

Item No:	Classification: OPEN	Date: 05.05.2004	Meeting Name: PLANNING COMMITTEE
Report Title:		PROPOSED HIGHWAY CLOSURE	
Proposal: Highway closure under section 247 of the Town & Planning Act 1990 (referral to the Mayor of London and promotion of the Council's Opposed Draft Order to the Planning Inspectorate/Public Inquiry for decision)		Address: Bermondsey Square, London SE1	
Ward(s) or Group affected:		Ward: Chaucer	
From:		Manager, Transport Group & Interim Development & Building Control Manager	

1. PURPOSE

- 1.1 To permanently close sections of the public highway at Bermondsey Square, Bermondsey, London, SE1 as considered necessary for implementation of a planning permission granted by Southwark Council for the re-development of Bermondsey Square.

2. RECOMMENDATIONS

- 2.1 That the Director of Regeneration be authorised to apply for a Made Order for the permanent closure of sections of public highway at Bermondsey Square (under the powers contained with Section 247 of the Town and Country Planning Act, 1990) by referring the Council's proposal, and objections to the proposal, to the Mayor of London and the Planning Inspectorate/Public Inquiry for decision.

3. BACKGROUND

- 3.1 Planning permission was granted to Urban Catalysts on 9th January 2004 (ref. LBS Reg. No. 01-AP-1710) for redevelopment of land (including public highway) at Bermondsey Square. The permission is for redevelopment of the New Caledonian Antiques Market and associated land and highway to provide four new (mixed use) buildings, three of which are to be positioned around a public square which is to accommodate the Friday New Caledonian antiques market.

- 3.2 The planning permission is for a scheme that would include six private parking spaces and two car club parking spaces on land that is currently public highway. Currently there are seven CPZ parking bays on this public highway at Bermondsey Square. Following redevelopment, eligibility for CPZ permit holders to park here would be extinguished.
- 3.3 To implement the whole scheme of development, following the grant of planning permission, an application was received from the developer to close areas of public highway maintained by the Council as Highways Authority at Bermondsey Square. This application was processed by officers of the local planning authority and legal services department.
- 3.4 A draft Order for closure of the public highway at Bermondsey Square was consulted upon from 23rd January for a period of 28 days (due to clerical error re-advertised on 26th January for 28 days). Consultation finished on 23rd February. During this period five objections were received. Two objections were resolved during that period or by March 10th.
- 3.5 On March 10th letters were written to the developer and to the three remaining objectors asking them to advise the Council whether they expected to resolve the outstanding objections by 26th March. Replies were received back between 17th March and 29th March confirming an intention to continue to negotiate. As of 6th April the three objections have not been resolved and the Council must now consider what steps to take.
- 3.6 The three outstanding objections are as follows:
- i. TRANSCO – arrangements for alignment and access to services;
 - ii. a resident of Bermondsey Square (Mr Charles Beck, 5 Bermondsey Square) – arrangements for parking of their private motor vehicle;
 - ii. a resident of Bermondsey Square (Miss C.P. Hogan, 4 Bermondsey Square) - arrangements for parking of their private motor vehicle.
- 3.7 The status of the objections is as follows:

TRANSCO Objection

On 29th March the developer (Urban Catalysts) informed officers acting for the local planning authority that they were *“in contact with TRANSCO with a view to undertaking to meet all reasonable costs associated with relocating their pipes. The withdrawal of their objection is expected shortly”*.

Residents' Objections

On 29th March the developer (Urban Catalysts) informed officers acting for the local planning authority that they were *“in discussion with the Council's legal advisers with regard to this issue [arrangements for residents' parking] and currently await confirmation from them as to the final form of the letter to be written to the residents addressing their concerns around car parking spaces”*. The reference to the developer awaiting the Council's legal advisers confirmation

of the final form of letter they propose to approach the objectors with, is not a reference to the Council's legal advisers in relation the local planning authority's proposed 247 Order. Another legal firm has been appointed to advise the Council in relation to its property considerations and the local planning authority's proposed Compulsory Purchase Order at Bermondsey Square.

4. FACTORS FOR CONSIDERATION

- 4.1 Consultation on applications for s247 Orders normally involve the charging of an application fee of £4,500 to the developer and receipt of all necessary application details from the developer.
- 4.2 A delegated report of the local planning authority then considers whether to authorise consultation on a Draft Order on the basis that Committee approval will be sought to proceed further by referral to the Mayor of London and/or Planning Inspectorate for a public Inquiry if objections to the Order cannot be resolved.
- 4.3 If agreed, the Draft Order is issued for consultation and officers acting for the local planning authority and the developer then endeavour to resolve any objections.
- 4.4 Once these have been resolved a report is prepared for delegated decision of the Council as local planning authority, recommending the making of the "Made Order" on the basis that the developer's s247 application has been found to be satisfactory to the highway authority and local transport authority and to statutory undertakers, gas transporters and local consultees.
- 4.5 In this case, permission to proceed with a Draft Order was granted by delegated authority, subject to planning permission being granted, on 11th February 2003. The process was formally invoked once planning permission was granted on 9th January 2004.
- 4.6 As a result of consultation received on the Draft Order as proposed in the developers' application for road closure at Bermondsey Square under s247 TCPA (1990), this can be considered to have resulted in an Opposed Draft Order.
- 4.7 Therefore the local planning authority, as explained in para 4.2 (above), must now consider whether to further propose and promote the Order at this time.
- 4.8 If the local planning authority resolves to promote the Order further, as recommended in this report, it will be referred to the Mayor of London and to the Planning Inspectorate who will hold a Public Inquiry.
- 4.9 Determination will then follow as to whether the draft s247 road closure Order (which is currently opposed) should become a 'made' Order, and whether it should be made in the form currently proposed. This process is likely to take several months. Negotiations could be continued alongside the statutory Order-making procedure, and if successful the Planning Inspectorate may decide that a Public Inquiry is no longer required. Referral to the Mayor of London and the

Planning Inspectorate is required by law but should also prevent negotiations from continuing ad infinitum. In accordance with the Scheme of Delegation Committee approval is sought to make the referral to the Mayor of London and the Planning Inspectorate.

- 4.10 In view of the importance attached by the Council to the scheme of regeneration at Bermondsey Square, including its importance to the local planning authority, Committee approval is sought to promote the Order.
- 4.11 Information received since the original delegated decision to proceed with highway closure, informs the Council that such a closure does not meet the aspirations or needs of two local residents and TRANSCO. Although the scheme does not meet their concerns, it is considered that the Council is justified in continued promotion of the Order. This is considered to be appropriate because (i) there remains a prospect that their concerns can be addressed through continued negotiation and the public inquiry process, and also (ii) because the objections of the two local residents (that are about the loss of conveniently located parking) are not in themselves considered to be of sufficient weight to justify the Council no longer promoting the Order.

5. CONSULTATION

- 5.1 Statutory consultation procedures have been carried out (26th January to 23rd February 2004) with statutory undertakers, gas transporters, local people and the Council as Highways Authority and Local Transport Authority.

- 5.2 This consultation period has been completed but three formal objections remain and an advisory comment from the Council as Highways Authority and Local Transport Authority.

TRANSCO Objection

- 5.3 TRANSCO maintains infrastructure below the public highway for the supply of gas to both residents and local businesses. As a gas transporter they currently have access for repair and maintenance of their plant under the highway, subject to provisions such as the New Roads and Street Works Act. They wish to secure a suitable private arrangement with the developer to maintain access and this may necessitate diversion of some services. They are looking to the developer to meet the costs and until such time as they have the agreement and assurances they seek, their objection remains unresolved.

Residents' Objections

- 5.4 Two local residents have outstanding objections. They formally object to the loss of conveniently situated highway space for parking of their motor vehicles in this Controlled Parking Zone. This is because the development proposals seek to replace some existing regulated public parking spaces on existing public highway with a new mixed-use development.
- 5.5 The development proposals make provision to include 6 private car parking spaces, plus two for car club use and one for disabled use. The 6 newly created

private car parking spaces will be for the developer to issue at their discretion. They are situated outside the objectors' properties in approximately the same location as the seven existing CPZ parking spaces.

- 5.6 Currently there is no privately negotiated agreement between the developer and residents (objectors) to make any of the development's car parking spaces available for use by them. Were no such agreement concluded, the residents (objectors) would be obliged to seek regulated public parking spaces elsewhere in the CPZ, or private parking or garaging, should they wish to retain the use of a private motor vehicle and park it in the immediate vicinity.
- 5.7 Within 250m there are 55 CPZ parking spaces. The CPZ was not over-subscribed when last reviewed two years ago. However, CPZ parking pressure is increasing and is likely to increase in future years.
- 5.8 One factor in the anticipated increase in parking pressure is that the planning permission for the Bermondsey Square redevelopment is subject to a s106 agreement under which 25 residents of the development will be permitted residents' parking permits on a first come first served basis. Also, a Traffic Regulation Order may be considered for the southern end of Bermondsey Street to help accommodate the antique traders (they wish to be re-located from Bermondsey Square to facilitate implementation of the development proposals). Were this proposal agreed it could reduce on-street CPZ parking.
- 5.9 In view of such CPZ pressure, the possibility of introducing 12 additional regulated public parking space on nearby public highways has been examined, and measures to promote less dependency on private motor vehicles are being encouraged (see advisory comment below).
- Highway Authority/Local Transport Authority – advisory comment
- 5.10 Officers of the Council as Highways Authority and Local Transport Authority have raised no objection to the draft 247 Order, but have commented that the CPZ needs reviewing. In coming years a process of periodic planned review is expected to be established. Under this approach funds from the Council's parking revenue account surplus, Government/TfL local transport grant, planning obligations, the Council's capital programme, and other sources, would become prioritised under a local transport plan (Local Implementation Plan for Transport and its ancillary Parking & Enforcement Plan), enabling the Council to set out a five to ten year programme for CPZ review and updating linked to other improvements in streetscape, alternative modes of transport etc. At present this system is not in place and ad hoc sources of funding need to be identified to finance investment in regulated public parking and its review within the borough, including encouragement of alternative modes where this could help reduce parking pressure.
- 5.11 Under the current ad hoc arrangements, besides measures to promote alternatives to the private car, about £50,000 funding has been secured to review parking supply and design in CPZ D, and some early pre-consultation analysis has been undertaken. These preliminary studies have confirmed that there is scope for some additional regulated public parking spaces to be set out in CPZ

D, including 12 additional spaces within 250m of the proposed Bermondsey Square development.

- 5.12 Subject to further funding being identified, these studies will form the basis for consulting in the locality with a view to adding some further regulated public parking spaces, and introducing such further changes to CPZ D as are considered necessary so as to adequately provide for a properly designed, safe, and controlled scheme of parking regulation in the public interest, and for local people.
- 5.13 There is considered to be adequate time for decisions on funding for consultation and implementation of such further spaces if funds become available to the Council as Highways Authority and Local Transport Authority. A sum of £160,000 would enable the review of CPZ D to be completed and implemented. This sum is not identified at present.

6 EQUAL OPPORTUNITIES IMPLICATIONS

- 6.1 The proposed development has been fully considered as part of the Council's Development Control process and the details regarding disabled facilities (access, mobility), general mobility and access were found to be acceptable.
- 6.2 It is not considered that any new accessibility considerations have arisen as a result of consultation on the Draft s247 Order.

7 RESOURCE IMPLICATIONS

- 7.1 The investigation of the closure has been undertaken for the fee of £4,500.00. A cheque has been received for the above fee as required.
- 7.2 The Council normally successfully negotiates an agreement with applicants that they will defray the Council's costs in full. On this occasion such an agreement has not so far been reached.
- 7.3 It is therefore possible that by agreeing to promote the s247 as an 'Opposed Order' as recommended in this delegated decision report, the local planning authority will have to bear costs including but not limited to those of a public inquiry.
- 7.4 No budget has so far been made available to officers writing this report and it cannot be guaranteed that the costs can be contained within planned budgets. Negotiations are proceeding with the Council's property department to explore whether they could contribute from their budgets and other avenues will be considered should costs arise. The cost implications can not be known at the present time because, whether there are costs and what these would be, will depend upon whether objections are withdrawn or met by the parties involved, whether the process runs to full term or is agreed prior to a public inquiry, and whether the developer agrees to defray the Council's costs as is usual.

8 CONCURRENT REPORT FROM THE BOROUGH SOLICITOR

- 8.1 Stopping up orders under section 247 of the Town and Country Planning Act, 1990 were processed by the Government Office for London until the 3rd of July, 2000 when the power passed to London Borough Councils by virtue of Schedule 22 of the Greater London Authority Act, 1999.
- 8.2 The Council has followed the appropriate statutory procedure for the making of Orders under Section 247 Town and Country Planning Act 1990. These are set out in Section 252 of the same Act and include a 28 day consultation period.
- 8.3 The Council must now notify the Mayor of London of the objections and cause a public inquiry to be held in accordance with statutory requirements. The public inquiry is obligatory because one of the objections is from TRANSCO, a gas transporter. If the TRANSCO objection was to be withdrawn then it would be for the Council to inform the Mayor of London who would then decide whether, in the special circumstances of the case, the holding of such an inquiry was unnecessary. If the Mayor then decided that such an inquiry was unnecessary, it would be for him to notify the Council who could then dispense with the inquiry. Whilst there is no specified time period within which the Council must make the referral to the Mayor of London and cause a public inquiry to be held, the Council must act reasonably. This means that the Council must not unduly delay making the referral to the Mayor of London and causing a public inquiry to be held. Any delay must be reasonable in all the circumstances of the case.
- 8.4 The Council should now revisit its original decision to promote this Order in the light of any new information that has come to light since that original decision was taken.

Background Papers	Held at:	Contact
Transport Group	Council Offices, Chiltern, Portland Street SE17 2ES	Emele Roberts on 020 7525 5458

Audit Trail

Lead Officer	David Solman	Team Leader, Transport Group
Report Author	Emele Roberts	Transport Group 020 7525 5458
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Appendix : SITE MAPS