

Committee: Planning and Transportation Committee	Date: 26 January 2020
Subject: Stopping up application – Site bounded by Fenchurch Street, Mark Lane, Dunster Court and Mincing Lane, London, EC3M 3JY	Public
Report of: Director of the Built Environment	For decision

Summary

Officers have received a stopping up order application for areas of Fenchurch Street, Mark Lane, Mincing Lane and Star Alley, relating to the development of the site bound by these streets for which this committee resolved to grant planning permission on 14 May 2020. As part of this resolution, committee agreed in principle to the stopping up of the public highway that would be built upon if the development were implemented. The report advised that the applicant intended to stop up the whole of Star Alley, comprising areas of public highway that would be built upon and others that would not, and officer's advice was that an assessment on this would be for separate determination upon receipt of this stopping up application.

A Stopping Up application which includes the whole of Star Alley, including the area which does not have structures placed on it, has been received (see Appendix 1). Officers are satisfied that in principle the proposed stopping up satisfies the legal tests for making an order and that in the exceptional circumstances of this case the public interest in securing the very significantly enhanced and expanded public realm provided in place of the existing highway, protected by rights of access through covenants within the S106 agreement, justifies the loss of existing public highway. However, this is subject to the statutory notice procedure and consideration of any objections

Recommendation

1. Planning and Transportation Committee is asked to authorise the commencement of the process for stopping up of highway as shown indicatively on the Stopping Up plan at Appendix 1.
2. If, after giving notice of the proposed stopping up, there are no unresolved objections the Director of the Built Environment is authorised to make the Stopping Up Order as per the plans, subject to the additional S106 covenant detailed in paragraph 16 being secured, and noting that the plans may be updated following minor mapping adjustments.
3. If there are unresolved objections the stopping up application will be reported back to your Committee.

Main Report

Background

1. This Committee resolved to grant planning permission for the development of the site bounded by Fenchurch Street, Mark Lane, Dunster Court and Mincing Lane, London, EC3M 3JY on 14 May 2020 (“the Site”).
2. The development proposals comprise demolition of existing buildings on site and the provision of a new 35 storey office building with basements and ground floor retail accommodation and a publicly accessibly roof terrace, double height winter gardens at level 10 and a newly created large area of public realm. The scheme also proposes a separate building for the new Clothworkers’ Hall, which incorporates significant basement area extending under the public realm.
3. The Committee report of May 2020 included the following detail on stopping up and resolved to stop up those areas that would be built upon, as outlined in paragraph 4a of this report;
 - a) A stopping up order would be needed to stop up small areas of Fenchurch Street, Mark Lane, Mincing Lane and Star Alley that would be built upon if the development was implemented. This includes the livery hall lightwell in the southern leg of Star Alley, which would then become, as a result, two short cul-de-sacs. To ameliorate the obvious disbenefits to public movement that this interruption to Star Alley as a pedestrian thoroughfare would create, 24-hour public access is proposed to be secured over the whole of the proposed new public realm through an appropriate planning obligation, which would allow the public to walk at any time around the lightwell to its north (this being the principal desire line from the west to and from London Street and therefore Fenchurch Street Station) and also to the south of the church tower.
 - b) The Court has authorized the Town Clerk to make stopping up orders that are not opposed, and he has delegated this authority to the Director of the Built Environment. Opposed stopping up orders are, however, reported to your Committee to determine.
 - c) The developer has proposed stopping up the whole of Star Alley (not just those parts where the lightwell is located), so that it would be owned, insured and managed within the same regime as the surrounding privately-owned public realm. It is understood that the applicant envisage the acquisition of the part of Star Alley which is owned by the City Corporation and several other small areas to enable delivery of the scheme. Officers are not currently satisfied that the stopping up of the whole of Star Alley would be fully compliant with policy aimed at safeguarding rights of access (Local Plan Policy D.M.16.2), but acknowledge that there are countervailing public benefits which will in due course need to be weighed in the balance. As part of the separate process of stopping up there will need to be an assessment of whether it would meet the statutory test of necessity. However, this matter would be for separate determination in the event of a stopping-up application being received. It is open to your Committee to agree the recommendation

notwithstanding the City's initial reservations regarding a potential stopping-up application in respect of the whole of Star Alley.

4. This report relates to an application for the stopping up of the areas detailed in paragraph 3a and paragraph 3c. The area detailed in paragraph 3c which was the subject of officers' reservations is shown indicatively on the plan marked Appendix 2. The proposed stopping up also includes an area of Dunster Court which would be built upon and two areas adjacent to Mark Lane that would form part of the new area of public realm, which are not adopted public highway but which may be subject to prescriptive rights.
5. The areas that are the subject of the stopping up application are shown indicatively on the plan marked Appendix 1. Please note that these plans are referred to as indicative as they may be subject to minor changes if adjustments to the City's mapping are required following receipt of an updated survey.
6. It is noted that the officer's recommendation to committee on 14 May 2020 included the following;
 - a. That you agree in principle that the land affected by the proposal which is currently public highway and land over which the public have right of access (comprising small areas of Fenchurch Street, Mark Lane, Mincing Lane and Star Alley that would be built upon if the development was implemented) may be stopped up to enable the development to proceed and, upon receipt of the formal application, officers be instructed to proceed with arrangements for advertising and making of a Stopping-up Order for the various areas under the delegation arrangements approved by the Court of Common Council.
7. This point attracted interest from Members during the committee of 14 May 2020 and as such, in consultation with the Chair and Deputy Chairman, it was decided that this application and the officer's recommendation be presented to committee for determination.

Legislation

8. Under section 247 (2A) of the Town and Country Planning Act 1990 (TCPA 1990) the City of London Corporation, may by order authorise the stopping up or diversion of any highway if it is satisfied it is necessary to do so in order to enable development to be carried out.
9. Under section 247 (2B) of the TCPA 1990 in determining an application the authority may consider whether any order should make any such provision as may appear to the authority to be necessary or expedient for the provision of any other highway.
10. The application has been submitted under Section 253 of the TCPA 1990, which enables the authority to publish notice of the draft of a proposed order prior to the grant of planning permission.

11. Section 130(1) of the Highways Act 1980 makes it “the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority”.
12. When assessing applications for the stopping up of public highway, officers must be satisfied that it is both necessary to do so (“the necessity test”) and that the advantages in doing so outweigh any disadvantages (“the merits test”).

Assessment

13. Officers are satisfied that the physical interference in the highway including the extensive works to change levels, insert a basement and lay out the public realm satisfy the legal test of necessity for the stopping up of all the proposed areas shown on plan in appendix 1.
14. Officers recognise that the loss of public highway and its replacement with routes over which the public have rights of access through covenants in a S106 agreement is contrary to Local Plan Policy D.M. 16.2. This is because highway status affords greater public protection of the rights of way, which cannot be removed other than through a statutory procedure requiring public notice.
15. Officers are satisfied that the merits test is satisfied in this instance due to the exceptionally significant public realm provided by the development over which the public would have 24/7 rights of access, the public benefit of which is considered to outweigh the disbenefits of stopping up the remainder of Star Alley. This assessment is subject to the statutory notice procedure and consideration of any objections. The rights of access are to be secured by S.106 covenants, which are to be in place before the issue of planning permission and the making of any stopping up order.
16. In order to provide additional strength to the S.106 covenants it is proposed that the S.106 Agreement includes a further covenant that the freeholder will not dispose of any interest in land in the surface of the public realm area without the City’s prior approval. This is to ensure that responsibility for the public realm is not transferred, for example, to the office leaseholder and to ensure management responsibility is not split between owners, both of which would risk prejudicing its long-term public benefit.
17. In coming to this in principle recommendation officers want to make clear on record that this is not to be considered a precedent for non-compliance with existing Local Plan policy DM 16.2 or new Local Plan policy AT1, particularly as that policy increases in weight approaching and after adoption. The new policy states that ‘the replacement of a route over which pedestrians have rights with one to which the public have access only with permission will not be acceptable’.
18. Officers do not consider public access rights secured through a S106 agreement as equivalent to public access rights afforded by public highway status. The recommendation is based on the provisional conclusion that the stopping up of the public highway and resulting loss of highway status is outweighed by the exceptional circumstances namely the very significantly expanded and enhanced proposed area of public realm.

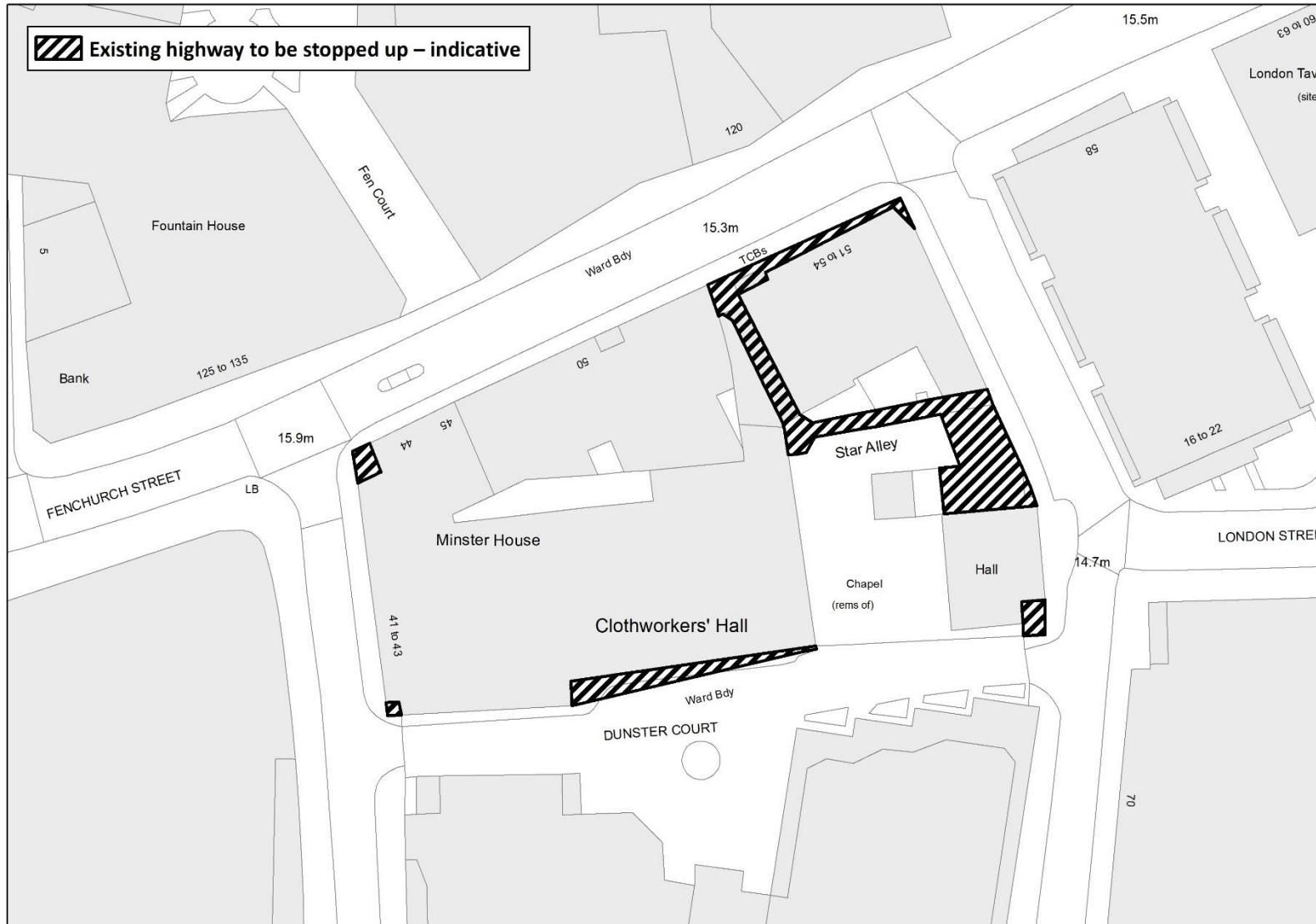
Appendices

Appendix 1: Indicative stopping up plan

Appendix 2: Indicative plan showing areas of Star Alley not built upon proposed to be stopped up

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Appendix 1: Indicative stopping up plan



Appendix 2: Indicative plan showing areas of Star Alley not built upon proposed to be stopped up

