

Committee(s)	Dated:
Planning and Transportation	8 June 2021
Subject: Highway reduction and gain through the planning process	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	11
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Chief Planning and Development Officer	For Information
Report author: Lucy Foreman	

Summary

At Planning and Transportation committee on 5th January 2021 members requested information on the number of stopping up orders and changes to the public highway that have been approved through planning applications. This report sets out information on the number of stopping up orders made each year for the last 5 years – overall there has been a loss of public highway of 421.5sqm. The report also identifies the number of planning applications that have been approved in the last 5 years, which require stopping up or dedication of public highway. Overall, the planning permissions that have been approved in the last 5 years, but which stopping up orders have not yet been made, will result in a gain of 415.4sqm of public highway. This gain in public highway is a reflection of our strengthened policy position in the draft City Plan 2036 Policy AT1 – 5 and thus better negotiations.

Recommendation(s)

Members are asked to note the contents of this report.

Main Report

Background

1. Planning applications occasionally involve changes to the public highway boundary. Members of the Planning and Transportation Committee have requested details of the number of stopping up orders and highway dedications that have occurred in the last 5 years.

Key Data

2. Table 1 shows there have been 14 stopping up orders over the last 5 years, 7 highway dedications and 1 land swap. Overall, this has resulted in the reduction of 951.6sqm of public highway and the dedication of 530.1sqm of public highway (Appendix 1). Therefore, overall there has been a net loss of public highway of 421.5sqm.

Table 1: this shows the number of stopping up orders and the number of highway dedications that have been made in the last 5 years (2016-2020)

	2016	2017	2018	2019	2020
Number of stopping up orders	2	2	3	3	4
Number of highway dedications	1	2	2	1	1
Number of land swap (Section 256)	0	1	0	0	0

3. The overall loss was mainly attributable to four historical schemes with mitigating circumstances. The rationale for each is set out below:
 - a) 30-32 Lombard Street resulted in a 71.6sqm reduction of the highway. The planning permission for this development was granted in 2006 and when the development reached completion it was considered an old scheme, which was aligned with our plans and policies from around 2006. The stopping up was required to bring the building line back to the historical building line to marry with the rest of the conservation area – it was considered a design benefit of the scheme. Prior to the planning permission, it was the only development on Lombard Street that was set back, and therefore at the time the loss of highway was not considered to unacceptably impede pedestrian movement.
 - b) 60 London Wall resulted in a 294.2sqm reduction of the highway which was attributed to the stopping up of the existing colonnade. The colonnade was deemed to be of poor quality due to lighting and a poor route experience. Therefore, it was proposed for the colonnade to be removed and façade brought forward to create a more prominent and active frontage, which was considered a benefit of the scheme. The S278 agreement also involved the stopping up of the colonnade, and repaving of footways, realignment of cycle parking stands, in keeping with the City Public Realm Technical Manual.
 - c) Goldman Sachs, Fleet Building, 40 Shoe Ln and 70 Farringdon St resulted in a 155.6sqm reduction of the highway. The loss off highway was offset by enhancements to the highway surrounding the development which was secured in the S106 agreement. The works included, reconfiguration of the public realm, supplementary tree planting, pedestrian priority measures and footway widening.
 - d) Bloomberg, 3 Queen Victoria Street resulted in a 112.0sqm reduction of the highway which was offset by the new public routes and squares around the development (over 1,000sqm), which are secured by legal agreement.
4. It should be noted that due to minor design amendments there have been 3 stopping up orders associated with 22 Bishopsgate, so there have been stopping up orders associated with 12 developments between 2016-2020 inclusive, which is on average 3 stopping up orders made per year.
5. Applications for stopping up orders can be made at various stages of a scheme, from an early stage after the resolution to grant planning permission, to a much later stage once implementation is reasonably well advanced¹. In addition, the City's template stopping up orders provisions specify that they do not come into force until after the planning permission to which it relates has been implemented. This means that stopping up orders can be made and can then come into force during a wide time-line relative to the consideration of a planning application by your Committee (and some stopping up orders never come into force at all if there

¹ However, stopping up orders may not be made retrospectively after all the permitted development on the line of the highway has been completed: *Ashby v SoSE* [1980] 1 WLR 673

is no implementation of the planning permission). As a result, the stopping up data in Table 1 is from planning applications that were approved from as far back as 2010.

6. In the last 5 years, we have been more focused on enhancing public highway, providing new highway and protecting the highway and public realm. Table 2 shows the number of changes to public highway, which have been approved in principle in planning permissions since 2016.

Table 2: this shows the number of planning permissions that have been granted that will include highway reduction

	2016	2017	2018	2019	2020
Number of applications granted in each year where stopping up is required	1	4	3	2	0
Number or applications granted in each year where new highway dedication was agreed	1	2	1	2	0

7. Table 2 shows we have approved 10 planning applications in the last 5 years where stopping up is required to facilitate the development. 6 of these stopping up orders also include dedication of public highway.
8. Most of the stopping up orders referred to in Table 2 have already been made. However, there are 3 stopping up orders still to be made, which have been approved in principle through planning applications between 2016 and 2020. These 3 stopping up orders will result in a net increase of public highway of 415.4sqm (see Table 3 and Appendix 2).

Table 3: this shows the approximate area of highway reduction or increase where orders are still to be made, that were approved through planning applications 2016-2020

	Total areas associated with applications in Table 2
Area of stopping up required	659.4sqm
Area of new highway dedication	1074.9sqm
Total proposed public highway	+415.4sqm

9. Notwithstanding the above there are a number of applications that have resolutions to grant planning permission, but have not yet issued. These include (but are not limited to) 50 Fenchurch, 2-3 Finsbury Avenue, 55 Gracechurch Street, 70 Gracechurch Street and Salisbury Square. All of the schemes include gains in public space and routes through the site and whilst these spaces and routes will not become highway they are considered to improve the permeability, relieve congestion on footways, create enhanced open spaces, contribute to urban greening and create pleasant spaces for the public to use and dwell.
10. In the last few years we have been more focused on securing good quality public highway and public realm, and this shows in the applications that have been approved or for which there has been a resolution to grant permission. It is noted however, that there have been schemes approved that have proposed a loss of public highway; these cases are exceptional and the merits of the schemes are clearly set out in the committee reports. Table 4 shows examples of new public space secured as part of redevelopment planning applications.

Table 4: this shows a number of case studies for notable major redevelopment schemes considered by committee from 1st June 2020 to 1st June 2021, which include changes in public realm we have negotiated through the planning process

Site address	Increase in public realm (sqm)
2-3 Finsbury Avenue	163
50 Fenchurch Street	1,435
55 Gracechurch Street	470
70 Gracechurch Street	1,175
Salisbury Square	84
Total increase in public realm	+3,327

Corporate & Strategic Implications

Strategic implications

11. The Corporate Plan requires everything we do to meet three aims, to contribute to a flourishing society, to support a thriving economy and to shape outstanding environments. Where stopping up is supported it is because the harm is offset by an equal or greater public benefit. It is these public benefits, that we negotiate through the planning process that meet the corporate plan aim to shape outstanding environments.
12. The Local Plan 2015 requires developers to show the impact of their development. For example Policy DM16.1: Transport Impacts of Development, requires a transport assessment for new development which addresses the impacts of development on the highway and requires mitigation of any impacts. Policy DM16.2 Pedestrian Movement, seeks to maintain pedestrian routes, including upper level routes and the Barbican and London Wall, and resists the loss of pedestrian routes, setting out criteria to control the loss of routes.
13. The Local Plan 2015 has a number of policies to enhance the quality and quantity of public space. The vision is for the number of open spaces to be increased by encouraging owners of private amenity space to make it available for public access, the use of highways no longer needed for traffic and the provision of green roofs and roof gardens. For example 'Core Strategic Policy CS7: Eastern Cluster' aims to enhance streets, spaces, and the public realm for pedestrians, and provide new open and public spaces. 'Policy DM19.1 Additional open space' requires major commercial and residential developments to provide new and enhanced open space².
14. The draft City Plan 2036 strengthens our stance on public space. Policy VT1: Impacts of Development on Transport, specifically requires the mitigation of any adverse impacts of development on the highway network through site/building design and management of operational activities. Policy AT1: Pedestrian Movement, resists the loss of pedestrian routes at ground at high level routes in the Barbican and London Wall. Where loss is proposed, there is a requirement for an alternative route of at least equivalent standard to be provided. More broadly, Policy AT1 – 5 states “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.” This specifically relates to protecting public highway and we have strengthened our policy position compared to the adopted City Plan.

² Local Plan 2015 (<https://www.cityoflondon.gov.uk/assets/Services-Environment/planning-local-plan-adopted-2015.pdf>)

15. In the draft City Plan 2036 there are various policies to protect and encourage new public space. For example 'Policy OS1: Protection and provision of open spaces', aims to create further public space from underused highways and other land, requires public access to be secured in existing and proposed private spaces, and new pedestrian routes in major commercial and residential developments wherever practical. 'Policy S10: Active Travel and Healthy Streets' states Healthy Streets Plans will help to enhance the public realm and create new public space. 'Policy S12: Tall Buildings' requires new development to incorporate areas of publicly accessible open space at no charge.
16. The City of London Transport Strategy aims to shape outstanding environments by reducing motor traffic levels to enable space to be reallocated to walking, cycling, greenery and public spaces. The strategy recognises that 'attractive and safe public spaces, with seating and things to see and do, are a vital ingredient of a modern city' and states we should 'improve the experience of using the City's streets and open spaces and support efforts to increase the amount of public space'³.
17. Transport for London (TfL) have 'adopted the Healthy Streets Approach to improve air quality, reduce congestion and help make London's diverse communities greener, healthier and more attractive places to live, work, play and do business'⁴. For planning applications which TfL are consulted on, the Healthy Streets Approach has been incorporated into planning and developers must submit a Healthy Streets Transport Assessment as part of the planning application. Part of this assessment should include the how the planning application will make improvements against the ten Healthy Streets indicators. Providing new or enhanced public space will provide improvements for a number of the ten Healthy Streets indicators, including 'Places to stop and rest' and 'Shade and shelter'.

Legal implications

18. Under Section 130 (Protection of Public Rights) of the Highways Act 1980, the City of London has a duty to 'protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority'⁵. There are occasions where stopping up of the highway has been on balance acceptable to the City, and the justification of stopping up is usually offset by dedication of public highway, or public access secured to other land via legal agreement.
19. A Stopping Up Order may be made under Section 247 Town and Country Planning Act 1990 where the City is satisfied that it is necessary in order to enable development to be carried out in accordance with a planning permission which has been granted. In considering whether to make a stopping up order under section 247 pursuant to an application both the "necessity" test (ie is it necessary to enable the permitted development to be carried out) and the "merits" test must be satisfied. The merits test involves consideration of the overall public interest in the removal of highway status and interference with rights of access, but does not allow for the merits of the decision to grant planning permission to be re-opened⁶.

³ City of London Transport Strategy (<https://www.cityoflondon.gov.uk/assets/Services-Environment/city-of-london-transport-strategy.pdf>)

⁴ Transport for London (<https://tfl.gov.uk/corporate/about-tfl/how-we-work/planning-for-the-future/healthy-streets>)

⁵ Highways Act 1980, source: <https://www.legislation.gov.uk/ukpga/1980/66/section/130>

⁶ Vasilou v SoS for Transport [1991] 2 All E R 77

20. Stopping Up orders may also be made by order of the Magistrate's Court under S.116 Highways Act 1980 where the highway is not necessary. This occurs only very rarely in the City (once each 5-10 years on average).

Equalities implications

21. During the planning application stage, we have inhouse accessibility experts who comment on planning applications to ensure they are accessible to all. We also have the COLAG group to which major planning applications are presented to, to ensure they are accessible to all. In exercising its functions the City is subject to the public sector equality duty under S.149 Equality Act 2010

Climate implications

22. As the Climate Strategy states, 'the City Corporation has long used our planning role to implement a range of resilience measures in the Square Mile. These include green roofs, urban greening, landscaping, flood resilience and climate resilient new buildings'⁷. We will continue to embed the aims of the Climate Action Strategy into the planning process and where relevant into new public realm, which can be done through enhancing greening and biodiversity, and using heat resistant materials to adapt to higher temperatures.

Security implications

23. Where new public realm or public open space is created through developments, the City of London Police (CoLP) and the Counter Terrorism Security Advisers (CTSA) are consulted to ensure crime can be designed out as much as possible in the development design process.

Conclusion

24. This report has provided the number of stopping up orders over the last 5 years requested by committee on 5th January 2021. The report has also set out the number of applications approved in the last 5 years that will affect public highway. The City is committed to providing greater and improved public realm and this is shown by the public realm negotiations that have lead to high quality public realm being secured in the last 5 years. The losses in previous years have changed to a gain in the most recent years, and the net gain in public highway that has occurred over the last few years will continue.

25. Stopping up, highway reduction and gain, is one part of a more complex story of public realm improvements in the City. If members require more information then a further paper can be prepared on public realm secured as part of the planning process.

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⁷ City of London Climate Action Strategy (<https://www.cityoflondon.gov.uk/assets/Services-Environment/climate-action-strategy-2020-2027-20-10-20.pdf>)

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Appendix 1: Stopping up completed 2016-2020

Appendix 2: Proposed highway changes in planning applications approved 2016-2020
(SUO to be made)

Appendix 3: Total proposed highway changes in planning applications approved 2016-
2020