

PRINCES PARADE, HYTHE, KENT

**Application proposing the stopping-up and diversion of part of the highway known as
Princes Parade, Hythe, Kent: made by Folkestone & Hythe District Council to the
Secretary of State for Transport**

Town and Country Planning Act 1990, ss. 247 & 252/253

Ref: NATTRAN/SE/S247/3254

OPENING STATEMENT OF SAVE PRINCES PARADE

INTRODUCTION

1. This is the Opening Statement of Save Princes Parade (“SPP”) in respect of the public local inquiry which the Secretary of State for Transport (“Secretary of State”) has, under s. 252 of the Town and Country Planning Act 1990 (“TCPA 1990”), decided should be held to consider unresolved objections made during the statutory consultation into the proposed Stopping-up and Diversion of Highways (South East) [No.] Order 201[] (“the draft Order”).
2. The application for the draft Order was made by Folkestone & Hythe District Council (“the Council”) in March 2018, and described the development which it contends necessitates the “closure/diversion” as:

“By relocating the road to the rear of the site, we can generate a vehicle free link from the proposed leisure centre and housing development to the beach and existing promenade.”

3. The s. 247 TCPA 1990 draft Order and accompanying Plan describe the highway to be stopped up as: “An irregular shaped area of highway as leads off Princes Parade comprising its car parking area, footpaths and highway verge” (Pt A), together with a length of 871 m of Princes Parade (Pt B). The vehicular right of way which would be extinguished if the draft Order were to be made is to be diverted over and along a re-aligned highway – being 887 m of a proposed new local distributor road.

UNRESOLVED OBJECTIONS

4. Princes Parade was opened by the Prince of Wales in 1881. It has been a highway providing an attractive seaside route - and straight road link – between Seabrook and Hythe for over 100 years. It has, itself, intrinsic heritage value running parallel to, but at some distance from, the straight alignment of the Royal Military Canal. The traffic count survey data in 2016 was that circa. 4,500 vehicles each day use Princes Parade.
5. Princes Parade provides an alternative to the busy A259 Seabrook Road, between Hythe and Sandgate. It is a known, existing, long-standing all-purpose public right of way which facilitates direct and convenient access to the beach and the sea for swimming, fishing, water sports, together with the various recreational activities that the public enjoy either on the beach, or in the sea, or along Princes Parade Promenade. Free parking was available until the Council relatively recently introduced pay and display for the six months of the spring/summer season, taking that opportunity to introduce double yellow lines by gaps in the sea wall and so reducing the number of parking space opportunities.

6. If the draft Order was confirmed these existing public rights would cease to exist. This is a disadvantage or loss which would flow directly from the Order if made.
7. The value attributed to a public vehicular right of way is reflected in the Common Law rule: “Once a highway always a highway”. Such rights are jealously guarded.
8. The Council propose an alternative to that which would be lost. It is a new 887 m LDR routed around the back of the new leisure centre, housing estate and hotel/retail/café. It is envisaged that this new road will incorporate a series of bends at each end, and be “traffic-calmed” with 3 raised table areas, and 2 kerb build-outs with one way priority. It appears that the northern edge of the carriage way is to be between 13.19 – 19.73 m of the Royal Military Canal [Lloydbore plan 16/7 2021].
9. The Council also propose replacement parking provision to that which would be lost - identified in Mark Fitch appendix A (existing) and appendix B (proposed). Save Princes Parade’s case is that what is proposed appears considerably less convenient than what is being lost. Those who wish to access the beach, the sea or Princes Parade will, subject to finding a parking space, now be required to walk through or between blocks of housing and other development with all their possessions passing between a 1 m high new splash wall and, if they are heading for the beach or the sea, a new secondary wall.
10. When considering the number of parking spaces to be provided it is important to recognise that the visitors to the new leisure centre, 150 dwellings, hotel, café and retail unit will all generate significant demand and potential competition for parking places.
11. SPP’s case is that this is a further disadvantage or loss which would flow directly from the Order and is to be weighed in “the merits balance”.

EFFECT ON THE SETTING OF THE ROYAL MILITARY CANAL

12. For approximately half its length the new LDR is to be between within 13.19 – 19.73 m of the Royal Military Canal. It is proposed that circa. 4,500 vehicles each day will travel along it.

13. To the extent that the Council's case is that they would build the same road to service the development irrespective of whether or not the Order is made, and that 25% of the total volume of traffic using it would arise from the building and use of 150 dwellings, leisure centre, hotel et cetera, SPP's case is that the additional detrimental impact upon the setting of the Royal Military Canal which would be occasioned by 4,500 vehicles each day traveling along it and in such close proximity to the Royal Military Canal is a further disadvantage or loss which would flow directly from the Order and is to be weighed in "the merits balance".

EFFECT ON THE TRANQUILITY OF THE ROYAL MILITARY CANAL

14. The difference in character between the "vibrant sea-front" and the "quiet canal area" is captured in Design SE's December 2016 design review. The effect of 4,500 vehicles each day passing in such close proximity to the Royal Military Canal, and the public bridleway adjacent to its southern bank, will be to introduce significant disturbance from vehicle noise, fumes and headlights which will have a considerable detrimental impact on the public who enjoy a public right of way and walk, run, fish and engage in other recreational activities in what is, presently, a peaceful highly valued green corridor without having to see hear or smell vehicular traffic.

15. SPP's case is this would constitute a further disadvantage or loss which would flow directly from the Order and is to be weighed in "the merits balance" against making the Order.

EFFECT ON BIODIVERSITY

16. The adverse impact upon biodiversity, including wildlife and flora, which would be a direct result of the Order diverting 4,500 vehicles each day along the vehicular right of way over the new LDR would constitute a further disadvantage or loss which would flow directly from the Order and is to be weighed in “the merits balance” against making the Order.

EFFECT ON TRAFFIC

17. One intended effect of the Order is that the vehicular traffic presently using Princes Parade is diverted along the realigned route instead. How convenient that vehicular right of way turns about to be once the LDR is constructed, and then opened for public use, is unknown.
18. As the local highway authority, Kent County Council, appear to envisage the new road as “a far slower environment for all traffic” with estimated speeds of “in the vicinity of the bends and raised tables in the high teens to 20s” it is plausible that a lot of traffic which use, or can use Princes Parade today, will not be inclined to exercise a vehicular right of way which involves taking a slower, longer, less attractive detour. In such a scenario, vehicles will be displaced primarily onto the Seabrook Road with a detrimental impact upon the local highway network.
19. SPP’s case is that this risk of vehicle displacement is a further disadvantage or loss which would flow directly from the Order and is to be weighed in “the merits balance” against making the Order.

THE SECRETARY OF STATE'S DISCRETION

20. Because there are unresolved objections made by Save Princes Parade, together with many others, the Secretary of State has decided to hold this public local inquiry to be conducted by the appointed Inspector, Mr Owen Woodward MRTPI, to report and recommend whether or not the Secretary of State should make the Order (or a variant of it).
21. The material parts of section 247 Highways affected by development: orders by Secretary of State provides:
- “(1) 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 –
- (a) in accordance with planning permission granted under Part III [TCPA 1990] ...”
22. SPP's case is that the decision-making framework is accurately encapsulated by Stephen Sauvain QC:¹
- “The essential pre-condition to the making of an order under s.247 is a conflict or potential conflict, between a planning permission and the continued existence along its present line of a public right of way [vehicular in the present case]. The process leading to the confirmation or non-confirmation of the order is the means of balancing the respective public interests which are in conflict.*
- ... the first precondition for the exercise of the power under s.247 is the existence of a planning permission ... The second pre-condition is that the extinguishment or diversion should be necessary to enable the development to be carried out. [the so-called “necessity test”] ...*

¹ Highway Law 5th Edn. 2013 Sweet & Maxwell pp. 365-371

23. SPP's contend that the scope of this exercise of statutory discretion is accurately encapsulated by Sauvain:²

“It does not, however, matter that the section [s. 247] does not set out any further criteria (nor even an overall test of expediency) it is clearly a discretionary power which entitles the Secretary of State to balance the overall public interest in interfering with an established public right of way.³ In considering what factors have to be balanced against each other to come to a decision on that public interest, it is important to distinguish between the matters relevant to the application for planning permission that has brought about the need for the diversion of the highway and the factors which will be relevant to the extinguishment or diversion of the highway.”

24. In Vasiliou v. Secretary of State for Transport and Another⁴ the Court of Appeal addressed the relationship between the planning and highway issues to be balanced when considering and determining a s. 247 application. In that case the Secretary of State's decision to make an order under s.247 - contrary to the recommendation of his Inspector - was quashed. The Court of Appeal held that the Secretary of State was both entitled to, and should have, taken into account the adverse effects his order would have on the trade of an owner of a business being carried on land adjoining the highway.
25. In his judgment in Vasiliou Nicholls LJ emphasised: (i) the difference in the functions of determining an application for planning permission with that of deciding whether or not to authorise a proposed stopping-up and diversion of the highway; (ii) where an overlap exists between the matters considered at the planning stage and in the application for a stopping-up or diversion order, the perspectives of the determining bodies are different and, therefore, different conclusions could be reached on the question of the public interest; & (iii) there is, inherently, an inevitable element of

² Op cit.

³ See KC Holdings (Rhyll) Ltd v. Secretary of State for Wales and Colwyn Bay BC [1990] JPL 353; Vasiliou v. Secretary of State [1991] 2 All ER 77

⁴ Op cit.

overlap in the two decisions and in the considerations that had to be taken into account – albeit from different perspectives.

26. Save Princes Parade both understands and appreciates that the Secretary of State's role or jurisdiction under s. 247 TCPA 1990 does not include either re-visiting the planning merits (or de-merits) of the proposed development now authorized by planning permission; nor a consideration of alternative development schemes to that which has planning permission. Additionally, Save Princes Parade appreciates that the construction and engineering of the proposed LDR is controlled by the planning permission and/or other statutory processes.

27. On 18 July 2019 the Council granted itself conditional planning permission (hybrid planning application ref: Y17/1042/SH) for development described as:

Outline: (with all matters reserved, including access and layout) for up to 150 dwellings, up to 1,270 sq. m. of commercial use including hotel, retail, and/or restaurant/café use; hard & soft landscaped open spaces, children's play facilities and surface parking for vehicles & bicycles, alterations to existing vehicular and pedestrian access and highway layout around the site, site levelling and groundworks, and all necessary supporting infrastructure and services.

Full/detailed: a 2,961 sq. m. leisure centre, including associated parking, open spaces and children's play facility.

28. It is the words underlined which is – and has to be - the focus of this public local inquiry.

29. It is of course the role of the Secretary of State's Inspector to form his own view of the cogency, credibility and persuasiveness of the written and oral evidence to be given at the Inquiry.

CONCLUSION

30. The legal consequence of the making of the Order appears to be the immediate extinguishment of the public vehicular right of way and diversion of that right along a realigned route over the new road from the time the Order takes effect. The draft Order appears to contemplate prohibiting the “stopping up” of the proposed diverted section of Princes Parade until “the provision by the Council (Kent County Council) of a new highway”. As it is the Order, if made, which extinguishes the public vehicular right of way along part of Princes Parade, any works to block the right of way from being exercised could, SPP contend, occur upon the making of the Order.

31. SPP contend that the unresolved objections which it, together with others, have put forward as part of the consultation process amount to loss and inconvenience which will be suffered by members of the public as a direct consequence of the Order being made.

32. After all the evidence has been given and heard, Save Princes Parade anticipates closing its case by inviting the Secretary of State to conclude that disadvantages which would flow directly from making the Order outweigh the benefits. And, accordingly, inviting the Inspector to recommend not confirming the Order.

CLIVE MOYS

Counsel for Save Princes Parade, instructed under Bar Council Public Access arrangements

Radcliffe Chambers

11 New Square

Lincoln’s Inn

London WC2A 3QB.

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