

**LONDON BOROUGH OF BRENT
HIGHWAYS COMMITTEE 14 SEPTEMBER 2004
FROM THE BOROUGH SOLICITOR**

For Action

Name of Wards Affected

Tokyngton, Stonebridge

**REPORT TITLE: STADIUM ACCESS CORRIDOR PROJECT PHASE 2
SECTION 1 – STOPPING UP OF HIGHWAY AND PRIVATE MEANS OF
ACCESS**

FP REF: ES-04/05-261

1. Summary

On 10th February 2004, the Highways Committee authorised the Director of Transportation Services to promote orders for the diversion to the public footpath in the River Brent Open Space, to rationalise the existing highways affected by the SAC scheme and to close and alter certain private means of access along the route of the SAC. Brent Transportation Services gave notice of the Council's proposal to make the Order on 9 March 2004. Because objections were received a public inquiry into the making of the orders was held on 20 July 2004.

The Inspector, in his report of 17 August 2004, recommended that the Order be made with modifications.

This report seeks authorisation for the Order to now be made in accordance with the Inspector's recommendations (provided that the consent of the Mayor of London is given to the making of the order).

2. Recommendations

- 2.1 That the London Borough of Brent (Great Central Way) Stopping Up of Highway and Private Means of Access Order be made in the form recommended by the Inspector, provided the Mayor of London first gives his consent to the making of the Order in this form.
- 2.2 The Director of Transportation Services be authorised to serve notices on affected parties and place notices on site and in local newspapers to publicize the making of the Order.

3. Financial Implications

- 3.1 The estimated cost of construction of Section 1 of the SAC is currently £6.634m. This includes a budget for the estimated land acquisition costs. Full details of the financial implications are set out in the report

to the Executive of 7 January, a copy of which is appended to this report at Appendix 1.

- 3.2 The proposed order under Section 248 of the 1990 Act, by including the power to stop up private means of access to the highway network, could give rise to claims for compensation. Such claims are assessed by reference to the depreciation in value of the property affected as a result of the closure of the access or as a result of any disturbance to the property. It is anticipated that there will be little further compensation due as a result of the Order being made as suggested by this report. S126 (4) of the Highways Act 1980 expressly excludes compensation as a result of any other enactment if compensation is claimed for the closing of the private access.
- 3.3 Most accesses along the route of Great Central Way will not be closed as a result of the SAC scheme being implemented. Of those accesses affected by the scheme and requiring alteration, only a few accesses would be closed without a direct replacement. These accesses are on to Great Central Way from Riverside House. A new or revised access to Fourth Way will be provided from that site.
- 3.4 It is not anticipated the revised access arrangements resulting from the proposed order will of themselves result in significantly increased compensation.
- 3.5 The Council is required to pay for the costs of the inquiry that was held into the proposed Order. This will include the costs of the Inspector appointed to the inquiry. The Council has also incurred the costs of preparing and making its case for the Order.

4. Staffing Implications

- 4.1 The project owner for the transportation and highways proposals within the Destination Wembley SRB Programme is the Council's Transportation Services Unit. The Director of Transportation is himself overseeing the project and liaising with the Council's appointed agents.
- 4.2 The work proposed is in accordance with the highways and transportation study prepared in 1997 by Scott Wilson Kirkpatrick under the project management of JMP Consultants Limited, in consultation with the Transportation Services Unit. These companies have been working on the SRB infrastructure scheme since 1997 and will continue to progress the Scheme on the Council's behalf.
- 4.3 The CPO and the required highway orders will be progressed by the existing team of the Council's officers instructed for both the EAC and SAC in relation to the land acquisition and engineering processes.
- 4.4 The order making authority for the orders to be made is the Council itself. It is anticipated that the Council's legal services will advise the Council on the order making process. Officers from Planning Services

and officers responsible for highways may assist the Council in its capacity as order making authority.

5. Environmental Implications

- 5.1 An environmental report for the SAC Section 1 was prepared by the Council's external consultants. The report concludes that there will be no significant environmental impacts resulting from the SAC scheme. The environmental impacts were reported on to the Executive at the meeting on 7 January 2004. No further environmental impacts should result from the making of the Orders proposed in this report.

Diversity

- 5.2 The proposals in this report have been subject to screening and officers believe there are no diversity implications.

6. Legal Implications

- 6.1 The procedure for making the proposed Order is principally set out in the Town and Country Planning Act 1990. The Council must also be mindful at all times of its role as order making authority despite it being the promoter of the SAC scheme.
- 6.2 The Order making power has been with the Council since the coming into force of the Greater London Authority Act 1999. The procedure is subject to independent review as the appointed inspector was from the Planning Inspectorate. Further independent scrutiny is provided by the role of the Mayor of London in having to consent to the Order before it can be made by the Council .
- 6.3 The order may only be made on the basis of grounds specified in the relevant sections of the Acts. It will be for the Council as order making authority to consider these grounds objectively, with the assistance of the Inspector's report and subject to the scrutiny of the Mayor of London. Those grounds are that planning permission has been granted for construction of a main highway and other highways cross or enter the route of the proposed main highway or will be otherwise affected by the construction or improvement of the main highway and if it appears to the Council expedient (a) in the interest of the safety of users of the main highway or (b) to facilitate the movement of traffic on the main highway to order the stopping up or diversion of the highways entering or affected by the main highway.
- 6.4 Orders made pursuant to the provisions of section 248 of the 1990 Act may also invoke powers to close and re-provide PMAs (Private Means of Access) pursuant to section 125 of the Highways Act 1980. This power allows the Council to seek powers in the draft order for the stopping up of a PMA and the provision of new PMAs. The Act requires that no PMA may be stopped up unless the order making authority is

satisfied either that no access is reasonably required or that another reasonably convenient access is available or will be provided, either by the order itself or otherwise.

- 6.5 These powers are being sought in relation to the PMAs described below. Section 129 of the Highways Act 1980 states that, when considering what is reasonably convenient for the alternative access, the order making authority should have regard to the need, if any, for a means of access on those or other premises which will be capable of providing such a means and also any roads paths or other ways which will be capable of providing such a means.
- 6.6 Members must bear the implication of the Human Rights Act 1998 in mind when making their decision. The Act came into force on 2 October 2000. The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members need to have regard to the Convention. The rights which are of most relevance to local authorities making orders it itself promotes is Article 6 – the right to a fair hearing. The Inspector appointed to any Inquiry will be independent of the Council. The decision of the Council will be subject to scrutiny by the Mayor and also the scrutiny of the Court on the grounds specified in the Town and Country Planning Act.
- 6.7 A Convention right that is also of significance is that contained in Article 1 of Protocol 1 (peaceful enjoyment of possessions). Article 1 of Protocol 1 provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law, although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 6.8 In determining the level of permissible interference with enjoyment, the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of compensation to affected persons is relevant in assessing whether a fair balance has been struck. In reaching their decision when the Order is being considered, Members will need to consider the extent to which the decision may impact upon the Human Rights of affected occupiers and to balance these against the overall benefits to the community which the overall SAC scheme would bring. Members will wish to be satisfied that interference with the right under Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest. The provision of replacement highways and accesses for those proposed to be stopped up as a result of the Order making process will also be relevant in this regard, as will the availability of compensation to affected parties in appropriate circumstances.

7. Detail

- 7.1 The Stadium Access Corridor (SAC) project is a key element of the highway improvements intended to be implemented to improve accessibility to the Wembley Park Estate, especially during major events at the new English National Stadium. The implementation of the project is one of the principal aims of the transportation and infrastructure elements of the Destination Wembley Programme. Full details of the scheme were set out in the report to the Executive of 7 January 2004.
- 7.2 The CPO proposed in that report was approved by members and the CPO made on 13 January 2004. A public inquiry into it has been held and the outcome of this is expected shortly.
- 7.3 The route of Section 1 of the SAC is primarily along the existing Great Central Way, but runs to the north of the existing alignment towards the western end of the scheme. Riverside House and its associated outbuildings at the corner of Fourth Way and Great Central Way are expected to be totally demolished to allow the scheme to progress. **Attached at Appendix 1 is the scheme plan showing the proposed works.**
- 7.4 The Inspector's report is attached at Appendix 2. The Council's case for seeking the Order is summarised in Section 3 of the Inspector's report.
- 7.5 The references to the individual PMAs to be stopped up (and their replacement accesses) in this report use the same references as in the Order, the modified draft of which is attached to this report at appendix 3. References to the diverted footpath are also drawn from the Order. It is this modified form of Order that is now being recommended to be made by members, in accordance with the Inspector's recommendations.

Objections

- 7.6 Objections to the draft Order were received by the McArdle Group in connection with the stopping up of PMA X1, the Carey Group in connection with the stopping up of PMAs X2 and X6. No objections were received in connection with the stopping up of the footpath or the improvement of Fourth Way.

McArdle

- 7.7 The McArdle Group of companies, also representing the interests of DB Autos, objected to the draft Order on the basis that the arrangements proposed at the shared McArdle/DB Autos access X1 would result in the loss of valuable car parking space at the front of the site. There

was also concern that the reconfigured access PMA 1 would not be satisfactory for the large vehicles which need to have access, and the widened Great Central Way would be higher and closer to the premises, increasing impact in terms of amenity, security, safety and noise.

Carey Group

- 7.8 The Carey Group registered their objection based on the draft Order being a substantial restriction on the current operations and future plans of the Carey Group at the Riverside House site. The main basis of the objection is the closure of PMA X2 onto Great Central Way with only one access being provided to the site from Fourth Way via new PMA 2. Their objection also covered the stopping up of PMA X6 on Fourth Way.
- 7.9 Their evidence stated that the yard at the back of the building is integrated into the current working practices of the Group, who main buildings and yard are on the south side of Great Central Way. Their Riverside House yard is in constant use for the storage of plant and materials, and vehicles make regular crossings of Great Central Way from one yard to the other. The Carey Group deem that it is essential to maintain an access direct onto Great Central Way in order to avoid a long diversion via the one-way system of Carey Way to enter their site at Fourth Way.
- 7.10 The Carey Group have a medium-term objective to try and secure a suitable alternative yard facility and to redevelop the Riverside House site. Their evidence stresses that any such redevelopment would be unreasonably constrained if the two main vehicular accesses were not maintained or at least re-provided in an equivalent position. An access onto Great Central Way is required not only for current use but also to allow possible redevelopment of the site in two parcels with separate access.
- 7.11 The Carey Group did not object to the closure of PMAs X3, X4, X5 and X7.

Inspector's Decisions on Objections

McArdle

- 7.12 The Inspector concluded that as proposed new PMA 1 is effectively in the same position as the existing access, this proposed access is at least as convenient as the existing one. The Inspector accepted that adequate manoeuvring space was provided for all likely configurations of vehicles. Transportation Services intend to remove the current right turn ban and maintain the provision of full access even when tidal flow conditions are in place. The inspector concluded that when the scheme is complete the new PMA will in fact be an improvement on the existing access.

- 7.13 The Inspector recognised that there may be some inconvenience during the construction stage, but noted the undertaking made by the Council in this regard as well as the level of consultation that had already taken place with the objector. The Inspector deemed that the loss of on-site parking and the impact on amenity of the site are not matters for his consideration under the Act.

Based on the evidence presented, the Inspector concluded that overall, a reasonably convenient alternative means of access would be provided if the existing access is stopped up, and that the draft Order in respect of the existing PMA X1 and its replacement by PMA 1 should be recommended.

Carey Group

- 7.14 The Inspector accepted that existing PMAs X3,X4, X5 and X7 will become redundant when Riverside House is demolished and much of the land subsumed into the highway. Since there were no objections raised to the stopping up of these particular PMAs and that the test included in the Act was satisfied, the Inspector recommended that these PMAs be stopped up.
- 7.15 The Inspector identified that the position and design of the Carey Group's proposed access on Fourth Way was effectively the same as that included in the Council's design for PMA 2. The Inspector therefore concluded that the test under the Act for the PMA X6 is satisfied by the Council's proposed PMA 2. He also stated that access is required to Fourth Way, and the PMA proposed by the Council would be reasonably convenient.
- 7.16 The existing PMA X2 from Great Central Way into the Riverside House site is the only location where the Inspector recognised there is a difference between the Council and the objector. The Inspector recognised that the loss of this access would result in a significant level of inconvenience for the Carey Group in regard to their current operations on the site.
- 7.17 The Inspector stated that for Great Central Way with the tidal flow in operation, it was more important than would usually be the case to provide generous visibility standards. In particular, when eastbound traffic on Great Central Way are restricted by cones into one lane to allow incoming tidal flow, full-standard visibility for vehicles exiting from any Riverside House access into the constrained single-lane traffic flow would be of special importance and that it would be beneficial to limit the number of PMAs on this tidal flow section of Great Central Way wherever possible. The Inspector therefore accepted the view of the Council that the access to Riverside House from Great Central Way as proposed by the objector would be disadvantageous.
- 7.18 Having considered the future development aspirations the Carey Group have for the Riverside House site, the Inspector concluded that a

satisfactory design could be achieved with the single access from Fourth Way as proposed with the Council's PMA 2.

- 7.19 The Inspector stated that having taken into account the importance of the new Wembley Stadium project and the advantages and disadvantages of the stopping up of PMA X2 without direct replacement on Great Central Way, he concluded that the Council's proposals for dealing with the Carey Group accesses to Riverside House are appropriate and should be recommended.

The Case for Stopping Up of Public Highway

- 7.20 The Footpath subject to the Stopping Up order will be built over if the Scheme is implemented in accordance with the existing planning consent. Therefore the Footpath requires diversion to the north. Without this diversion, the current planning permission for the Scheme could not be implemented without the carriageway and/or footway being narrowed where Great Central Way crosses the River Brent.
- 7.21 The Stopping Up Order was also originally to be used to alter the status of the current path. Currently it is dedicated as a footpath, but the principal route to which it connects – the cycle track from Atlas road to the Tokyngton Open Space forms part of the Council's strategic cycle network. The proposed Scheme will also have enhanced cycled provision. The opportunity to reclassify the diverted route as a cycle track with a right of access on foot was therefore sought in the original draft Order.
- 7.22 However, as the existing path under Great Central Way and the London-High Wycombe railway is too narrow to allow cyclists to ride without conflicting with pedestrians. "Cyclists dismount" signs are to be erected on either side of that part of the footpath to restrict its use as a cycle track. It was therefore proposed to the inspector that the Order be modified to replace the length of footpath being stopped up with a new footpath, rather than a cycle track with right of way on foot. This modification to the original draft order is now being proposed to members, and is recommended by the inspector. All objectors and other interested parties such as the Auto Cycle union and Cyclists Touring Club, have been told of the proposed modification.

Inspector's Decision to the Stopping of Public Highway

- 7.23 There were no comments or objections to the original or the modified proposals for this stopping up and re-provision of the footpath. The Inspector noticed that the proposed footpath provides benefits including improved safety and capacity on Great Central Way and therefore the proposed stopping up of the footpath passes the test within s248 of the Act.
- 7.24 The Inspector noted that the proposed modification by the Council changing the status of the diverted highway from a cycle track with

rights of access on foot to a footpath highway was likely to have little practical effect as the short length of highway is too short and too steep for effective use as a cycle path. Therefore the Inspector concluded that the stopping up of the highway together with the modified proposal for its diversion should be recommended.

Inspector's Recommendation

- 7.25 Having assessed the evidence presented by both the Council and the Objectors, the Inspector recommended that the London Borough of Brent make the Order with the modification to the diverted Footpath from "Cycle track with right of way on foot" to Footpath as mentioned above.
- 7.26 It is considered that the Order, as modified, does fall within the grounds set out in the Act referred to in paragraph 6.3 to 6.5 above. Accordingly, the Committee is recommended to resolve as set out in the recommendations above.

8. Background Information

	<u>Details</u>	<u>File Reference</u>
	Wembley Park Master Plan, Foster & Partners 1996	
	Environment, Regeneration and Property and Resources Committee Reports (30th April 1996)	
	Policy and Resources Committee 13th January 1997 and 21 October 1997	
	Environment Committee 13th February 1997 11 March 1997 7th July 1997 29 July 1998 and 7 July 1999	
	Transportation Sub-Committee Report 22nd July 1997 and 16th September 1997	
	Wembley Park SRB Public Transport Demand Study: Final Report 1997	
	Wembley Park SRB Highways and Transportation Study: Final Report 1997, SWK	
	Report to Executive by Director of Environment 13 October 2003	

	Report to Planning Committee 8 February 2001 re application 00/2132	
	Secretary of State's decision letter 30.11.99 and Inspectors Report following Wembley EAC CPO inquiry	
	Report to Executive 7 January 2004 London Borough Of Brent (Wembley Park Stadium Access Corridor) (No1) Compulsory Purchase Order – Order, Order Map and Statement of Reasons	
	Highways Committee Report from the Director of Environment 10 February 2004 STADIUM ACCESS CORRIDOR PROJECT Inquiry core documents and evidence	
	Council's full statement of case for the public inquiry into the proposed Order. Any person wishing to inspect the above papers should contact: Robert Vale Legal Services Town Hall Annexe Forty Lane Wembley Middlesex, HA9 9HD Tel: 0208 937 1327	