitigation recommendations of the noise report are implemented. Further noise conditions will ensure that the equipment does not breach the Council's noise thresholds and will restrict the operation and testing of the emergency generator to protect neighbouring amenity.

### **1.13. Transport**

- 1.14. The proposal was revised to omit the bin store doors opening onto the footway. The Council's planning guidance advises that while doors that open onto footways are generally resisted an exception is made for doors required for electricity sub-stations.
- 1.15. The application seeks to move the boundary wall adjacent to Queen's Grove 0.5m further towards the existing footway to safeguard the existing mature (TPO) trees and their roots. This would involve the narrowing of the existing footway. The Council's transport team, highway engineering and the Council's Structures Manager have reviewed the proposal. The existing footway is quite wide (approximately 3.6 meters). Even with the loss of 0.5m this will still leave the footway at a comfortable width for the number of pedestrians who use this footway. Therefore the loss of 0.5m of footway is considered acceptable in this

instance.

1.16. Highways have confirmed a stopping up order will be required. The current cost for processing the order is: £27,307.00. This would be secured by legal agreement.

1.17. The footway directly adjacent to the site is likely to sustain damage because of building the boundary wall. It is noted that a highways contribution (£56,000) was secured as part of the previous application (2011/2388/P) and no work has been implemented. Therefore these funds would still be available to be spent on the highway reinstatement and no further highways contribution would be required.

#### **1.18. Trees**

1.19. No trees are proposed to be removed in order to facilitate development. The arboricultural method statement is considered sufficient to demonstrate that the trees to be retained will be adequately protected in accordance with BS5837:2012. A condition will be included to require the works would be undertaken under the supervision and monitoring of the retained project arboriculturalist in consultation with the Council's Tree and Landscape Officer.

#### **1.20. Conclusion**

1.21. Grant conditional planning permission subject to s106 legal agreement

1.22. Heads of terms:

- Highways contribution
- Stopping up order

### **DISCLAIMER**

**The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 23<sup>rd</sup> November 2020, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to [www.camden.gov.uk](http://www.camden.gov.uk) and search for 'Members Briefing'.**

## **Appendix 5**

**A copy of the S106 agreement from  
planning application 2020/2796/P**

DATED 3<sup>RD</sup> MARCH 2021

(1) WEI-LYN LOH

and

(3) EFG PRIVATE BANK LIMITED

and

(4) THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF CAMDEN

**A G R E E M E N T**

relating to land known as

73-75 Avenue Road

London NW8 6JD

pursuant to

Section 106 of the Town and Country Planning Act 1990 (as amended);

Section 16 of the Greater London Council (General Powers) Act 1974;

Section 111 of the Local Government Act 1972; Section 1(1) of the Localism Act 2011;

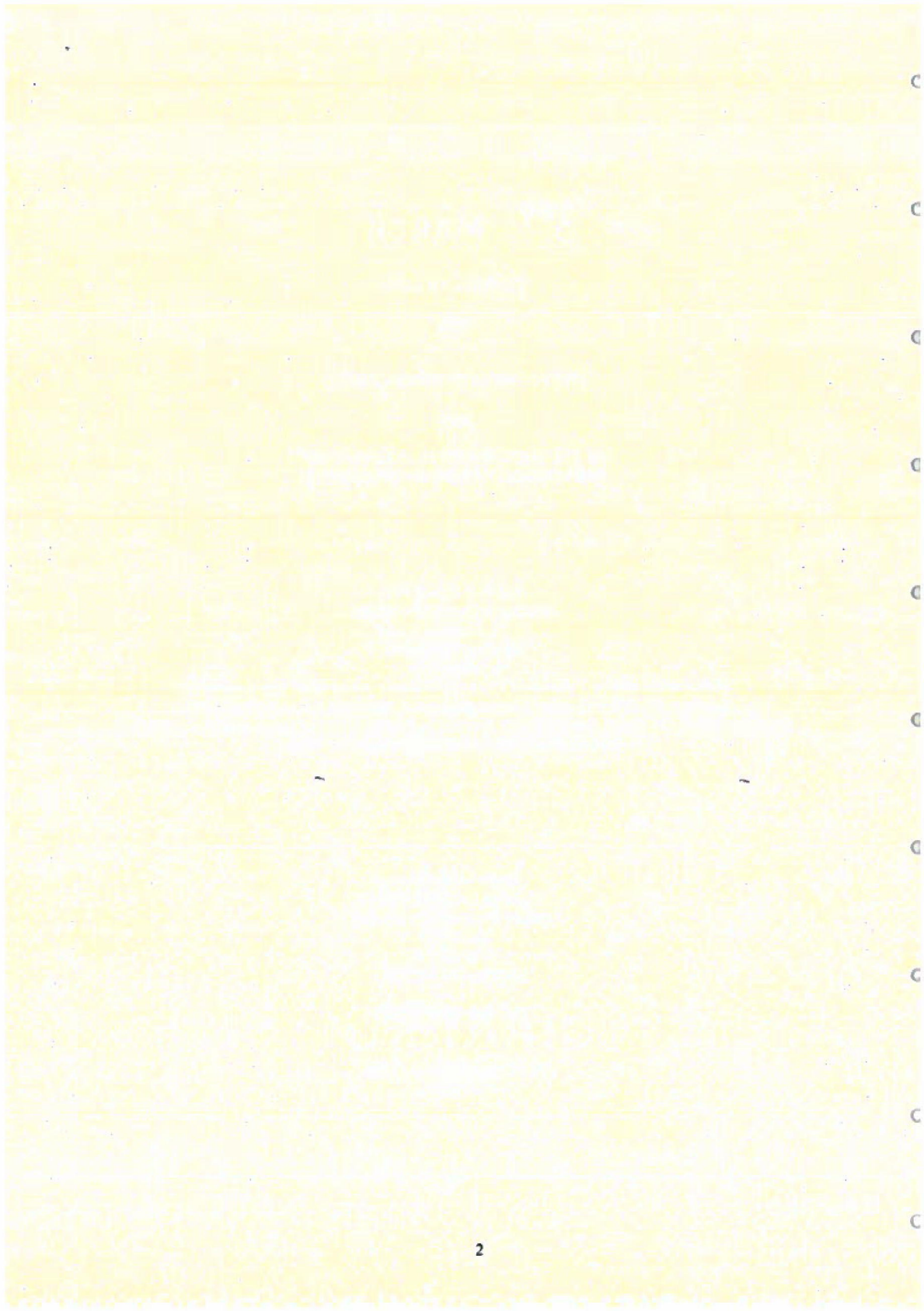
and Section 278 of the Highways Act 1980

Andrew Maughan  
Head of Legal Services  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9LP

Tel: 020 7974 5826

CLS/COM/ESA/1800.1760  
s106 FINAL





THIS AGREEMENT is made the 3<sup>rd</sup> day of March 2021

**BETWEEN:**

- A. **WEI-LYN LOH** of Flat 24, Welbeck House, 62 Welbeck Street, London W1G 9XE (hereinafter called "the Owner") of the first part
- B. **EFG PRIVATE BANK LIMITED** (Co. Regn. No.2321802) of Leconfield House, Curzon Street, London W1J 5JB (hereinafter called "the Mortgagee") of the second part
- C. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part

1. **WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL911641 subject to a charge to the Mortgagee.
- 1.2 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 20 August 2020 and the Council resolved to grant permission conditionally under reference number 2020/3796/P subject to the conclusion of this legal Agreement.
- 1.4 The Council is the local planning authority for the purposes of the Act and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

1.5 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.6 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL911641 and dated 19 February 2019 is willing to enter into this Agreement to give its consent to the same.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

2.1	"the Act"	the Town and Country Planning Act 1990 (as amended)
2.2	"the Agreement"	this Planning Obligation made pursuant to Section 106 of the Act
2.3	"the Development"	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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove). as shown on drawing numbers:- A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbotrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220
2.4	"the Implementation Date"	the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly
2.5	"Occupation Date"	the date when any part of the Development is occupied and

			the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.6	"the Parties"		mean the Council the Owner and the Mortgagee
2.7	"the Planning Application"		a planning application in respect of the development of the Property submitted to the Council and validated on 20 August 2020 for which a resolution to grant permission has been passed conditionally under reference number 2020/3796/P subject to conclusion of this Agreement
2.8	"Planning Obligations Monitoring Officer"		a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.9	"the Planning Permission"		a planning permission granted for the Development substantially in the draft form annexed hereto
2.10	"the Property"		the land known as 73-75 Avenue Road London NW8 6JD the same as shown shaded green on Plan 1 annexed hereto
2.11	"Stopping Application"	Up	means an application made by the Owner to the Council to authorise the stopping up of the Stopping Up Area pursuant to section 247 or section 253 of the Act
2.12	"Stopping Up Area"		means part of the carriageway and footway at 73-75 Avenue Road as shown for indicative purposes (to be agreed by the Council in writing prior to submission of the Stopping Up Application) coloured red on Plan 2 annexed to this Agreement
2.13	"Stopping Contribution"	Up	means the sum of £27,307.00 to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the council in connection with the Stopping Up Measures
2.14	"Stopping Measures"	Up	means all procedures (including statutory and internal Council procedures and consultation) required to facilitate the stopping up of the Stopping Up Area pursuant to section 247 of the Act to enable the Development to be carried out in accordance with the Planning Permission whether or not such procedures result in the obtaining of the Stopping Up Order

2.15	"Stopping Up Order"	means a statutory order authorising the stopping up of the Stopping Up Area
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3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7 and 8 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.

**4. OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

**4.1 Stopping Up Application**

**4.1.1** On or prior to Implementation of the Development the Owner will submit to the Council the Stopping Up Application.

**4.1.2** Within 5 days of the Council accepting the Stopping Up Application to pay the Stopping Up Contribution in full.

**4.1.3** Not to Implement or to allow Implementation of the Development until such time as the Stopping Order has been made.

**4.1.4** To pay the Council's further reasonable costs incurred in connection with the Stopping Up Measures including where reasonably requested payments on account, subject to the Council providing such information as the Owner may reasonably request to verify the Council's incurrence of such further costs.

**4.1.5** On completion of the Stopping Up Measures the Council will provide to the Owner a certificate specifying the sum expended by the Council in carrying out the Stopping Up Measures ("the Stopping Up Measures Certified Sum").

**4.1.6** If the Stopping Up Measures Certified Sum exceeds the Stopping Up Contribution and any other sums already paid on account by the Owner in respect of the Council's reasonable costs in carrying out the Stopping Up Measures then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess, subject to the Council providing such information as the Owner may reasonably request to verify the Council's incurrence of such excess sums.

**4.1.7** Not to restrict or to allow the restriction of public access to the Stopping Up Area unless and until the Stopping Up Order has been made and in the event of non-

compliance with this sub-clause the Owner shall forthwith take any steps required by the Council to remedy such non-compliance.

**5. NOTICE TO THE COUNCIL/OTHER MATTERS**

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2020/3796/P the date upon which the Development will be ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.

- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2020/3796/P.
- 5.7 Payment of any contributions pursuant to Clause 4 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2020/3796/P. Electronic Transfer be made directly to National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.
- 5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Office for National Statistics at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = \frac{B \times (Y-X)}{X}$$



5.10 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Placeshaping Service, Urban Design and Development Team, 2<sup>nd</sup> Floor, 5 Pancras Square, London, N1C 4AJ and sent to [planning obligations on PlanningObligations@camden.gov.uk](mailto:planningobligations@camden.gov.uk) quoting the planning reference number 2020/3796/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

6.2 This Agreement shall be registered as a Local Land Charge.

6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.

6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.

6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights,

powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

- 6.6 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of Development this Agreement shall forthwith determine and cease to have effect.

7. **MORTGAGEE EXEMPTION**

- 7.1 The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.
- 7.2 The Parties agree that the obligations contained in this Agreement shall not be enforceable against any mortgagee or chargee of the whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

8. **RIGHTS OF THIRD PARTIES**

- 8.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner and the Mortgagee have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY )  
WEI-LYN LOH )  
In the presence of: )

.....  
Witness Signature  
Witness Name:  
Address:  
Occupation:

EXECUTED AS A DEED BY )  
EFG PRIVATE BANK LIMITED )  
by *Helen Price* )  
in the presence of:- )

[Redacted]  
*odgers. W14 9AD.*  
*147 West Kensington*

.....  
[Redacted]

THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF CAMDEN was hereunto )  
Affixed by Order:- )

.....  
[Redacted]  
Authorised Signatory



IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner and the Mortgagee have executed this Instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY  
WEI-LYN LOH  
In the presence of:

) [Redacted]  
)  
)

.....  
Witness Signature

Witness Name: ARDAL LOH-GROMAER  
Address: FLAT 29 WELBECK HOUSE, 62 WELBECK STREET, LONDON, W1G 9XE  
Occupation: COMPANY DIRECTOR

EXECUTED AS A DEED BY  
EFG PRIVATE BANK LIMITED  
by Helen Price  
In the presence of:-

) [Redacted]  
)  
)

.....  
[Redacted]

odgorels  
W14 9AD. 147 West Kewes,

THE COMMON SEAL OF THE MAYOR  
AND BURGESSES OF THE LONDON  
BOROUGH OF CAMDEN was hereunto  
Affixed by Order:-

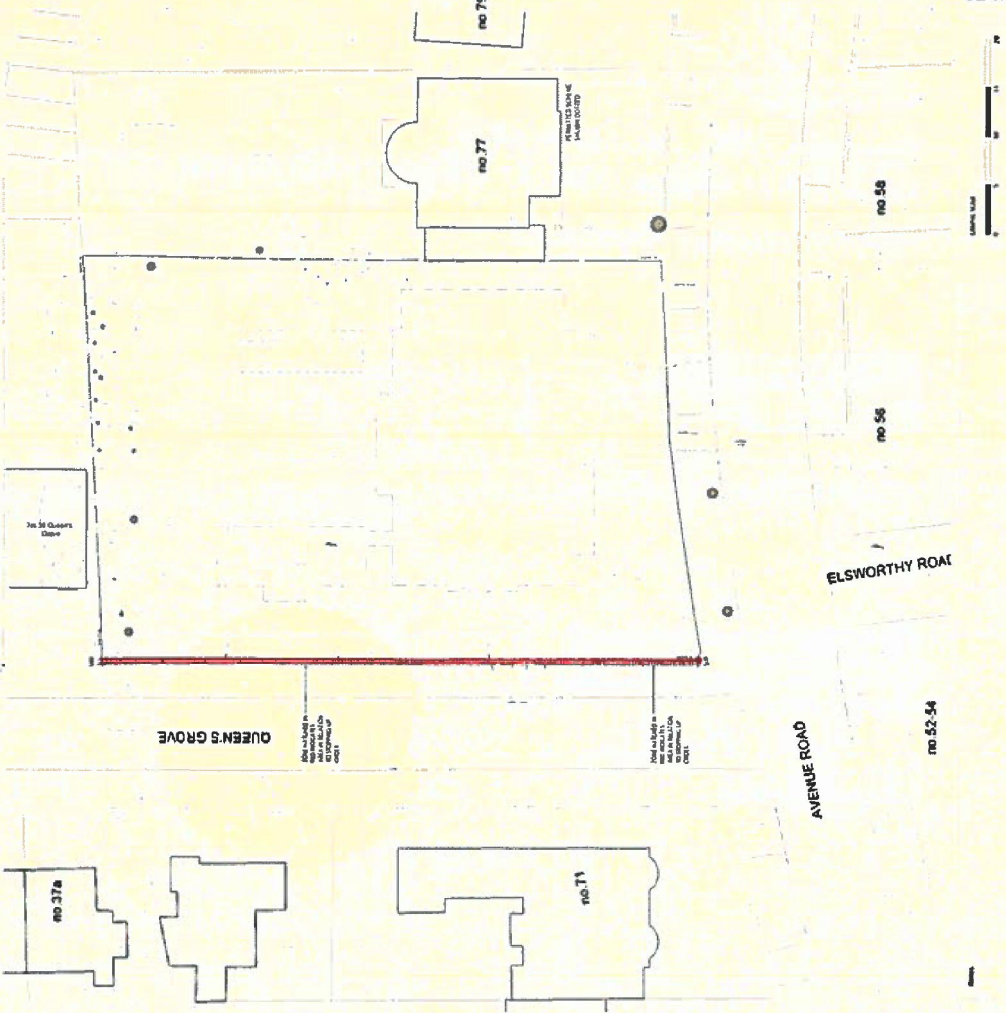
.....  
[Redacted]

Authorised Signatory



T

HP



70.58 Queens Drive

QUEEN'S GROVE

Not to build on this area as it is reserved for the use of the Council.

Not to build on this area as it is reserved for the use of the Council.

no. 79

no. 77

no. 71

no. 37A

no. 56

no. 56

no. 52-54

AVENUE ROAD

ELSWORTHY ROAD

**PLANNING ISSUE**

This is a Call Drawing. It is not a final drawing and should not be used for construction purposes. It is intended for use in the planning process only. It is not to be used for any other purpose. It is not to be used for any other purpose. It is not to be used for any other purpose.

**Client**  
PRIVATE CLIENT  
72-75 AVENUE ROAD, HIVE LOD

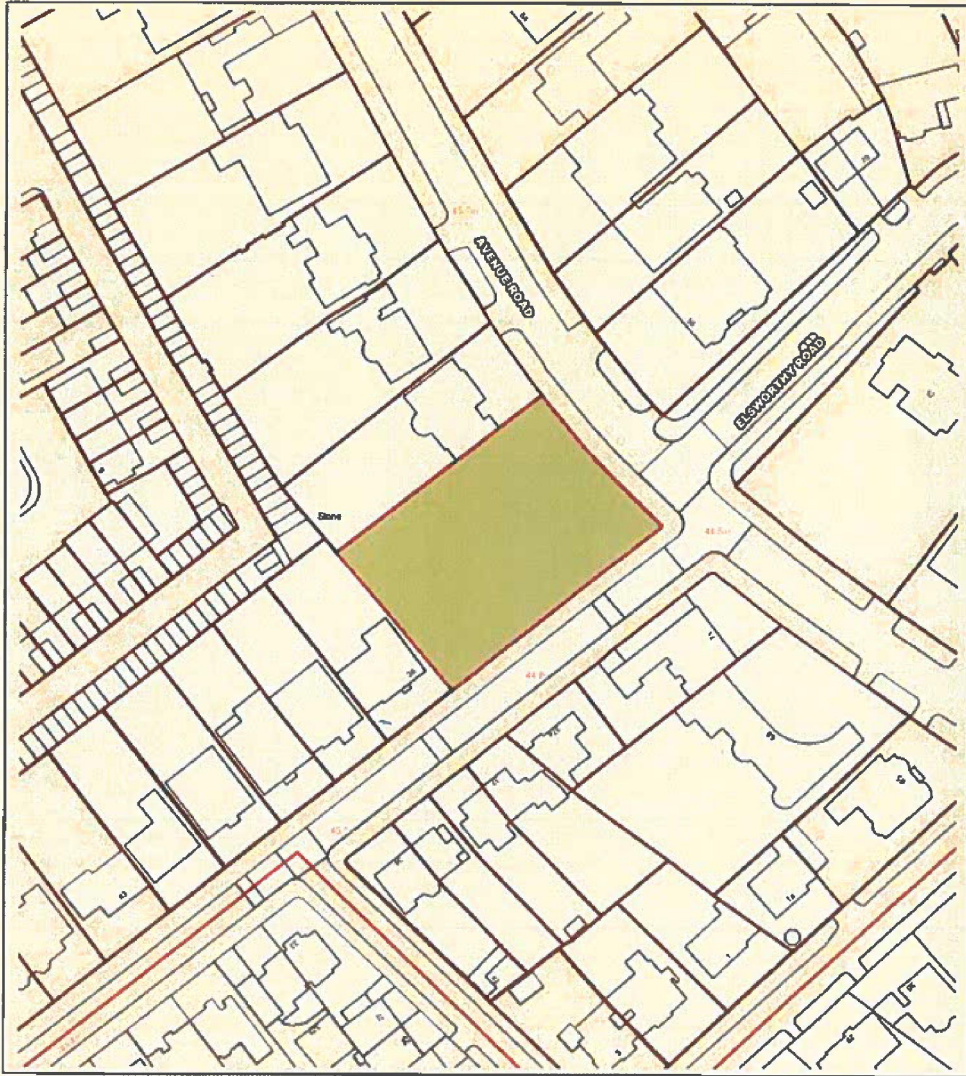
**Project**  
PROPOSED SITE PLAN  
NOVEMBER 2020 AN  
1:200 @ A1 & 1:400 @ A3

**Studio Indigo Ltd**  
ARCHITECTS & INTERIOR DESIGNERS

100-102, The Arcade, London, EC2A 4DU  
Tel: 020 7424 1000  
Email: info@studioindigo.co.uk  
www.studioindigo.co.uk



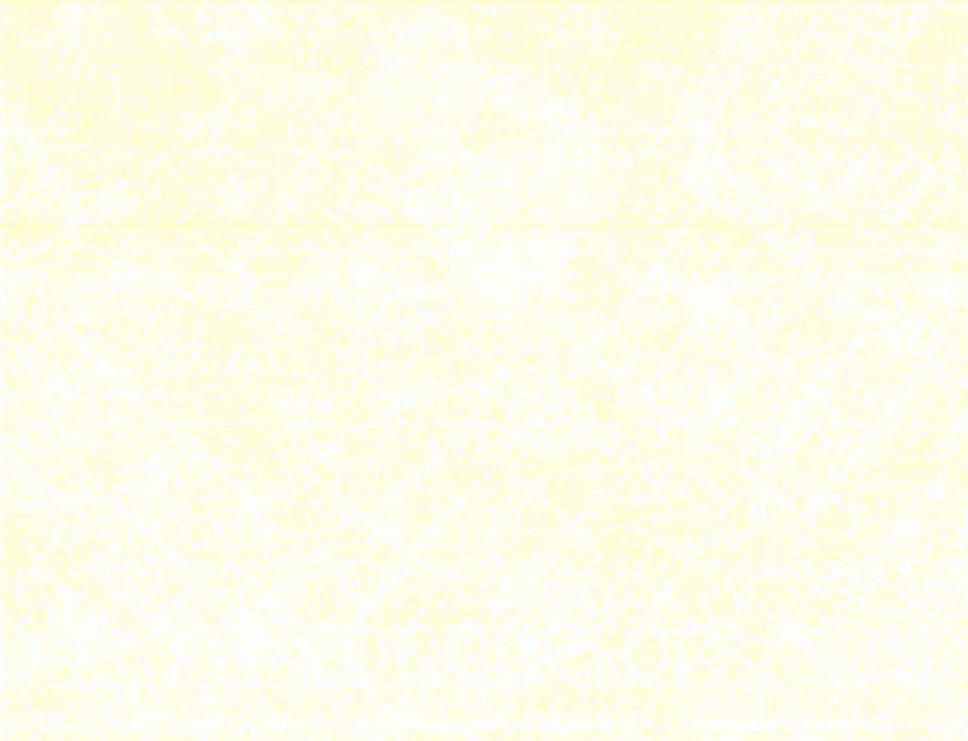
## NORTHGATE SE GIS Print Template



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HP.

# Journal of the American Medical Association





Application ref: 2020/3796/P  
Contact:  
Tel: 020 7974  
Date: 4 December 2020

**Development Management**  
Regeneration and Planning  
London Borough of Camden  
Town Hall  
Judd Street  
London  
WC1H 9JE

Phone: 020 7974 4444

[planning@camden.gov.uk](mailto:planning@camden.gov.uk)  
[www.camden.gov.uk/planning](http://www.camden.gov.uk/planning)

TJR Planning  
Suite 3 The Mansion  
Wall Hall Drive  
Aldenham  
WD25 8BZ

Dear Sir/Madam

**DRAFT**  
**FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION**  
Town and Country Planning Act 1990 (as amended)

**DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT**

Address:  
**73-75 Avenue Road**  
**London**  
**NW8 6JD**

**PROPOSAL**

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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).

Drawing Nos: A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.



Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the London Borough of Camden Local Plan 2017.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans:

A0-010 P1; A1-020 P1; A2-010 P1; A2-110 P2; A3-100 P1; A3-105 P1; A3-110 P1; A3-200 P2; A3-210 P1; A2-005 P1; A3-050 P1; Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020; Method statement for the avoidance of physical damage to roots prepared by Arbortrack; Planning Statement prepared by TJR Planning dated August 2020; Boundary Wall Design Statement prepared by Studio Indigo dated August 2020; Technical Submission Power Technique / PTDGPS220

Reason: For the avoidance of doubt and in the interest of proper planning.

- 4 Noise mitigation

Before the first operation of the generator hereby approved, the generator shall be provided with sound attenuation measures in accordance with the recommendations set out in the Generator Noise Assessment prepared by Cole Jarman dated 17 September 2020 hereby approved. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy A1 and A4 of the London Borough of Camden Local Plan 2017.

- 5 Noise from emergency generators

Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any premises.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

6 Emergency generator operation

The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

7 Emergency generator testing

Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.

Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

8 Tree protection / supervision and monitoring

Prior to the commencement of works on site, tree protection measures shall be installed and working practices adopted in accordance with the arboricultural impact assessment by ArborTrack Systems Ltd entitled "Method statement for the avoidance of physical damage to roots during boundary wall demolition & construction at 73-75 Avenue Road London NW8 6JD" dated 14th July 2020. All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with BS5837:2012 and with the approved protection details. The works shall be undertaken under the supervision and monitoring of the retained project arboriculturalist and with ongoing consultation with the Council's Tree and Landscape Officer.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the Camden Local Plan.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
- 2 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of

proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.

- 3 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at <https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319> or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Supporting Communities Directorate

## Appendix 6

### Copy of photos of the wall/ site of the stopping up order

*Photo 1*

**Photo 1: Showing the temporary hording next to the constructed brick wall**



*Photo 2*

**Photo 2: Showing the wall where the hording and the wall meet**



**Photo 3: Showing the wooden frame of the hording from the top and the incomplete top of the brick wall.**

*Photo 3*

**Photo 4: showing the wooden frame of the hording from the top**



*Photo 4*

**Photo 5: Showing the hording, the wall and one of the trees mentioned in the Planning Officers report**

**Photo 6: Showing the “brick” pattern covering for the hording.**

**Photo 7: Showing the 3metre hording / gap in the wall measured using a wheel.**



*Photo 6*

*Photo 5*



*Photo 7*



## **Appendix 7**

**A copy of the objection from  
Thames Water and Request for Access and  
Amended Draft Order**

**From:** [Devcon Team](#)  
**To:** [Elliott Della](#)  
**Subject:** Your Ref: ES/I&M/ED/1/22/S247 Our Ref: 14706  
**Date:** 29 July 2022 12:07:24  
**Attachments:** [image002.png](#)  
[image001.png](#)

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**[EXTERNAL EMAIL]** Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.



29 July 2022

**STOPPING UP: Queen's Grove: Part of footway at the side of 73-75 Avenue Road NW8 6JD**

Dear Sir / Madam,

Thank you for your recent correspondence with regards to the above location.

Our records show that Thames Water has apparatus in the area you are proposing to carry out your works.

We may be willing to rely on the rights preserved in the Order under Section 261 (4) of the Town and Country Planning Act in respect of apparatus in the land. However, before we can determine this could you please confirm that our apparatus will not be affected by the proposed works, that our rights of access will not be impeded and that there are no proposals to build over or close to our apparatus.

If we are not satisfied with your assurances, you will hear back from us within 10 working days of receipt outlining our reasons. If you do not hear from us, we have no further comments to make.

Yours Sincerely

**Saira Irshad**

Developer Services - Planner  
020 3577 9998  
[devcon.team@thameswater.co.uk](mailto:devcon.team@thameswater.co.uk)

Maple Lodge STW, Denham Way, Rickmansworth, WD3 9SQ  
Find us online at [developers.thameswater.co.uk](http://developers.thameswater.co.uk)



New site? Need network capacity information?  
Developers can make a pre-planning enquiry at  
[thameswater.co.uk/preplanning](http://thameswater.co.uk/preplanning)

Visit us online [www.thameswater.co.uk](http://www.thameswater.co.uk) , follow us on twitter  
[www.twitter.com/thameswater](https://www.twitter.com/thameswater) or find us on [www.facebook.com/thameswater](https://www.facebook.com/thameswater). We're  
happy to help you 24/7.

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DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT  
**LONDON BOROUGH OF CAMDEN  
TOWN AND COUNTRY PLANNING ACT 1990  
SECTION 247  
GREATER LONDON AUTHORITY ACT 1999**

**THE STOPPING UP OF HIGHWAYS  
(LONDON BOROUGH OF CAMDEN) (NUMBER 1) ORDER 2022  
MADE:**

**QUEEN’S GROVE: PART OF FOOTWAY AT THE SIDE OF 73-75 AVENUE ROAD**

The London Borough of Camden makes this order in the exercise of its powers under Section 247 of the Town and Country Planning Act 1990 as amended by Section 270 and Schedule 22 of the Greater London Authority Act 1999 and of all other enabling powers: -

The London Borough of Camden authorises the stopping up of the areas of highway described in the First Schedule to this Order and shown on the attached drawing solely in order to enable the development described in the Second Schedule to this Order, to be carried out in accordance with the planning permission, granted under Part III of the Town & Country Planning Act 1990, by the London Borough of Camden on the 3<sup>rd</sup> March 2021 under reference 2020/3796/P, for the works described in the Second Schedule to this Order.

1. This Order shall come into force on \_\_\_\_\_ and may be cited as the Stopping Up of Highways (London Borough of Camden) (Number 1) Order 2022.
2. **This order will not change the rights of any statutory utilities to access and maintain their plant.**

**THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF CAMDEN was hereunto)  
Affixed by Order:- )**

.....  
**Authorised Signatory**



**DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT**  
**THE FIRST SCHEDULE**

**Areas of highway to be Stopped Up**

- Queen's Grove: An area of 0.5 metres by 57 metres of the footway at the side of 57 Avenue Road as shown diagonally hatched on drawing number 3680/A1-021/P1.

**THE SECOND SCHEDULE**

**The Location**

73-75 Avenue Road NW8 6JD.

**The Development**

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 sub-station to rear garden and bin store to front garden (both adjoining Queen's Grove).