

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

Secretary of State's appointed Inspector, Mr Owen Woodward MRTPI

CLOSING SUBMISSIONS OF SAVE PRINCES PARADE

Local Public Inquiry

19-22nd October and November 3rd and 4th 2021

The text struck through in red at paragraphs 66, 67 and 68, (whole) and 69 & 76 (part) is no longer relied upon by Save Princes Parade as forming a part of its closing submissions.

References: [C/D 1, 2, 3] = Core Document number [I/D 001] = Inquiry document number

EiC = examination in chief, X-e = cross examination, Re = re examination

INTRODUCTION

1. These are the written Closing Submissions of Save Princes Parade in respect of the local public inquiry held to consider the unresolved objections concerning the proposed stopping-up of 878 m of the highway known as Princes Parade, Hythe, together with the replacement, or re-alignment of that vehicular right of way, along a new proposed road, or way, yet to be constructed. The applicant, Folkestone and Hythe District Council ("the Council"), intend to construct the new road which will provide the

alternative proposed way. Together, the proposed Stopping-up and Diversion Order (“the Order”).

2. In March 2018, the Council applied to the Department of Transport for the Order describing the development which it contended necessitated the “closure/diversion” [C/D 65] 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 application was made pursuant to section 253 of the Town and Country Planning Act 1990 (“TCPA 1990”): Procedure in anticipation of planning permission, because the Council had not then granted itself planning permission for its proposed development.
4. In May/June 2018 Save Princes Parade – together with various statutory consultees and individuals - submitted a considerable and significant body of objections to the National Transport Casework Team in response to the statutory consultation concerning the draft published Order. Then, in reply to the Buckles’ May 2021 Response to Statutory Consultation on behalf of the Council, [C/D 66] Save Princes Parade, together with various statutory consultees and individuals, submitted a further Comments document maintaining a number of objections under identified topics on behalf of its 623 members. [C/D 67]
5. In consequence of this substantial body of unresolved objections the Secretary of State, in accordance with common practice, decided to hold this local public 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 variation of it).

THE SECRETARY OF STATE'S DISCRETION

6. The material part of section 247 TCPA 1990, 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] ...”

7. Save Princes Parade's submit that the decision-making framework is accurately encapsulated in in the highly regarded, well-established legal textbook 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. 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.

In other words, the public interest in the implementation of the planning permission, contrasted with the public interest in preserving and not extinguishing the long established vehicular public right of way over Princes Parade.

8. Sauvain continues: ... *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*

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

extinguishment or diversion should be necessary to enable the development to be carried out. [The “necessity test”]

9. Save Princes Parade 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.”

10. The leading case is Vasiliou v. Secretary of State for Transport and Another⁴ in which the Court of Appeal addressed the relationship between the planning and highway issues to be balanced when considering and determining a section 247 application. In that case the Secretary of State’s decision to make an order under section 247 - contrary to the recommendation of his Inspector not to confirm the order - 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 and explained how both individual rights, together with public rights, were to be considered. [C/D 106]

11. 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

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 (1991) 61 P. & C.R. 507

not to authorise a proposed stopping-up and diversion of the highway; (ii) that where an overlap exists between the matters considered at the planning stage and the matters to be considered on 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; and (iii) there is, inherently, an inevitable element of overlap in the two decisions and in the considerations that had to be taken into account – albeit from different perspectives. [see pp. 10/11 of Vasiliou]

12. The Secretary of State for Transport effectively sits at the apex of highway and transport decision-making in the public interest.

COMMON GROUND

13. It is common ground between the main parties – the applicant Council and Save Princes Parade - that the necessity test is met and satisfied on the facts of this application or case.

14. Following a consideration of the officers' report to the Council's planning committee on 16 August 2018 [C/D 3] the Council then granted itself conditional planning permission on 18 July 2019 [C/D 2] (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. [C/D 2]

15. The recent case of R. (otao Network Rail Infrastructure Ltd) v. Secretary of State for Environment, Food and Rural Affairs and others⁵ well explains the applicable relevant legal principles to guide a decision-maker looking to see if the necessity test is met.⁶
16. Save Princes Parade accepts that the applicant Council has made good the necessity test through the evidence it has adduced, together with the relevant documents produced at this Inquiry. For example, the existing road overlay plan drawing illustrates how the proposed built development encroaches upon the present Princes Parade carriageway. [C/D 68]
17. Furthermore, Save Princes Parade does not seek a variation on the proposed Order [C/D 63/64]. It is Save Princes Parade's case that the Secretary of State should either confirm the Order as it stands – assuming he is satisfied that it is necessary to do so - or, as is Save Princes Parade's case, not confirm the Order because the loss and inconvenience which would be suffered by members of the public as a direct consequence of the closure of part of Princes Parade outweigh the benefits which would flow from making the Order.
18. In summary, Save Princes Parade contend that the Council does not satisfy “the merits test” because the loss and inconvenience to the public outweighs any benefit that making the Order would achieve.

⁵ [2017] EWHC 2259 (Admin) and, on appeal, [2018] EWCA Civ 2069

⁶ Holgate J. [40] – [59]

THE MERITS: LOSS AND INCONVENIENCE TO THE PUBLIC

Princes Parade: the existing public vehicular right of way

19. 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 shows that, based on a 7-day average, each day circa. 4,500 vehicles exercise the right to use Princes Parade – Environmental Statement, Technical Annex 8 Transport, Appendix 6 Traffic Survey Data. [C/D 18 pp. 47- 54]

20. Princes Parade provides an important alternative to the busy A259 Seabrook Road, between Hythe and Sandgate. The Council recognise Princes Parade is “a strategic road link”. 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 all the various recreational activities and pursuits 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 the seven gaps in the sea wall and so reducing the number of parking spaces available.

21. The value attributed to a public vehicular right of way is reflected in the Common Law rule: “Once a highway always a highway”⁷. Such rights are jealously guarded and not easily given-up. The public’s present right over the Princes Parade highway is a right of passage for the purpose of passing and repassing and for purposes reasonably incidental thereto such as stopping and parking.

⁷ Dawes v. Hawkins [1860] 141 E.R. p. 1399, Byles J.

22. Save Princes Parade contend that this is a significant right or advantage which, if the Order is confirmed, would constitute a significant disadvantage or loss to the public.

Princes Parade: existing road safety

23. Road safety is, of course, an important matter for the Secretary of State to consider and take into account. Save Princes Parade contend that where, as in this case, the s. 247 power is being relied upon to divert a highway right then the suitability and convenience of the alternative route proposed to be provided, together with the issue of highway safety are, plainly, relevant matters the Secretary of State is required to take into account.
24. In R. v. Secretary of State for the Environment, Transport and the Regions ex p. Batchelor Enterprises Ltd.⁸ Sullivan J held that the Secretary of State was entitled to consider the highway safety aspects of the proposed order notwithstanding the fact that they were, or should have been, considered at the planning application stage. That decision was affirmed by the Court of Appeal:⁹

“Road safety is a matter of central importance to the exercise of the Secretary of State’s functions under section 247 and he must, in my judgment, be able to take it into account when considering such an application, irrespective of the views taken by the local highway authority or the local planning authority. The minister is, after all, dealing with the consequences of his making the stopping-up order, not the consequences of the grant of planning permission. There may be some overlap between the matters relevant to planning control and those relevant to the section 247 orders but that is legitimate as was recognised in Vasiliou.”

⁸ [2001] EWHC Admin 383

⁹ [2001] EWCA Civ 1293, per Keene LJ, para. 9

25. The Council's evidence that Princes Parade is unsafe [Mark Fitch] is not borne out by the statistical data – personal injury accident data – TA Appendix 7 [C/D 18]. Furthermore, the majority of the reported accidents occurred outside the Hythe Imperial Hotel and Golf Club [Mark Fitch table 7.1 of his Proof]. That is on the part of Princes Parade which is to remain open for vehicular traffic. If Princes Parade was as unsafe as Mr Fitch opines it is very surprising that Kent County Council, *qua* local highway authority, would not have taken simple steps to reduce such a risk, for example by reducing the speed limit, or installing speed cameras, et cetera. The Inspector is invited to prefer the evidence of Mr Grahame Wickenden – namely, Princes Parade does not constitute an unsafe road over which the vehicular right of way has been exercised by the public for approximately 100 years.
26. The Council's evidence about the difficulties of getting out of vehicles into the carriage way – together with problems of getting over or through the dwarf splash wall (which is approximately 60 cm high and 35 cm wide) between the carriageway and the Promenade is, also, exaggerated. There are 7 gaps in that dwarf wall and it is perfectly possible for an agile person to get out of a parked vehicle even where such vehicle's door opens on the dwarf wall side. For either vehicles with sliding doors such as camper vans, or motor bikes, the issue does not arise.
27. As Princes Parade is not, relatively speaking, and compared to the A259 particularly heavily trafficked. Hence, if occupants do have to wait until there is no on-coming traffic before opening their car doors that presents no material inconvenience. Again, the Council's evidence exaggerates the issue.

The proposed new road or way

28. The Council propose an alternative to that which would be lost. It is a new road to be constructed to Kent County Council's local distributor road standards ("LDR"). A

reasonable amount of the detail of what is proposed is now known – being depicted on the Council’s contractor BAM’s general arrangement plans. [C/D 88-90]

29. The new road will be 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, will 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 [Lloyd bore plan 16/7/2021].

30. The Council contend that the new LDR would constitute a safer way than the part of Princes Parade that is proposed to be stopped up. This contention should be tested against the fact that the Capital Traffic’s stage 1 Road Safety Audit in January 2018 identified 4 problems in respect of which various recommendations were made. These included identifying a problem at the eastern end of the site:

“... there is a considerable level difference between the existing car park and canal beyond ... errant vehicles leaving the carriageway or risk of drowning.”

The recommendation was to ensure that a road restraint risk assessment process was carried out. It is clear that the nature and constraints of the site presents a considerable challenge to providing the proposed new vehicular right of way road. [C/D 28]

31. Set against the Council’s evidence that some people have to get out of their vehicles into the live carriageway of Princes Parade, it is to be noted that those parking in the new canoe centre car park will have to cross the entire carriageway of the proposed new road to access the Royal Military Canal.

32. Again the evidential foundation of the Council’s claim that the new LDR will, in time, prove itself to provide a safer vehicular right of way than that over Princes Parade is very questionable.

33. The loss and inconvenience to the public flowing directly from the Order if made, is the loss of what is known, together with the uncertainty of an alternative way yet to exist and be provided.

Loss of parking provision

34. The replacement parking provision proposed by the Council has evolved from the planning application, through to the committee report, the stance taken by Buckles in May 2021 and, most recently, in the evidence given by Mr Mark Fitch to the Inquiry. Proposed replacement parking - identified in Mark Fitch Appendix A (existing) and Appendix B (proposed).
35. As Mr Fitch accepted in C-x, on the part of Princes Parade proposed to be stopped-up, 187 parking spaces existed at the time of the planning application, reduced to 172 by the Council when it subsequently introduced pay and display restrictions for the summer season, together with double yellow lines by the gaps in the dwarf sea wall. The proposed replacement parking provision is 166 spaces, resulting in a reduction and loss.
36. As Brian Morgan explained in C-e, if the Order is made the proposed parking provision shortfall results in a loss of 29 spaces. That shortfall increases by 11 spaces – to a shortfall of 40 spaces – if the Council adheres to its own Planning, Design and Access Statement design proposals and does not authorise the creation of those 11 spaces on the new road which would contradict the “No on-street parking in the central open space section of the site”. [Table 5.1 C/D 007 p. 99]
37. As Brian Morgan also explained in C-e, the leisure centre parking is of the quantum required by Kent County Council for the nature of the use. In other words, the 69 spaces to be provided in the car park to the west of the proposed leisure centre building,

together with the 31 spaces in the car park to the east are required to meet the demands of leisure centre users. They will not be available for the general public to use – and should not be counted as available to meet demand generated by the closure of part of Princes Parade.

38. When considering the number of parking spaces to be provided it is also important to recognise that it is not clear that potential competition for the replacement parking places that are to be provided will not be generated by visitors to the 150 dwellings, hotel, café and retail uses. It remains to be seen whether it is physically possible to provide sufficient “dedicated parking” for these residential and commercial uses when these later phases come to be built out.
39. Furthermore, the proposed replacement parking is considerably less advantageous to the public generally, and people with disabilities (including anglers) in particular. As Mr Fitch accepted in X-e most of the proposed replacement parking is within 100 m of the seafront with, in the worst case, it being 125 m distant. Added to having to carry beach paraphernalia, possessions or fishing equipment from a new parking space over such a distance the public would also have to navigate between blocks of built development and past a new 1 m high protective stone wall.
40. Additionally, because the Council’s Planning, Design and Access Statement, Pt 4 The Proposals states that the built development will be at 7.8 m AOD with the Promenade at 6.8 m AOD, steps or ramps would appear to be required to get down the difference in levels. **[C/D 7, 4.4 pp. 71-81]**
41. As Mr Fitch accepted in X-e those members of the public using the 69 parking spaces (including 7 dedicated for people with disabilities) to be provided in the proposed car park at the western end of the site will have to cross the remaining part of the Princes Parade carriageway if they wish to access the beach or sea.

42. Save Princes Parade's submit that what is proposed appears considerably less convenient than what is being lost. This is a significant disadvantage, particularly to the elderly and people with disabilities because Princes Parade still currently provides free immediate, direct access to the Promenade, beach and sea for six months of the year along the entirety of it. For the remaining six months, one has to pay for that advantage.
43. Save Princes Parade submit this is a further disadvantage and loss to the public which would flow directly from the Order and is to be weighed in "the merits balance" against making the Order.

Effect upon the setting of the Royal Military Canal

44. 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. Mr McKay accepted in X-e that the Royal Military Canal is both unique and of national significance, and that the impact of the diverted traffic using the new way in such close proximity "may be detrimental to a small degree". Whilst Mr McKay evidence when X-e was "I don't think the extra traffic devastating" he accepted that this part of the Royal Military Canal was "certainly a very interesting part with lots of features of historic interest here".
45. The Council's evidence from Mr McKay is that the new LDR would be constructed at 7.16 m AOD, the tow path is at between 3.20 and 3.45 m AOD, hence the height difference is nearly 4 m. [I/D 004] Assuming the proposed native shrub trees to be planted to achieve screening of the LDR are 60 – 80 cm when planted, that equates to 5 years to reach 3 m. If the planting starts at the bottom of the embankment the diverted traffic along the new road will be visible for at least 5 years. The original phasing plan suggests that planting will start two years' after the commencement of the development. Hence, at least 7 years could pass before the diverted traffic off Princes Parade is

screened from the Royal Military Canal. If deciduous trees are to be planted, there will be no, or minimal foliage, for 4-5 months of each year.

46. The statutory consultee responses of Historic England to the Council about the proposed development scheme, together with re-aligned highway route are before the Inquiry. [C/D 40-42] As per Mr Joyce's EiC and answers in X-e Historic England found themselves having to make the best of a bad situation. In other words, to consider any form of mitigation to the obvious harm which the development will cause to the setting of the Royal Military Canal. That is the context of the idea that the new road could be regarded as "a buffer" between the built development and the Royal Military Canal.

47. In Mr Joyce's view substantial harm would be caused to the setting of the Royal Military Canal by diverting 4,500 each and every day along the proposed line of the new way in such close proximity to the most historically rich and significant part of the 28 mile Royal Military Canal.

Effect on the tranquillity of the Royal Military Canal

48. On either bank of the Royal Military Canal there are three public footpaths and bridleways including that immediately to the south on the seaward side, known as the tow path. It has a Local Wildlife Site policy designation. The difference in character between the "vibrant sea-front" and the "quiet canal area" is captured in Design South East's December 2016 design review. [C/D 112] The effect of 4,500 vehicles each day passing at such a height, and in such close proximity to the Royal Military Canal, and within less than 10 m of the public bridleway or tow path adjacent to its southern bank, will be to introduce very 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.

49. The Inquiry has received vivid, cogent oral evidence (Ms Chris Farrell EiC albeit it is accepted that the Council was not able to test such evidence by cross-examination as the witness was considered a vulnerable witness), together with written evidence from a considerable number of local people who regularly use the tow path and can give important evidence on the topic.
50. That walking is the most popular active recreation in England is well-known. That the number of people who walk is increasing, and that such number has increased since Covid-19 pandemic lockdown began in March 2020, is also very well recognised. The public right of way along the tow path immediately to the south of the Royal Military Canal is a very well used and highly prized public advantage.
51. It is important to recall that Seabrook is recognised as being deficient in terms of its public open space provision – Shepway Open Space Strategy [C/D 116 fig. 5.1, p. 79]. In such a context, a reduction in the qualitative experience of the green corridor is a significant loss to the public.
52. The Council seek to rely upon the contention that diverting the vehicular traffic from Princes Parade onto the proposed new LDR is “neutral” in terms of simply moving traffic, including its associated noise, away from the sea front and down by the Royal Military Canal, Save Princes Parade contend that this is a bad point and incorrect. The noise generated by the motion of the sea drowns out traffic noise. Miss Bond seemed to agree in C-e that the noise of the sea drowns out the noise of vehicular traffic – albeit she qualified this by saying it depended upon which side of of the Promenade one was on. By contrast, introducing that noise into a sheltered tranquil green corridor would, plainly, be detrimental. Mr Woodhead appeared to have accepted this in C-x albeit “not a significant issue as a dis-benefit” was his opinion on weight.

53. Save Princes Parade contend that seriously undervalues the issue, as 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

54. Save Princes Parade accepts that, its previous contention concerning 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 can no longer be sustained in the light of the revised evidence given by Mr Martin Whybrow to the Inquiry.

Effect on the local traffic network

55. 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 out to be once the LDR is constructed, and then opened for public use, is of course unknown.
56. 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” [Dr Geoff Burrell’s statement Council committee meeting exhibit] it is plausible that a lot of traffic which uses, 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.
57. The written and oral evidence presented to the Inquiry by Cllr Rory Love, together with that from long-standing local residents concerning traffic displacement, is important.

As Local Transport Note 1/07 Traffic Calming, explains changes in vehicle flows are very difficult to predict (p. 60) [submitted as part of his oral evidence]. It is reasonable to assume that Councillor Love has sufficient local knowledge and a good grasp of the issue to give credible and reliable evidence on the potential impact of traffic displacement.

58. Mr Fitch's technical note in response opines "it is highly unlikely" motorists would use the longer routes "rather than use the existing road". [I/D 013] This overlooks the fact that if the Order is made Princes Parade as it exists today would cease to be. It is entirely plausible that some motorists will prefer to use the familiar local road network rather than the re-routed and less convenient Princes Parade. It is reasonable to assume that a proportion of vehicles using Princes Parade today, will not use the realigned route in the future.

59. Save Princes Parade contend that Mr Fitch's opinion that there would be no traffic displacement is not credible. One of the Council's own design principles for the road is "to reduce rat-running" [C/D 007 p. 62] and Kent County Council's highway officer comments to the Council's planning committee when considering the planning application strongly suggest that it welcomed and preferred extra traffic being diverted onto the A259 because "... it is an A road and that is where the bulk of the traffic should be ..." [Council planning committee 16 August 2018 meeting transcript, Dr Burrell's appendix X1]

60. How many of the 4,500 vehicles will not take-up the right to pass and repass along the new proposed way is not known. Because the new way will be less attractive, involve negotiating a series of road humps, bends and priority give way features, the detour will take longer and be slower, it is reasonable to assume that there will be potentially a significant number of extra vehicles added to the Seabrook Road traffic flow.

61. Whilst the Seabrook Road may have the capacity to absorb these additional vehicles, doing so may have a noticeably detrimental impact on the “pinch point” junctions at Twiss Road/East Street roundabout, and the Portland Road/Light Railway (Scanlon’s Bridge Road) complex. As the Inspector may observe from his site visit drive route, at the East Street roundabout there are presently two types of traffic using that roundabout to perform a U-turn. First, cars leaving Twiss Road to travel to Folkestone (no right turn), and second, cars coming from the west who want to access Waitrose. The potential adverse knock-on effect of making the Order upon this roundabout is a detriment to the public which would be made worse if traffic then uses the narrow local streets, such as Mill Road, which can serve as short-cut back onto the Seabrook Road.

62. The phasing and programme in the Council’s Planning, Design and Access Statement suggests a time frame of circa. 4 years to complete the development. [C/D 7] Hence the fact that all the construction traffic will also be using the LDR during the construction phase may also provide a reason why some of the traffic diverted off Princes Parade will use the A259 instead. As Mr Woodhead accepted in X-e cement mixers, groundwork contractors, along with the usual vehicles associated with an active building site will all be coming down the new LDR during the construction phase.

63. Save Princes Parade contend that the potential detrimental impact of displaced traffic onto Seabrook Road and the surrounding local traffic network 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.

LEGAL CONSEQUENCES OF MAKING THE ORDER

64. If the Order is made and comes into operation that is a “legal event” within the meaning of section 53(3)(a) of the Wildlife and Countryside Act 1981: Duty to keep the definitive map and statement under review. It is that legal event which would extinguish

the public vehicular right of way over part of Princes Parade. The physical stopping-up is authorised by the Order, without which it would constitute an offence.

65. The Council contend that if the Secretary of State were to make the Order they control when Princes Parade would physically be stopped-up pursuant to conditions attached to the planning permission. This introduces a disadvantage to the public arising from the complicated nature of the development site.
66. ~~The Council's desire and need to fund the costs of: (1) remediating a former municipal landfill site; (2) the design and build of the new leisure centre; and (3) the construction of the new proposed road over which the way will be exercised results in a proposed development that the public cannot be certain will be built out.~~
67. ~~The planning permission itself includes a pre-commencement condition (No. 14) that requires the Council, as local planning authority, to be satisfied that full and sufficient funding exists to build out the new leisure centre. The Planning, Design and Access Statement's indicative phasing plan and timings show that remediating the site could, itself, take 11 months. [C/D 007] The planning committee meeting in August 2018 updates this to 10 months [C/D 2, 1.14]~~
68. ~~It is important to note that Design South East were of the view that re-aligning part of Princes Parade behind the built development and hard by the Royal Military Canal potentially created as many problems as it sought to solve and "is a very expensive move". [C/D 112 p. 3/8]~~
69. A direct consequence of making the Order would be to extinguish the right of way which exists on the basis that an alternative way will in the future be provided. ~~To the extent that there is a risk that the site will turn out to be too expensive for the Council~~

~~to develop, the public will suffer a loss and disadvantage without having the certainty of a substituted right over a new alternative way.~~

CONCLUSIONS

70. If the Secretary of State is to make the Order “stopping up” part of Princes Parade, then the legal consequence would be the immediate extinguishment, from the time the Order takes effect, of the vehicular right of way which has been enjoyed by the public for approximately 100 years. The Order proposes a diversion of that right along a realigned route over a new road or way which has yet to be constructed.
71. Whatever decision the Secretary of State reaches, that decision will have significant implications and ramifications for the public. When considering and weighing-up how to resolve the public interest conflict between the Council’s wish to implement its planning permission and the overwhelming public wish to retain the existing vehicular right of way over Princes Parade, the Secretary of State needs to come to a conclusion on where the public interest truly lies.
72. Save Princes Parade accepts that there is, of course, a public interest in the planning permission being implemented. A new leisure centre to replace the out-dated swimming pool at South Road, Hythe, together with the provision of a permanent home and facility for the Sea Point Canoe Centre are public benefits. The housing and commercial elements are, in truth, “enabling development” to generate a capital receipt towards the costs of the scheme.
73. To be weighed against that public interest however are the losses and disadvantages which the public would suffer as a direct consequence of making the Order. It is clear from the evidence before the Inquiry that a new 11 m wide Promenade – comprising 6 m of concrete paving with some planters, and a 4 m wide asphalt cycle path together

with a 1 m strip of planting to replace the existing 5-6 m wide Promenade (with its 20 benches and 7 gaps in the dwarf sea wall) - is not regarded as a public benefit worth having compared to the loss of the vehicular right of way. Additionally, to access the widened Promenade, beach or sea the public will have to navigate through gaps in the new 1 m wall designed to protect the houses from the sea.

74. In the end the Secretary of State – and his reporting Inspector - have to pose one question: Would the loss and inconvenience to the public of stopping-up and diverting part of Princes Parade outweigh the benefits of making the Order?
75. The cumulative inconvenience which would occur from the loss of seafront parking, the loss of seafront highway amenity, the inconvenience to people with disabilities, the harm to both the setting of the Royal Military Canal, and the tranquillity of the green corridor through which it flows, together with the potential detrimental impact upon the local highway network, are considerable and weighty inconveniences to the public.
76. ~~When added to the inherent uncertainty of the future new way being provided,~~ Save Princes Parade invite the Inspector to agree that the loss and inconvenience to the public would outweigh any benefits in making the Order.
77. Accordingly, Save Princes Parade invite the Inspector to report and recommend to the Secretary of State that, in the public interest, the Order should not be made.

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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