

Committee: Planning and Transportation Committee	Date: 14 December 2021
Subject: Stopping up application – Site bounded by Fenchurch Street, Mark Lane, Dunster Court and Mincing Lane, London, EC3M 3JY	Public
Report of: Executive Director Environment	For decision

Summary

An application for stopping up of public highway has been received 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. A copy of the draft order together with its associated plan is included in Appendix 1.

A report detailing the stopping up application was brought to this committee on 26 January 2021. This committee authorised officers to commence the process for the stopping up of the highway. Notice of the proposal to make an order was advertised and served as required by the Town and Country Planning Act 1990 (“the Act”). The statutory consultation period for this application has expired and two objections from members of the public remain outstanding.

Officers do not have delegated authority to make stopping up orders where there are unresolved objections and the 26 January 2021 report included a recommendation to report back any unresolved objections to the proposed stopping up order.

Under Section 247 of the Act, the City of London Corporation may authorise the stopping up of a highway if satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission granted under Part III. Where the City is minded to make an order authorising the stopping up but there is an outstanding objection from a person that appears to be affected by the order, the City must notify the Mayor for London and arrange for a local inquiry to be held unless the Mayor decides that a local inquiry can be dispensed with.

The London Local Authority (Charges for Stopping Up Orders) Regulations 2000 permits the City to impose a charge on the applicant for an order to stop-up highway, having regard to the City’s expenses in considering the application for the order and the steps to make the order, including any costs incurred in holding a local inquiry into the making of the order.

Recommendation

It is recommended this committee;

1. agrees that it is minded to make the order;
2. acknowledges the objections and accepts that the objectors appear to be affected by the order
3. authorises the Comptroller and City Solicitor to notify the Mayor of London of the objections;
4. authorises the Comptroller and City Solicitor to arrange for a local inquiry to be held, unless the Mayor of London decides that, in the special circumstances of the case, the holding of such an inquiry is unnecessary or the objection is withdrawn;
5. instructs the Executive Director Environment to report to this Committee on the report of the person holding the local inquiry should such an inquiry take place; and
6. instructs the Comptroller and City Solicitor to make the order should the Mayor of London decide that a local inquiry be dispensed with or the objections are withdrawn

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 accessible 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 proposed stopping up 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 the stopping up application and officer's recommendation be presented to committee for determination.
4. Officer's recommendation to authorise the commencement of the process for stopping up of the highway shown indicatively on the plan in Appendix 1 was approved at the committee of 26 January 2021.

5. Notice of the proposal to make an order was advertised and served in accordance with S252 of the Act. The consultation period ran from 20 April 2021 to 18 May 2021.

Objections

6. Two objections have been received by members of the public. The objections have been summarised in the table below and are provided in full in appendix 1. Some of the points raised in the objections relating to planning considerations which are not relevant to this application. The grounds for objection relevant to this application can be categorised into 5 points;

	Grounds for objection
Objection 1	<ol style="list-style-type: none">1. Loss of right of way/ erosion of public access rights2. Loss of historic route3. Expressed concern at the timing of publication of the draft order when footfall in the City was low.
Objection 2	<ol style="list-style-type: none">1. Loss of right of way/ erosion of public access rights2. Loss of historic route4. Questioning the necessity of the stopping up5. Developer imposing terms on use of the space following the stopping up

Applicant's Response

7. The applicant was invited to respond to the objections. Their response is provided in full in appendix 2.

Assessment

8. 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"). The 5 points of objection are assessed in turn.

Loss of right of way/ erosion of public access right

9. 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.
10. Officers do not consider public access rights secured through a S106 agreement as equivalent to public access rights afforded by public highway status. Officers accept that the objectors access rights would be reduced as a result of the proposals in common with all other highway users, but that sufficient access rights, 24/7 access over a widened route between Mark Lane and Fenchurch Street, have been secured through the S106 agreement such that officers are satisfied that the benefit of the enhanced routes and exceptional public realm would outweigh the disbenefit of the loss of the public right of way. Plans showing the existing and proposed public realm are provided in appendix 4.

Loss of historic route

11. Star Alley's position has changed over time and its existing line will be denoted in the paving of the new public square. Officers consider the benefit of the enhanced route and exceptional public realm would outweigh the disbenefit of the loss of Star Alley in its current form.

Expressed concern at the timing of publication of the draft order when footfall in the City was low

12. The draft order was advertised between 20 April 2021 and 18 May 2021 in accordance with S252 (1), (2) and (3) of the Act. This included site notices and publication in the Evening Standard and London Gazette.
13. It is acknowledged that when the notice was published footfall had not returned to more normal levels albeit lockdown had ceased and return to workplaces in the City had commenced. This may have affected the number of passers-by who would have seen the site notice or collected an Evening Standard. However, access to the London Gazette is unlikely to have been affected and the notice was displayed on the London Gazette website and a digital version of the Evening Standard is available in full online. Although emergency legislation modified the statutory notice requirements in respect of certain procedures, the notice arrangements for stopping up orders remained unchanged. The MHCLG Newsletter of March 2020 from the Chief Planner advocated that decision-making be given priority to ensure the planning system continued to function so that economic activity could continue. Although this did not specifically relate to stopping up orders, it nevertheless clarified that activity should not be suspended pending return to normal conditions. Any risk in reduced visibility of notices was addressed as best as possible by electronic publication by the Evening Standard and on the London Gazette website.
14. There is also an objection to the removal of a right of way across Dunster Court. A small area of Dunster Court would be built upon as a result of the proposals

which requires stopping up, otherwise access rights to Dunster Court would be unaffected, with the existing route between Mark Lane and Mincing Lane remaining as existing.

Questioning the necessity of the stopping up

15. 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.

Developer imposing terms on the use of the space following the stopping up

16. The S106 details how access to the space will be managed. The developer is obliged to keep the space unobstructed and open to the public for access free of charge on foot for recreational purposes at all times from the date of completion.

Financial Implications

17. The London Local Authority (Charges for Stopping Up Orders) Regulations 2000 permits the City to impose a charge on the applicant for an order to stop-up highway, having regard to the City's expenses in considering the application for the order and the steps to make the order, including any costs incurred in holding a local inquiry into the making of the order.
18. Accordingly, any costs arising from the application, including any costs to the City arising from a potential local inquiry, will be recovered from the applicant.

Legal Implications

19. Comptroller and City Solicitor has been consulted in the preparation of this report.
20. Section 247 of the Act authorises the City to make an order authorising the stopping up of areas of highway necessary to implement a planning permission. Section 252 of the Act sets out the procedures to follow in making an order.
21. The City has followed the procedure to the stage where the consultation process is complete but two objections are outstanding. To proceed, Committee must consider whether they are minded to make the order and whether the objector would be affected by the order. If the answer to both is yes and the objection is not withdrawn, then the application must be referred to the Mayor for London for him to consider whether, in the special circumstances of the case, a local inquiry can be dispensed with. If there are special circumstances, the City can proceed to make the order. Otherwise, the City will need to appoint an inspector and arrange for a local inquiry to be held.
22. Following an inquiry, the City would have to consider the report of the person holding the inquiry and, if minded to make the order, obtain the consent of the Mayor to the making of the order.

Conclusion

23. An application has been received to stop up highway around the site bounded by Fenchurch Street, Mark Lane, Dunster Court and Mincing Lane, London, EC3M 3JY to enable the approved redevelopment of this site to take place. The statutory consultation required on the draft stopping up order has been completed and two objections remain outstanding.
24. To progress the stopping up order Committee needs to consider whether it is minded to make the order in the light of the objections and whether the objector is affected by the stopping up order.
25. Should Committee decide not to make the order there is no further action to take and the proposed development would not be able to proceed in its current form.
26. Otherwise, it is recommended that Committee:
 1. agrees that it is minded to make the order;
 2. acknowledges the objections and accepts that the objectors appear to be affected by the order
 3. authorises the Executive Director Environment to notify the Mayor of London of the objections;
 4. authorises the Executive Director Environment to arrange for a local inquiry to be held, unless the Mayor of London decides that, in the special circumstances of the case, the holding of such an inquiry is unnecessary or the objection is withdrawn;
 5. instructs the Executive Director Environment to report to this Committee on the report of the person holding the local inquiry should such an inquiry take place; and
 6. instructs the Executive Director Environment to make the order should the Mayor of London decide that a local inquiry be dispensed with or the objection is withdrawn

Appendices

Appendix 1 – Objections

Appendix 2 – Applicant's response to objectors

Appendix 3 – Stopping up plan

Appendix 4 – Existing and proposed public realm

Background Papers

Planning Application Determination – Site Bounded By Fenchurch Street, Mark Lane, Dunster Court And Mincing Lane. London EC3M 3JY –14 May 2020

Stopping up application – Site bounded by Fenchurch Street, Mark Lane, Dunster Court and Mincing Lane, London, EC3M 3JY – 26 January 2021

Kieran Mackay
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Appendix 1 - Objections

Objection 1:

This week I was very concerned to read an application to remove a right of way through Star Alley. I use this alley as a short cut and avoid walking along the busy road of Fenchurch Street to visit my dentist in St Marks Lane. Also, I consider the right to walk in Star Alley an important feature of the City of London which go to make up its historic character. Losing these quirky paths would be a serious loss to present day users and future generations and further erode the public rights of access to different parts of the city.

Also, I strongly object to the dismantling and relocation of the grade II listed Lambe's Chapel Crypt which is linked to the grade I listed Tower of All Hallows Staining as wholly inappropriate. A development plan should work around these buildings and not alter them.

Finally, I am disappointed that this notice has appeared at a time when much fewer people will have the opportunity of reading it due to Covid restrictions reducing their ability to be out and walking around the area. Now that the public are much more aware of the importance of open space to their wellbeing and needing more quiet rights of way, it would be a great loss to allow this planning application to go ahead.

When prompted to confirm whether they would like to formally object to the stopping up:

I can confirm that I wish to make an objection to the stopping order. In particular, I object to the right of way being taken from Star Alley. Also I object to the right of way being taken from Dunster Court. I use these paths and so did many more people before the Covid restrictions. I think a lot of people would be surprised to lose these rights of way so easily, when they return to this part of the city after the restrictions are lifted.

Objection 2:

All looks good to me, however, given the great new public realm which is to be created and which appears from the presentation to include what was the former Star Alley, I would question (and object) to the formal stopping up of Star Alley.

Why for example can the route of Star Alley not be maintained and marked for example with studs (as is the case of the public right of way which runs in front of the AIG building at Tower Hill)?

I don't see why the Corporation cannot insist on the reinstatement of Star Alley post-development / construction given that aspects of its own assessment seems to recognise a Section 106 agreement is not as good as maintaining the public highway and that there is no long-term guarantee that Section 106 agreements will be honoured in the future especially after a change of owner.

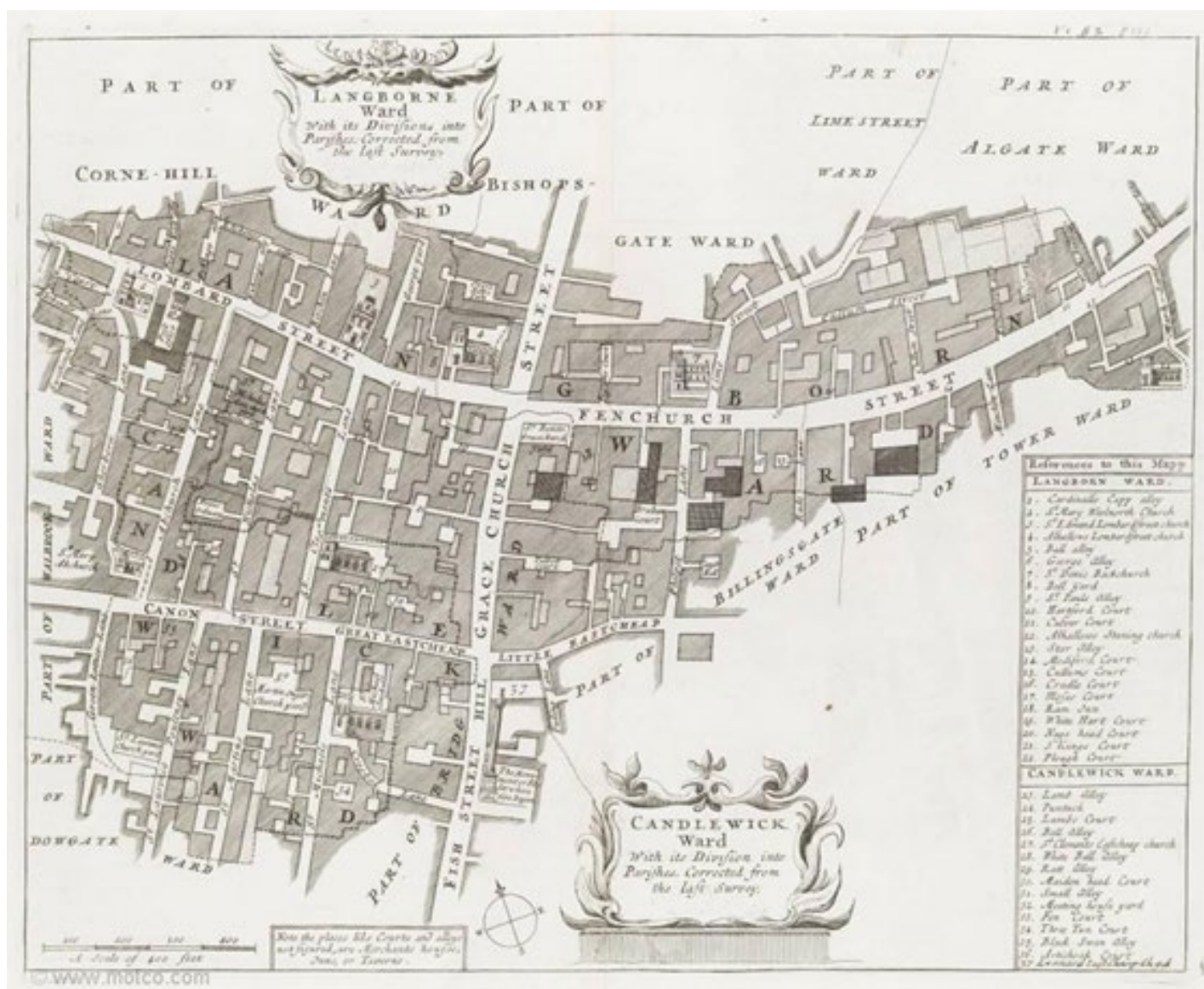
The City's ancient history is preserved in these ancient alleys and passageways. We need to keep these as far as possible. I cannot see why the public right of way cannot be maintained and doing so would not involve the loss of any developed space given that Star Alley appears to be entirely within the new public realm.

We often see in these so-called new public realms, attempts by the developers / owners to impinge upon harmless activities such as photography or children playing. This is a frequent issue on the right of way in front of the AIG building at Tower Hill which I referred to earlier. Anyone noted to be taking photographs on the studded right of way will be approached and told they can't by security guards. This is an attempted infringement of people's rights on the public highway. In the case where Star Alley would be extinguished, then owners / developers could impose such terms and someone would have no right to insist on carrying out activities that they are permitted to do so on the public highway. The potential for such pettiness by the "owners" of land in the City should not be extended by removing public highways. I use Star Alley as it is a pleasant, if short diversion around that particular corner. We should ensure future generations continue to have unfettered access. Agreement is not going to see the attempt to impose restrictions on people's activities and rights which they currently enjoy on the public highway.

We can see Star Alley - No 13 on this map (provided on the next page) made by John Strype in 1720. Let's not lose Star Alley as a public highway. I object to this aspect of the Stopping Up proposal.

I note also from the proposed outline of the new development for which planning permission has been obtained, that it will have a significant impact on sunlight reaching the wonderful roof garden at Fen Court, at 120 Fenchurch Street. I see that such spaces are not, according to the Corporation, supposed to constrain future development, but it seems bad overall planning not to have anticipated such issues and taken some steps to protect that garden. Hopefully the new roof garden at this proposed development will compensate for the losses at Fen Court garden,

I therefore formally object to the Stopping Up of Star Alley.





THE CLOTHWORKERS' COMPANY

Clothworkers' Hall
Dunster Court
Mincing Lane
London EC3R 7AH

2nd November 2021

Mr Kieran Mackay
City of London Corporation
Guildhall, PO Box 270
London EC2P 2EJ

Dear Mr Mackay

**Response to outstanding objections (two members of the public)
Application to stop up Star Alley to enable planning permission ref. 19/01307/FULEIA**

As the committee date for the Company's stopping up application approaches, I wanted to drop you a line with the Clothworkers' response to the two outstanding objections.

Both are from members of the public and were made in April and May 2021, several months before the Section 106 Agreement was signed and planning permission issued.

The first can be dealt with briefly. It objects to rights of way being taken from Star Alley on the ground that the objector has day to day use of the Alley. The erroneous implication is that current users, such as the objector, will not be able to use the Alley after its closure. This is clearly wrong.

The Section 106 Agreement, which has now been signed, guarantees that the current, narrow Alley will be widened and remodelled as an integrated part of the approved new public square and that members of the public will be guaranteed 24/7 rights of access over it and a much larger, new pedestrian route and square linking Fenchurch Street with Mark Lane.

The second objection extracts parts of the May 2020 committee report but ignores the conclusion reached in the report that countervailing public benefits would in due course need to be weighed in the balance through the separate process of determining a stopping-up application (paragraph 250).

That determination has now taken place and Officers are satisfied that the exceptionally significant expanded and enhanced public realm delivered through this development is a public benefit outweighing any disbenefits which may exist from closure of the Alley.

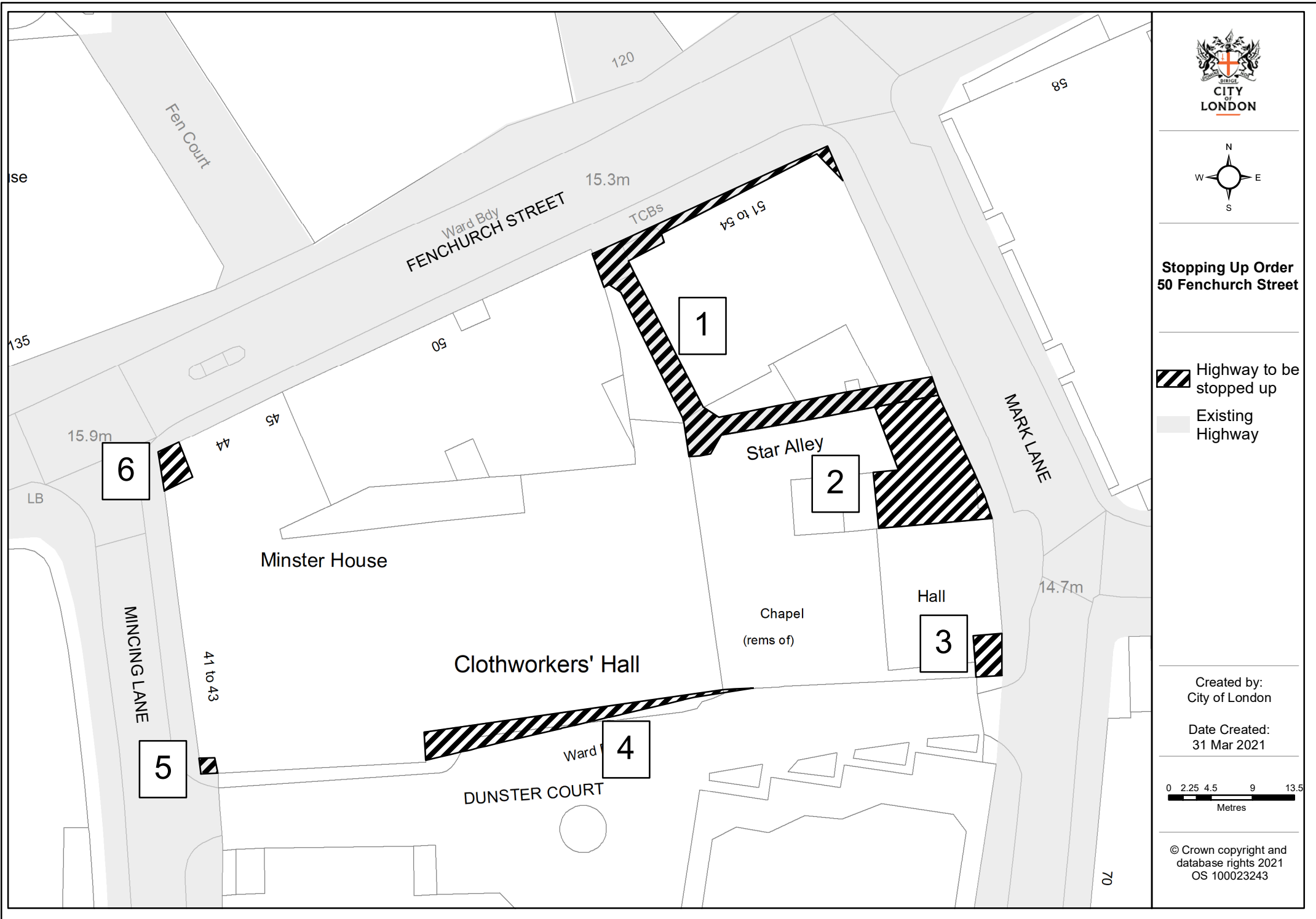
The second objection also refers to sunlight impacts at 120 Fenchurch Street, suggesting that the decision to permit the development amounts to "bad planning" on the part of the City Corporation. It speculates that users of the new public square may be prevented from taking photographs or from allowing children to play in the square. These objections are baseless and should be disregarded.

Sunlight impacts have already been assessed through the planning application process and the objector's speculative remarks are without foundation and in any event addressed in the Section 106 obligations which require the new square to be kept open to the public free of charge at all times for recreational purposes.

Yours sincerely



Jocelyn Stuart-Grumbar
Clerk to The Clothworkers' Company

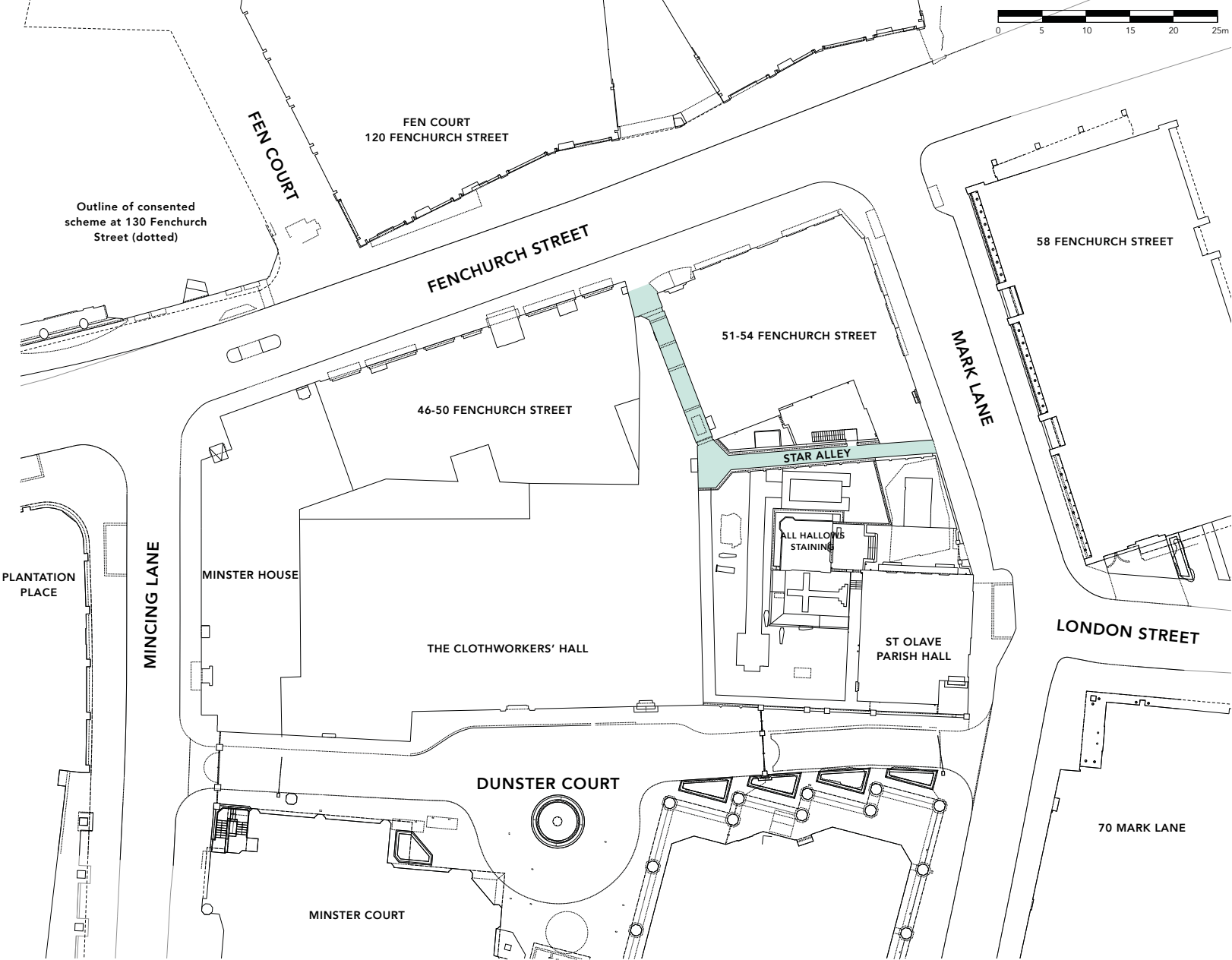


Public Realm Existing Ground

Existing Ground Level
Public Realm: 95 sq m



 Publicly Accessible



Public Realm Proposed Ground

Proposed Ground Level

Public Realm: 1,530 sq m
Public Lobby: 55 sq m

Level 10

Roof Garden: 1,294 sq m
Wintergarden: 353 sq m
Public Lobby: 52 sq m

Basement 1

Lambe's Crypt & Information Centre: 118 sq m
Total: 3,492 sq m



 Publicly Accessible

