

Agenda Item 65.

Development Management Ref No	No weeks on day of committee	Parish	Ward	Listed by:
Not Applicable	Not Applicable	Wokingham Without and Wokingham	Wokingham Without and Wescott	Scheme of Delegation

Applicant Wokingham Borough Council

Location Eastern Gateway

Stopping Up Proposal Application for stopping up of Waterloo Road associated with the Southern Distributor Road Eastern Gateway works (ref: 172934). The stopping up application may be made under section 247 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) to the Secretary of State for Transport to have the highway stopped up or extinguished.

Type Application to the Secretary of State for Transport for Stopping Up order under Sections 247 and 253 of the 1990 Act.

PS Category Officer Not Applicable
Vincent Healy

FOR CONSIDERATION BY Planning Committee on 13 December 2017
REPORT PREPARED BY Head of Development Management and Regulatory Services

SUMMARY

The Council submitted a planning application for the eastern section of the Southern Distributor Road under planning reference 172934 on 2 October 2017 which was validated on 10 October 2017. This comprises a section of highway and new rail bridge from the existing road to the north on Montague Park to Waterloo Road. Part of this work will require Waterloo Road to be stopped up.

To terminate the highway, a stopping up order under Section 247 of the 1990 Act is required where “*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* “. In this circumstance a stopping up order is required to enable the carrying out of a development proposal (under planning reference 172934 to construct 420 metres in length and 15 metres in width of single carriageway with footways/cycleways forming part of the South Wokingham Distributor Road (SWDR). The proposed route will connect the Montague Park residential development specifically William Heelas Way to a new junction with Waterloo Road at a four-arm roundabout, via a new bridge over the Reading-Waterloo Railway Line. A location plan outlining the application site in red is attached to this report as Appendix 1.

The application for stopping up will be made to the Secretary of State for Transport under Sections 247 and 253 of the 1990 Act and the Secretary of State will determine whether

or not the Stopping Up Order is confirmed. This report seeks authority to commence the process by making an application to the Secretary of State.

Where an application is made in advance of planning permission being granted the stopping up application is submitted pursuant to Section 253 of the 1990 Act and in accordance with Section 253(5) the Secretary of State cannot make an Order under Section 247 of which notice has been published until planning permission has been granted for the development which occasions the making of the order.

PLANNING STATUS

- The Planning application (under planning reference 172934) to which the stopping up application relates was submitted on 2 October 2017 which was validated on 10 October 2017.

RECOMMENDATION

APPROVE submission to the Secretary of State for Transport of an application to stop up highway Zebra hatched on the Stopping Up Order plan attached to this report at Appendix 2 together with all supporting documentation.

STOPPING UP ISSUES

Background to the Application

1. The planning application for the Eastern Gateway, which comprises the first section of the Southern Distributor Road (SWDR), was validated on 10 October 2017 includes the construction of 420 metres in length and 15 metres in width of single carriageway with footways/cycleways, The proposed route will connect the Montague Park residential development specifically William Heelas Way to a new junction with Waterloo Road at a four-arm roundabout, via a new bridge over the Reading-Waterloo Railway Line. The SWDR is a key component of the Strategic Development Location which unlocks the land within South Wokingham for development as outlined within the adopted Core Strategy.
2. On 26 March 2015 the Council's Executive considered and approved the progress of the SWDR (part of which subject to planning application 172934 is known as Eastern Gateway). As part of that resolution the Executive also approved negotiation with Network Rail to secure the Eastern Gateway as part of the SWDR. The proposed route of Eastern Gateway will connect the Montague Park residential development specifically William Heelas Way to a new junction with Waterloo Road at a four-arm roundabout, via a new bridge over the Reading-Waterloo Railway Line. As part of the delivery of the Eastern Gateway the Council will be entering into appropriate legal arrangements with Network Rail to deliver the bridge forming part of Eastern Gateway.

Consideration of Stopping Up Application

3. The Secretary of State for Transport in considering the application to stop up the areas of highway Zebra Hatched on the plan at Appendix 2 will apply the necessity test and the merits test.

4. In determining whether or not to confirm the stopping up order the Secretary of State will apply the tests now set out in Network Rail Infrastructure Ltd, R (On the Application of) v The Secretary of State for the Environment, Food and Rural Affairs [2017] the relevant parts of which are set out below:-

“(i) Necessity Test

- *(a) The relevant authority cannot make and/or confirm an order unless satisfied that a planning permission exists for development and that it is necessary to authorise the stopping up (or diversion) of the public right of way by the order so as to enable that development to take place in accordance with that permission;*
- *(b) Necessity should be interpreted in accordance with the plans and conditions of a planning permission which allow the development to be carried out. Thus, the necessity test is concerned with whether such an order is necessary for that purpose;*
- *(d) The word "necessary" does not mean "essential" or "indispensable", but instead means "required in the circumstances of the case." Those circumstances must include the relevant terms of the planning permission.*

(ii) Merits Test

- *(a) The relevant authority has discretion as to whether to confirm the order and therefore may refuse to do so;*
- *(b) In the exercise of that discretion the relevant authority is obliged to take into account any significant disadvantages or losses flowing directly from the stopping up order which have been raised, either for the public generally or for those individuals whose actionable rights of access would be extinguished by the order. In such a case they must also take into account any countervailing advantages to the public or those individuals, along with the planning benefits of, and the degree of importance attaching to, the development. They must then decide whether any such disadvantages or losses are of such significance or seriousness that they should refuse to make the order; and*
- *(c) The confirmation procedure for the stopping up order does not provide an opportunity to re-open the merits of the planning authority's decision to grant planning permission, or the degree of importance in planning terms to the development going ahead according to that decision.”*

5. In applying the “necessity test” regard is had to the provisions of section 247. Subsection (1) provides: *"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."*

6. Paragraph 55 of Network Rail Infrastructure Ltd, R (On the Application of) v The Secretary of State for the Environment, Food and Rural Affairs [2017] case set out the broad scope in applying the necessity test:-

“55 It is well-established that an order under section 247 or 257 may be made, not only where a planning permission allows development to be physically carried out on the route of an existing footpath...”

7. The planning application for this section of the South Wokingham Distributor Road (Eastern Gateway) cannot be carried out without the roundabout being constructed forming part of this section of the SWDR which comprises necessary infrastructure to deliver the strategic development of the South Wokingham Strategic Development Location (SDL). Wokingham Borough Council (WBC) has allocated, within its Local Development Plan – Core Strategy (CS), a number of Strategic Development Locations (SDL) across the Borough. These SDL are located to the north and south of Wokingham town, to the south of the M4 in Shinfield and Spencers Wood and at Arborfield Garrison. The combination of these developments is the provision of around 12,000 new dwellings and associated employment and social land uses (such as district centres and schools). WBC is committed to the development of 2,500 new homes in the South Wokingham Strategic Development Location. The aim of the planned South Wokingham Distributor Road is to create access for these new homes.
8. The effect of construction of the SWDR will physically truncate that section of Waterloo Road to the north of the proposed roundabout and render that section redundant.
9. In considering the merits the new highway created forming the Eastern Gateway will provide an alternative and safer route for both pedestrian and vehicular traffic which has been considered and is fully supported by the Council’s highway department. As part of the Eastern Gateway works, it is proposed to shut Waterloo Road level crossing and in turn stop up a section of Waterloo Road with all traffic diverted onto the new South Wokingham Distributor Road.
10. The Council is committed as part of its strategic planning policy to the development of 2,500 new homes in south Wokingham. The new South Wokingham Distributor Road (SWDR), when fully built, will link London Road and Finchampstead Road, providing access to the new development from both main roads. It will also minimise the impact of traffic from the new development on the surrounding residential roads in south Wokingham. In addition, it will provide some traffic relief to the town centre, and provide an alternative route for heavy goods vehicles and other commercial traffic travelling between Coppid Beech and the Molly Millars area.
11. Phase 1 of the SWDR, called William Heelas Way was built as part of the Montague Park housing development. The Eastern Gateway is the second phase. It will provide a link between Montague Park and Waterloo Road, via a new railway bridge

and will include pedestrian and cycle facilities. Subsequent phases will connect Waterloo Road through to Finchampstead Road.

12. That section of Waterloo Road to be stopped from the level crossing south to the proposed four arm roundabout is single carriageway with narrow footways north of the level crossing and none whatsoever south of the level crossing, in a semi-rural setting. It is unsuitable for safe use by pedestrians and any potential to undertake improvements are limited. As part of the Eastern Gateway works it is also proposed to realign a section of Waterloo Road south of the proposed roundabout. The realignment was necessary in order to achieve satisfactory tie-in between the new South Wokingham Distributor Road and Waterloo Road. The realignment also enabled the design to save one of the veteran oak trees by locating it within the proposed roundabout. Both the local representatives of the Ramblers Association and the Local Access Forum support the proposed stopping up and have confirmed their support in writing.
13. A detailed safety assessment was compiled by Network Rail on 25 August 2017 concluded that the level crossing at Waterloo Road as a consequence of its relatively low usage and relatively high accident rate the Automatic Half Barrier (AHB) Level Crossing should be closed. The Waterloo Road level crossing is one of the most dangerous on the network and has been identified by Network Rail as being in need of a major level crossing upgrade in order to reduce the risk to as low as reasonably practicable. There have been a number of fatalities at the crossing and a high number of incidents where vehicles and pedestrians have misused the crossing leading to increased safety risks.
14. Waterloo Road Level Crossing is currently ranked as the twelfth worst out of more than three hundred level crossings on the Wessex route and Network Rail preference is for this crossing to be closed.
15. An alternative pedestrian and cycle route will be provided via Clay Lane leading to the new Montague Park housing development and then onto the new SWDR – Eastern Gateway. Eastern Gateway will accommodate a shared 3m wide footway / cycleway on both sides of the carriageway which connects in with Montague Park facilities and also into future phases of the SWDR.
16. Network Rail considered upgrading the level crossing to a full automatic barrier. Their assessment concluded that this may very well be restrictive by virtue of available space at the location but, also such a crossing was likely to increase traffic congestion adversely in the surrounding areas with increased barrier downtime (number of trains planned for Waterloo / Reading line will increase in the future) and in particular the increased likelihood of excessive traffic and pedestrian usage arising from the emerging development within South Wokingham.
17. A pedestrian bridge and underpass were also considered near the existing level crossing. However, the feasibility assessment found that both options would have

significant negative impacts on nearby properties and would not represent good use of public money given the very limited pedestrian usage across this crossing. Both options would also have required land outside of the Council's and Network Rail's control to accommodate the structures.

Prior Construction of Eastern Gateway

18. It should be noted that the level crossing and section of Waterloo Road to the immediate south to the proposed four-arm roundabout and immediately south of the proposed four-arm roundabout would only be closed once the Eastern Gateway (the section of the SWDR subject of the planning application) is open to the public. The vehicular turning head immediately north of the level-crossing (shown by stipple notation on the Order Plan/s attached as Appendix 2) will be constructed immediately on the stopping up taking effect within the extent of existing highway.

CONCLUSION

Subject to the resolution of committee, officers will prepare the Stopping Up Order Plans, the application and supporting documentation and submit application to the Secretary of State for Transport.

BACKGROUND PLANS

Stopping Up Order Plans (x2)
 Drawing Reference: SUP 001 (x2)
 Planning Application Location Plan: Planning 100 005 Rev E

CONTACT DETAILS

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