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# Report to the Secretary of State for Transport

by **O S Woodward BA(Hons.) MA MRTPI**

an Inspector appointed by the Secretary of State for Transport

Date: 22 November 2021

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## **TOWN AND COUNTRY PLANNING ACT 1990**

### **THE STOPPING UP OF HIGHWAYS**

**(SOUTH EAST)**

**(NO. ) ORDER 201**

Inquiry held on 19 to 22 October and 3 to 4 November 2021  
Site visit made on 3 November 2021

Princes Parade, Hythe, CT21 6AQ

File Ref(s): DPI/L2250/21 22 SUOH

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**Princes Parade, Hythe, CT21 6AQ**

- The Order is made under Section 247 of the Town and Country Planning Act 1990 and is known as The Stopping Up of Highways (South East) (No. ) Order 201 (the Order).
- The Order proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 172 objections outstanding when Folkestone & Hythe District Council submitted the Order to the Secretary of State for the Department for Transport at the commencement of the Inquiry.

**Summary of Recommendation: I recommend that the Order be made.**

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**Costs**

1. At the Inquiry an application for costs was made by Folkestone & Hythe District Council against Save Princes Parade. This application is the subject of a separate Report.

**Preliminary Matters**

2. I was appointed by the Secretary of State for Transport, pursuant to Section 247 of the Town and Country Planning Act 1990 (the Act), to hold a public local Inquiry into the above draft Order and to report to the Secretary of State.
3. I opened the Inquiry on 19 October 2021 and it sat for six days, the first week at Leas Cliff Hall, The Leas, Folkestone CT20 2DZ and the second week at the Council Chamber, Civic Centre, Folkestone, CT20 2QY.
4. Folkestone & Hythe District Council is the Applicant. It has confirmed compliance with all statutory formalities for the publication of the Order and the notification of the Inquiry. No one has disputed this compliance.
5. A group called Save Princes Parade (SPP) are the principal objector group and they participated fully in the Inquiry including in cross-examination. A number of further objectors spoke at the Inquiry as detailed in my report.
6. I undertook an informal site visit on 21 September 2021. I undertook a further, accompanied, formal site visit on 3 November 2021 whilst the Inquiry was open. I also carried out an unaccompanied driving route, as previously agreed between the main parties.

**The Order**

7. The site in question includes the eastern part of Princes Parade from near to the junction with Seabrook Road and running approximately 40% of the way along the parade moving westwards. It also includes the land in-between the parade and the Royal Military Canal (RMC) to the north.
8. The Order would enable development permitted under planning permission Ref Y17/1042/SH, as granted by the Council in its capacity as local planning authority on 18 July 2019 (the planning permission). This is a hybrid permission, with full permission for a leisure centre and associated parking and facilities, and outline permission for residential commercial and retail uses, and substantial landscaping. The permission also includes the closure of the existing Princes Parade and the provision of a diverted road through the application site.

9. The Order is in relation to the closure of Princes Parade and the proposed new road. In detail, the effect of the Order would be to stop-up 871m of Princes Parade and land related to Sea Point Car Park. A new highway right would be provided on a diverted highway. This would run from the eastern end of Princes Parade, divert north towards the RMC and then run along the land in-between the parade and the RMC before diverting back to and re-joining Princes Parade.
10. The existing Princes Parade is a two-way road with on-street car parking on its southern side, directly adjacent to an existing splash wall. Beyond the splash wall is an approximately 6m wide promenade. To the north of the parade is scrub land and open space leading to an embankment down towards the RMC.
11. The proposed road would be wider, with a 6.75m carriageway, with footways mostly on both sides, various traffic calming measures, and some on-street parking albeit set back in dedicated bays off the carriageway. The promenade would be redeveloped and would be wider, at 11m, and with a new splash wall to the northern side. Various elements of planting and street furniture would be provided.
12. There would be no time-lag between the stopping-up of Princes Parade and the new road being operational and opening. This is because this is in the control of the Council in its role as a local planning authority, and as set out in conditions 13 and 30 of the planning permission. In any event, Article 2(1) of the Order also ensures this.

### **Scope of the Inquiry**

13. Section 247 of the Act allows the Secretary of State to authorise the stopping-up or diversion of such a public highway if he is satisfied that it is necessary to do so to enable development to be carried out in accordance with planning permission granted under Part III.
14. In these regards, I am satisfied, and it is uncontested, that the highway in question is a public highway. I am also satisfied, and it is uncontested, that the planning permission is valid and was granted under Part III of the Act.
15. Case law<sup>1</sup> has identified two key tests for the Order to meet. These are the 'necessity test' and the 'merits test', as follows:
  - whether the closure of the highway is necessary to implement the proposed development in accordance with the planning permission; and,
  - whether the advantages to be conferred by making the Order would outweigh any disadvantages or loss likely to arise to the public as a result of the stopping up.
16. The principle of the 'merits test' is to consider the balance of the public interest of the planning permission against the public interest in preserving the highway right. In this case, it relates to:
  - seafront parking, including parking for the disabled;

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<sup>1</sup> Network Rail Infrastructure Ltd, R (On the Application Of) v The Secretary of State for the Environment, Food And Rural Affairs [2017] EWHC 2259 (Admin)

- highway safety;
  - seafront highway amenity;
  - the setting of the RMC, including from noise and air pollution; and,
  - traffic congestion.
17. The above list was agreed through the production of the Proofs of Evidence and at the Pre-Inquiry Meeting. Biodiversity was initially raised as a main issue by SPP, but they withdrew this during the course of the Inquiry.
18. Within this framework, consideration of the Order is limited to the direct consequences of the stopping-up of the existing highway and the diversion to the new road, limited to the highway right. It includes the right to pass and re-pass and purposes reasonably incidental thereto, such as parking and stopping. The construction of the planning permission including the proposed road, and the subsequent operation of the permission, are not related to the Order. The operation of the proposed development instead forms the baseline condition against which to assess the effect of the Order.
19. This approach was agreed between the main parties. They further agreed that this limits the considerations to the effect of the displaced traffic onto the new road, which is in the order of 4,500 vehicles per day, or between two thirds and three quarters of the total traffic, depending on the time of day. These figures are taken from the Transport Assessment accompanying the planning permission and are as quoted and agreed between the main parties during the course of the Inquiry.
20. SPP, and some of the objectors, revised their statements and their evidence in light of this clarification of the scope. This was reflected through the cross-examination and verbal presentations made to the Inquiry, and also by revised Proofs of Evidence and supporting documents as provided during the course of the Inquiry. I have reflected this as appropriate throughout this report.

### **The Case for the Applicant (Folkestone & Hythe District Council)**

The material<sup>2</sup> points were:

#### *Parking*

21. The existing car parking along Princes Parade is inconvenient and dangerous as it is along a narrow road and directly adjacent to the existing splash wall, necessitating people to exit their cars either directly adjacent to the wall or into the carriageway. The existing gaps in the sea wall are infrequent, at 180m – 300m apart, and the actual walking distances from the parking to the sea is therefore often longer than that claimed by the objectors.
22. Following the introduction of the pay and display car parking, there are now approximately 172 spaces along Princes Parade. Their survey accompanying the

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<sup>2</sup> Documents APP001, 002, 003, 004, 00401, ID002, ID004, ID022, ID023, and oral evidence by Mark Fitch, Richard Andrews, Martin McKay and Matthew Woodhead.

planning application<sup>3</sup>, taken in 2016, showed that the peak usage of spaces was 100. They claim this is a robust survey, despite being only from one day, because it was a sunny Saturday in July in the school holidays. This is particularly true because since the survey was undertaken, pay and display parking has been introduced along Princes Parade, reducing demand. They claim the relevant consideration is to re-provide for the maximum usage of spaces, not the total existing provision.

23. The proposal is for 71 spaces in a new car park to the west, approximately 33 spaces to remain on the seafront, and 43 spaces to be provided on the new road. This amounts to 147 spaces, far in excess of the maximum recorded demand of 100 spaces. In addition, the majority of the spaces would be better quality and safer than the existing, either within dedicated car parks or in bays set back from the road and with direct access to a pavement, or even when onto the carriageway this would be where the road is wider than existing. The replacement Sea Point Car Park would be a similar distance from the sea, but without now requiring the crossing of Princes Parade.
24. There is no danger of users of the proposed commercial uses in the planning permission needing to use the public spaces because each proposed use is accompanied by its own car parking, each meeting Kent County Council's (KCC) parking standards, including for visitor parking. In fact, they claim further spaces may be available, at certain times, in the leisure centre car park for the public. This is for 108 spaces and is dedicated for the leisure centre, but there is nothing in the permission, including condition 33, requiring that the spaces be permanently reserved for leisure centre users. They claim it is possible that the operator would seek to maximise use of the spaces in off-peak leisure centre times by also allowing use by the public.
25. Parking for the disabled would be improved, partly through the less constrained on-street parking, and also through seven dedicated spaces for the disabled in the western car park. In addition, they claim the walking from the parking to the seafront would be acceptable for disabled people because frequent rest places would be provided on route, e.g. benches. These do not exist at present. In addition, the existing parking, although directly adjacent to the seafront, only offers infrequent gaps in the sea wall, which is an impediment for some disabled people. In any event, approximately 60% of Princes Parade, to the west of the stopping-up order, would remain as existing. This provides approximately 142 spaces in exactly the same style as the existing spaces on the Order land, adjacent to the sea wall.

#### *Highway safety*

26. They claim highway safety would be improved through the introduction of a wider, traffic calmed road, with parking set-back from the carriageway, and with dedicated pedestrian crossing points to be provided. A Stage 1 Road Safety Assessment was submitted with the planning application, and was agreed with KCC, who will adopt the new road. A crash barrier might eventually be required at the eastern end but, if so, this could be easily incorporated into the landscaping in this location and would not be intrusive.

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<sup>3</sup> CD018 - Environmental Statement Annex 8, Appendix 5

27. The new, widened, promenade would provide a dedicated cycle lane. Improving safety and convenience both for cyclists and pedestrians. Cyclists could also use the new road, if they so wished, and if they did, it would be safer than the existing because it would be wider and the parked cars set off from the carriageway.
28. They claim the existing Princes Parade is an unsafe road, due to its narrowness, the parking directly alongside the carriageway, and the speed of traffic, which has been recorded at 48 mph (85<sup>th</sup> percentile). This is evidenced by eight accidents recorded along the road, including four along the part to be stopped-up, including pedestrian collisions. The proposed road would remove these dangers through the traffic calming, such as raised tables and bends, dedicated walking routes, set-back car parking, and 30 mph speed limit.

#### *Highway amenity*

29. They acknowledge that the existing Princes Parade is an attractive route along the sea front. However, approximately 60% of this is to remain, to the west of the Order. They question the relevance of this point because there is no 'right' to a view from a highway. They also claim that, even if relevant, the value to be attributed to this should be low because drivers should not be admiring the view, so this is largely a benefit to passengers. In addition, the promenade would become a more attractive route for pedestrians and cyclists with the removal of cars and the wider promenade with more attractive landscaping.

#### *Setting of the Royal Military Canal*

30. They agree that the eastern end of the RMC is an important part of the canal in heritage terms. However, they claim that the heritage significance of the setting of the RMC is not tranquillity. The area where the road is proposed would have been the 'killing fields' area where battles were anticipated. In any event, the tow path is by the canal in a trench, below the proposed new road. The embankment next to it would be planted with trees and other landscaping, which is to be controlled by condition. It is likely this planting would start at 600mm-800mm and grow to approximately 3m tall within five years. The traffic on the new road would therefore only be, at best, intermittently visible.
31. The traffic on the new road would be slower than along the existing Princes Parade, and would therefore be quieter. It is likely that the existing Seabrook Road, to the north, would be noisier than the proposed road because it is much busier. All of these considerations need to be seen in the context of the proposed development and its buildings, none of which flow from the Order and which therefore form the baseline for assessment. Any harm to the setting of the RMC needs to be assessed against this baseline.
32. It is advised that Historic England did not object to the location of the proposed road and, in fact, they stated that it would be beneficial to separate the proposed development from the RMC with the road.
33. Even if there is some harm to the setting of the RMC, this is limited. They state that it is absurd to categorise it as 'substantial' harm as defined by the National Planning Policy Framework (the Framework).

### *Traffic*

34. The reserved matters applications are due to be submitted imminently. The target is to go to planning committee in Spring 2022, and for construction in Summer 2022, with the new road to be operational in 2023. This is the date used for the traffic modelling. There is no need to model into the future. Any changes to traffic in the future will be for future developments to take into account. All affected junctions, including Sandgate Junction, were tested at the planning application stage and found to be acceptable by the Council and KCC.
35. The proposed road would result in longer journey times because of the reduced speed limit and longer route. However, this would only be approximately 20 seconds longer. For approximately 60% of the route, Princes Parade would remain by the sea. The proposed traffic calming is only intended to keep traffic speeds at 30 mph, not to lower that further into the teens/low 20s. It is unlikely these changes would give rise to any material diversion of traffic from the road to alternative routes, i.e. Seabrook Road. This is particularly so because Seabrook Road is a busy road, with traffic lights, a roundabout and other restrictions to the free flow of traffic. It is therefore unlikely to be considered as a preferred alternative by a material proportion of users of Princes Parade. In any event, they asserted that the road and the relevant junctions would have the capacity to absorb the additional traffic, even in the unlikely event that this were to occur.

### *Other*

36. Princes Parade is not of the same historic merit as the RMC but it is of some local interest. The Parade would be enhanced by the Order, which would revert the promenade closer to its Victorian intent without car traffic. The promenade would also become more attractive through improved landscaping. The tram shelter is also to be retained, albeit moved into the central public open space. The overall effect on the parade would be positive.
37. They claimed that it is not possible to amend the stopping-up order so that only the element of Princes Parade outside the leisure centre be stopped-up and diverted. This is because such changes would not allow for the new splash wall to be constructed, which is an Environment Agency requirement, it would involve directing the road through areas proposed for buildings, and conditions 6 and 42 and a number of others could not be complied with, nor could the Design Code. This is not a viable alternative.
38. They claim the effects of Seabrook Primary School arise from the planning permission not the Order. In any event, the school is set at least 60m from the new road, on the other side of the RMC, and there would be significant landscaping in-between the school and the proposed road.

## **The Case for the Supporters**

### *Miss Gillian Bond*

The material points were:

39. Princes Parade is difficult to drive along because of the parked cars and because it is narrow. It is inconvenient to get out of the car when parked along the road, due to the proximity of the splash wall. Cyclists are a hazard to pedestrians along the promenade. A wider promenade is needed to improve this.

### *Written Representations*

40. 29 written representations in support of the Order have been received, including from the Hythe Aqua Swimming Club, Cllr David Godfrey, Cllr David Wimble, and Cllr Jenny Hollingsbee. The material points were:
41. Princes Parade is dangerous, with speeding traffic and pedestrians close together, and the new road would be an improvement; the new promenade would be an improvement for pedestrians and cyclists compared to the existing and would improve the character of the seafront, thereby also increasing tourism and economic investment in the area; the new road would mitigate the effect of the proposed new development on the RMC; and, other rat runs are encouraged from Princes Parade including along Twiss Road and South Road.

### **The Case for Save Princes Parade**

The material<sup>4</sup> points were:

#### *Parking*

42. There would be a shortfall in proposed spaces compared to the 172 as existing. The shortfall is greater than that set out by the Applicant because 11 of the proposed spaces should not be provided because they would be contradictory to the Design and Access Statement, which states that there should be no on-street car parking in the central area of public open space. In addition, the car parking numbers are inconsistent between different documents relied upon by the Applicant.
43. The existing car parking provides immediate access to the beach. This is important for recreation, swimmers, fishing and other users of the seafront. The splash wall is fairly low and not a big impediment for most users. The proposed car parking would be less convenient than the existing with longer walking distances to the sea front and inconvenient pedestrian routes involving ramps. Many of the proposed spaces would still require people to exit onto the carriageway. The leisure centre car parking should not be counted towards public car parking because it cannot be guaranteed that the future operator would allow for this.
44. Parking for the disabled would be worsened with lots of the walking distances to the sea front increased compared to the existing parking directly on the sea front. Even the seven proposed spaces for the disabled within the proposed western car park would still involve crossing the road, which does not need to take place as existing.

#### *Highway safety*

45. Princes Parade is not unsafe. The accident data<sup>5</sup> shows fairly few incidents and of those, several are outside of the Order land opposite the golf club and hotel. This is a different character to the Order land because of the golf club. The only

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<sup>4</sup> Documents ID003, ID010, ID011, ID014, ID015, ID018, ID020, ID021, and oral evidence by Grahame Wickenden, Brian Morgan, Roger Joyce, Martin Whybrow, and Chris Farrell.

<sup>5</sup> CD018 – Transport Assessment Appendix 7



accident within the Order land was for a clipped wing mirror. KCC have not attempted to traffic calm or increase safety along the road, indicating that they are content with its current safety.

46. The proposed road would have safety challenges, for example the recommendation for crash barriers to be investigated to the eastern end. The proposed cycle lane would be segregated, however they questioned whether cyclists would, in practice, keep to this, and if this was enforceable. In addition, they claim that the additional street furniture, such as benches, that is proposed would worsen safety for cyclists.
47. They raised the importance that visibility splays are kept clear in perpetuity, although they acknowledged under cross-examination that KCC have not objected to them, and it is they who will be responsible for them.

#### *Highway amenity*

48. Drivers along the highway benefit from the amenity of being able to see the sea, even if only in peripheral vision. The existing car parking spaces also provide visual amenity by allowing people to park directly by the sea front and look out to the sea from the comfort of their car.

#### *Setting of the Royal Military Canal*

49. There are three footpaths/bridleways alongside the RMC, including one at a higher level on top of a bund. They are of markedly different character to the beach front, and are tranquil. The approximately 4,500 vehicles per day would introduce significant noise, air, and light (from the headlights) pollution. This would not be a neutral impact from diverted traffic because the existing traffic runs alongside the sea and its noise is partially drowned away by the sea, and is further from the RMC and its footpaths.
50. The most important part of the RMC is also the part where the proposed road would be closest, at the eastern end. The new road and the diverted traffic of approximately 4,500 vehicles per day would be very close, at 13m to 19m, from the RMC. The diverted traffic would create noise and pollution, and would be detrimental to the setting of the RMC. The road would be approximately 4m above the tow path and the underside of vehicles would be visible, even after planting, which would take five years to reach maturity, and would be a lesser visual barrier in winter months in any case.
51. Historic England's comments regarding the road providing a buffer to the built development behind were, SPP claim, them attempting to make the best of a bad situation. They were comments of the road in the context of the wider proposals, and not the road and the traffic in and of itself.
52. SPP's conclusion was that the diverted traffic would cause substantial harm to the setting of the RMC, in the terms of the Framework.

#### *Traffic*

53. The proposed road would have a convoluted route with several traffic calming measures. It would afford much less attractive views. The likely speeds would be lower than 30 mph and consequently the extra time to drive along the road compared to existing would be longer than the 20 seconds quoted by the

Applicant. Although changes to traffic flows are difficult to predict, they expect a material diversion of traffic from Princes Parade onto Seabrook Road. This would be even higher during the construction period due to the presence of construction traffic on the new road. They raised concerns whether or not the junctions at Twiss Road/East Street roundabout, and Portland Road/Light Railway could absorb the diverted traffic, even if Seabrook Road itself could.

54. They initially claimed that at least 10 years, and potentially 20 years, into the future should have been used for the traffic modelling, including an allowance for dispersed traffic. However, under cross-examination, they conceded that the modelled year of 2023 is linked to opening and that traffic growth in the future would not be as a consequence of the Order, and is therefore a future baseline and that future developments must deal with their own traffic generation.

*Other*

55. Princes Parade is an impressive, linear feature. It has integrity. Approximately 800m would be lost, nearly half of its length. This would disrupt the linear nature of the parade and negatively affect views along the front. The detail of the proposed sea wall has not been fully considered and would potentially exacerbate this.

**The Case for Objectors**

*Councillor Anita Jones – Hythe East Ward, Hythe Town Council*

The material<sup>6</sup> points were:

56. The Order would cause an increase in traffic on Seabrook Road, which has many junctions and does not have the capacity to cope. There would be a number of negative effects on Seabrook Primary School which is located on the road, including highway safety, congestion, conflicts with busses for the older children, and increased noise and air pollution. The loss of the existing Princes Parade car parking would result in the loss of appropriate parking for the disabled. The RMC is an important green space and the increased noise and air pollution would have a negative social and environmental impact.

*Matthew Jones*

The material<sup>7</sup> points were:

57. The new road would close the gap between two conurbations and result in the loss of green land. More discussions should be undertaken to mitigate the effect from road and building lighting. Consideration should be given to the road surface and other measures to mitigate noise levels. Calculations should have been provided for emissions from traffic and measures allowed for, if needed to lower them.

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<sup>6</sup> Objection No 187 and oral evidence

<sup>7</sup> Document PI088 and oral evidence

*Mark Brophy*

The material<sup>8</sup> points were:

58. There would be a significant loss of car parking, particularly in light of likely increased demand due to increase in car ownership and 'staycationing'. This would create access issues for existing residents and future users of the proposed commercial and residential accommodation. People searching for parking spaces would create traffic congestion and air pollution. We should be aiming to improve car parking, not just be 'no worse'.

*Councillor Lesley Whybrow - Folkestone & Hythe District Council, Hythe Ward*

The material<sup>9</sup> points were:

59. The negative effect on the tranquillity currently experienced by people walking along the tow path by the RMC. The new road would be built within the buffer zone as set out by the Environment Agency and is likely to cause harm to biodiversity. The road would harm the historic setting of the RMC. The route of the road was objected to by the South East Design Panel as part of consideration of the planning application. There would be a significant reduction in parking spaces along the seafront, particularly inconveniencing the disabled, those with young children and those with heavy fishing equipment. Safety and environmental concerns with Princes Parade could be tackled whilst keeping the existing road, for example by lowering the speed limit and introducing traffic calming measures.

*Marilyn Wheeler*

The material<sup>10</sup> points were:

60. The Order fails on both the necessity and merits tests. The tram shed is important to local people as a meeting and reference point and this would be lost in its new location within the large public open space. As existing, people do not tend to park near the existing gaps because the splash wall is only 2 feet high and is easy to get over.

*Theresa Cole*

The material<sup>11</sup> points were:

61. The proposal would harm biodiversity. The replacement planting would take a long time to grow. The pandemic has increased the value of the existing green space. Drivers do not habitually speed along Princes Parade and passengers gain great amenity from the sea views. The safety of the part of Princes Parade to be affected by the Order is good, with the quoted accidents mainly from outside the

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<sup>8</sup> Document PI052 and oral evidence

<sup>9</sup> Objection No 15 and oral evidence

<sup>10</sup> Objection No 101 and oral evidence

<sup>11</sup> Document PI086 and oral evidence

golf club and hotel, which could be due to alcohol consumption. The 'fake' Victorian/Edwardian look of the new promenade would not be successful. Access for the disabled is already strong because of the parking directly along the seafront. The 2016 traffic data is now out-of-date because traffic levels have risen due to the pandemic. The effects on Seabrook Primary School, both highway safety and pollution, should be assessed.

*Councillor Rory Love - Kent County Council, Cheriton, Sandgate and Hythe East*

The material<sup>12</sup> points were:

62. The planning permission did not consider traffic issues related to the Order. The necessity test is not met because small changes to the proposal could be secured which would mean that the existing Princes Parade could be kept. This is achievable within the parameters set out for the outline element of the permission. The road therefore only needs to be diverted around the back of the leisure centre and the other elements applied for in full, before diverting back to the existing Princes Parade.
63. Traffic calming measures would result in displaced traffic. The displaced traffic would negatively affect local highway junctions, particularly the Twiss Road/East Street roundabout and at the Portland Road/Scanlons Bridge Road junctions. He used data from the planning application to calculate peak traffic flows and assumed 75% traffic displacement to attempt to judge this affect, but did not definitively conclude on whether this would result in material worsening of the performance of the junctions.

*Hillary and Hannah St Clare*

The material<sup>13</sup> points were:

64. Concerns about the affect on children, including from pollution from diverted traffic and highway safety issues outside of the primary school. Negative effect on the RMC. Harm to biodiversity, with the inevitable loss of reptiles, birds, small mammals, insects and the flora and fauna that make the RMC special.

*Dr Geoff Burrell*

The material<sup>14</sup> points were:

65. Small changes to the planning permission would allow for Princes Parade to remain where it is. The dimensions of the site allow for this. In addition, there are inconsistencies between the drawings and conditions of the planning permission which make it impossible to build the proposal within the red line without making changes.

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<sup>12</sup> Objection No 239 and ID019 and oral evidence

<sup>13</sup> Objection No 83 (both parts) and individual oral evidence

<sup>14</sup> Objection No 194 and oral evidence

*Councillor Jim Martin – Hythe South, Hythe Town Council and Folkestone & Hythe District Council, Hythe Ward*

The material<sup>15</sup> points were:

66. Simple amendments to the planning permission would mean that the road does not need to be stopped-up and diverted. Princes Parade is iconic and its straight orientation is part of the heritage of the area. The displaced car parking would result in parking on surrounding residential streets. The vehicles would result in a detrimental effect on the biodiversity of the RMC, in particular birds, small mammals, reptiles, flora and fauna would all suffer. It would be built in the Environment Agency 'buffer zone' and would likely require significant engineering in order to be constructed. The vehicles would also detrimentally affect the tranquillity of the RMC. Overall, access to the beach would be hindered by the proposal. The new location of the tram stop would lose its historic connection to Princes Parade. The illumination from the road would harm one of the few areas which remains dark at night along the coast.

*Councillor Prater – Folkestone & Hythe District Council, Sandgate and West Folkestone Ward*

The material<sup>16</sup> points were:

67. The diversion would result in increased traffic and congestion on Seabrook Road. This is a busy, congested, primary route which already has difficulties for passing cars. There would also be displaced car parking onto Sandgate Esplanade and other local roads, causing disruption to local residents. These roads are already heavily parked and have been getting worse since the introduction of pay and display car parking along Princes Parade. Parking for the disabled would be made worse and therefore would encourage disabled persons in particular to park on surrounding roads.

#### *Written Representations*

68. 172 written representations in objection to the Order have been received, including from the Campaign to Protect Rural England, the Shorncliffe Trust, the Seabrook Church of England Primary School, and the Hythe Civic Society. The material points, where they differed from those outlined above, were:
69. The difficulty of turning onto Seabrook Road being exacerbated by increased traffic, and the Full Council voted to shelve the permission but this was decided by Cabinet to be 'non-binding'.

#### **Inspector's Conclusions**

70. Bearing in mind the submissions and representations I have reported, I have reached the following conclusions.

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<sup>15</sup> Objection No 243 and ID016 and 017, and oral evidence

<sup>16</sup> Objection No 125 and oral evidence

### *Necessity test*

71. It needs to be established if there is either a physical obstacle, e.g. a practical impediment, or a legal obstacle, e.g. a Grampian condition, that prevents the implementation of the planning permission. The High Court in the Calder case<sup>17</sup> confirmed that it is not for the Secretary of State to postulate other development if he is satisfied of the necessity of the stopping-up and/or diversion to allow the development to be carried out.
72. This test is uncontested by SPP. However, it is contested by other objectors. The objectors highlight inconsistencies between the parameters plans associated with the outline element of the permission and the drawings associated with the full element of the permission. They also highlight that the description of development does not include reference to the new road within the full element of the description.
73. I agree that the parameters plans are ambiguous about whether or not the eastern end of the proposed road is within the full or outline element of the permission. It is also true that the full element of the description of development does not directly reference the proposed road. However, a description of development does not need to be fully comprehensive and must be read in conjunction with the approved drawings. In this instance, the drawings associated with the full element of the permission, as set out in condition 4, are clear that the full element includes the eastern end of the proposed road. Condition 6 in relation to the outline element cross-refers to the Design Code which confirms the road layout. In addition, although not currently agreed, detailed drawings of the proposed road were provided to the Inquiry, which marry to the proposed road layout attached to the Order. This matter has therefore been resolved to my satisfaction, and the proposed layout of the new road is confirmed and matches that as applied for in the Order.
74. The existing highway would conflict with parts of some of the proposed buildings and supporting infrastructure. So would the proposed promenade and splash wall. If the existing highway were left where it is, then these elements could not be built in their proposed locations, relevant conditions could not be complied with, and the permission would not be viable. It is not within the power of the Secretary of State to make alterations to the planning permission. The points raised by objectors regarding changes to the permission are therefore not relevant.
75. Councillor Rory Love suggested that the diversion could be amended so that the new road only diverts around the leisure centre before curving back to Princes Parade. However, no details of this were provided. Any plausible routing in this regard would travel through areas of the outline permission outlined for development and buildings. It would not therefore be possible to construct an alternative route of this nature within the confines of the planning permission. This is not therefore a realistic consideration before the Secretary of State.
76. I am therefore satisfied that the necessity test is met.

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<sup>17</sup> Calder v Secretary of State for the Environment [1995] E.G.C.S. 43

### *Merits test*

77. There are some slight inconsistencies in the evidence provided by the Applicant regarding the number of proposed car parking spaces. There is also justified uncertainty regarding the provision of 11 of the on-street spaces in the proposed public open space, due to conflicts with the guidance in the Design and Access Statement for that area. However, even at the lower end of the provided figures and even discounting for those 11 spaces, 123 spaces would be provided. This is fewer than the approximately 172 spaces available on Princes Parade. However, it is materially higher than the maximum car parking demand of 100 spaces recorded in the parking survey.
78. I acknowledge that this survey only took place on one day, and that the first Saturday of the school holidays might not be at the absolute peak of demand as it could be a travel day for many holiday makers. Nonetheless, it is the only data before the Inquiry and no convincing evidence has been provided that parking demand would ever be materially higher than this. In addition, since the survey was undertaken, pay and display charges have been introduced to Princes Parade, likely reducing demand and negating any increase in visitor traffic either due to the pandemic or general tourism growth. Overall, I am satisfied that the number of replacement car parking spaces is sufficient to meet peak demand. Whether or not the future operator of the leisure centre would allow for some use of the dedicated leisure centre car park by members of the public is therefore moot.
79. The replacement spaces would also be of better quality, with 71 spaces to be provided in a dedicated car park, and a number on the new road which would be set back from the carriageway and adjacent to a wider road to one side and a pavement to the other, in contrast to the existing spaces directly alongside the splash wall and the narrow Princes Parade.
80. Parking directly on the sea front provides some benefits in terms of ease of access to the beach. It also provides the opportunity for people to park and sit in their cars looking at the sea. However, some spaces would remain on Princes Parade in the Order land, and approximately 142 spaces would remain along Princes Parade to the west of the Order land. Opportunities for visitors to park in this manner, if they so wish, would therefore remain.
81. Dedicated parking for the disabled bays would be provided in the car park to the west. The on-street spaces along the diverted road would be wider and easier to use than the existing spaces along Princes Parade. There would be walking routes from the proposed spaces to the sea, including opportunities for rest. As existing, although the parking is directly adjacent to the sea front, the splash wall makes access to the beach inconvenient for some disabled people. Gaps in the sea wall are infrequent and actual walking distances to the sea can be fairly long when this is allowed for. Consequently, considered in the round, parking for the disabled would be improved by the Order.
82. Princes Parade is narrow and the car parking is directly on the carriageway and adjacent to the splash wall. I observed on my site visit that there is barely room for two cars to pass in either direction whilst adjacent to parked cars. The accident record has not shown a huge number of accidents along the road. However, there have been accidents involving pedestrians. Although these were further along the road, I am not persuaded by the argument that the golf club

materially changes the character of that part of the road, because the road in that location is of the same width with the same parking arrangement. This is therefore still indicative of safety concerns. Importantly, the proposed road would clearly be safer, being wider, traffic calmed, providing dedicated pedestrian crossing points, and with on-street parking set back from the main carriageway. Cyclist safety would also be improved by the provision of a dedicated cycle lane along the new promenade.

83. The amenity provided by the views of the sea is a benefit to both drivers, through peripheral vision, and passengers. However, this is an incidental benefit of the highway right and this view can, in any event, still be enjoyed by drivers along the approximately 60% of Princes Parade that is not to be stopped-up.
84. The diverted traffic along the new road would create noise, air and light (from headlights) pollution. This would be close to the RMC, particularly at the far eastern end. However, this must be considered in the context of the baseline of the proposed development including the buildings and the road itself having been built, and the other non-diverted traffic as generated by the proposal. The permission would provide a leisure centre at over 8m tall with extensive glazing and therefore light pollution, directly adjacent to the proposed road. It would also provide extensive residential development along almost the entire remainder of the new road, again to be located adjacent to the road. The land the traffic is to be diverted onto was intended to be the 'killing fields' at the time the RMC was built in any army battles. Any harm to its heritage significance would therefore be minor and at the lower end of less than substantial as defined by the Framework.
85. Nevertheless, in its current form and use, the RMC provides three footpaths and bridleways for use by the public in a tranquil and pleasant setting. It was clear from the presentations provided at the Inquiry that this is an important and valued recreational area for some local people. This would be harmed by the diverted traffic, but only to a small degree in the context of the baseline of the planning permission. The proposed planting to the embankment between the RMC and the proposed road would also mitigate effects by providing a visual and noise barrier, even if the planting would take several years to reach full maturity.
86. The new road would be slower than the existing, due to the traffic calming and bendy route. It would also be less attractive, being set back from the sea front. It would take longer to navigate. This has been estimated at 20 seconds increased journey time by the Applicant, and it could be longer still as the precise speed on the new road as a result of the traffic calming is not yet known. However, in order for a material proportion of the current traffic using Princes Parade to be diverted to the alternative route of Seabrook Road, Seabrook Road would need to be considered as a more attractive alternative. Seabrook Road is heavily trafficked, has multiple junctions and a roundabout, and is even further from the sea. I have seen no convincing evidence that the slightly slower and longer revised road would lead to a material diversion of traffic onto Seabrook Road. In any event, no convincing evidence has been provided to demonstrate that either Seabrook Road or the relevant road junctions would not be able to cope, even if a large proportion of traffic were to divert to Seabrook Road.
87. Princes Parade is not a designated heritage asset. It does have some local value and is a strong linear feature along the sea front. However, approximately 60% of this would remain as existing. In the Order land, a wider promenade is



proposed, and the traffic would be removed, creating a design closer in feel to the original Victorian use of the promenade than as existing. A degree of linearity would be retained by the proposed promenade.

88. The new road, and the diverted traffic along it, would be close to the RMC and within the buffer zone as originally set out by the Environment Agency (EA) in relation to the planning permission. However, the EA eventually supported the proposed buffer zone because the wider western end compensates for the narrower eastern end<sup>18</sup>. The effect of the diverted traffic in this location has already been considered and deemed acceptable by the EA and the Council, in its role as local planning authority. No convincing evidence has been provided of the resultant harm to biodiversity from the diverted traffic in this location. This would therefore be acceptable.
89. Other points raised by objectors include the relocation of the tram stop and the effect on the primary school. However, these are issues that relate to the planning permission and not the Order. There might be some very slight effects on the primary school due to noise and air pollution from the diverted traffic but no evidence has been provided that this would cause any material harm.

### *Conclusion*

90. The disadvantages of the Order would be the harm to the significance of the setting of the RMC and the small loss in tranquillity to the footpaths and bridleways that run alongside the RMC. However, these are minor harms in the context of the baseline of the planning permission. There would also be some loss of convenience of parking for some users due to the reduced number of car parking spaces directly adjacent to the sea front. However, many of these spaces would remain, both within the Order land and also on the western part of Princes Parade, which is to remain as existing. The Order would bring with it many benefits, including safer and more varied car parking opportunities, improved car parking for the disabled, improved cycle routes, and improved highway safety.
91. There would also be very great benefits from the planning permission, including the provision of a new leisure centre, significant numbers of housing and affordable housing, improvements to the promenade, and the significant short and long term economic benefits from the construction and then operation of the development. Consequently, the advantages to be conferred by making the Order would outweigh the disadvantages or losses likely to arise to the public as a result of the stopping up and diversion of the highway. The Order would therefore be in the public interest and should therefore be made.

### **Recommendation**

92. I recommend that The Stopping Up of Highway (South East) (No. ) Order 201 be made.

*O S Woodward*

INSPECTOR

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<sup>18</sup> CD53 Environment Agency Consultation Response, dated 27 July 2018

## **ANNEX A: APPEARANCES**

### **FOR THE APPLICANT:**

Richard Honey QC. He called:

Mark Fitch MCIHT	Highways and transport
Richard Andrews CEnv FCIEEM	Ecology
Martin McKay ARB MRTPI	Heritage
Matthew Woodhead BTP MAUD MRTPI	Planning

### **FOR THE SAVE PRINCES PARADE:**

Clive Moys, of Counsel. He called:

Grahame Wickenden MICE FIHT	Highways and transport
Brian Morgan MRTPI	Planning
Roger Joyce RIBA IHB AABC	Heritage
Martin Whybrow	Ecology
Chris Farrell	Tranquillity

### **INTERESTED PERSONS:**

#### **Objectors:**

Theresa Cole	
Cllr Lesley Whybrow	Folkestone & Hythe District Council - Hythe Ward
Marilyn Wheeler	
Cllr Tim Prater	Folkestone & Hythe District Council - Sandgate and West Folkestone Ward
Dr Geoff Burrell	
Mark Brophy	
Cllr Anita Jones	Hythe Town Council - Hythe East Ward
Cllr Jim Martin	Hythe Town Council - Hythe South Ward, and Folkestone & Hythe District Council - Hythe Ward
Hannah St Clare	
Hillary St Clare	
Matthew Jones	
Cllr Rory Love	Kent County Council - Cheriton, Sandgate and Hythe East

#### **Supporter:**

Gillian Bond

## **ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY**

DOC 1	Applicant Appearance List
DOC 2	Applicant's Opening Statement
DOC 3	SPP Opening Statement
DOC 4	Royal Military Canal Landscape Sections 1 of 2 Ref PPLC-MHS-OS-Z0-DR-L-90204 Rev P02
DOC 5	SPP Witness List
DOC 6	Historic England Email No 1, dated 15 October 2021
DOC 7	Historic England Email No 2, dated 15 October 2021
DOC 8	Cllr Lesley Whybrow Amended Statement
DOC 9	Matthew Jones Amended Statement
DOC 10	Brian Morgan Amended Statement
DOC 11	Roger Joyce Amended Statement
DOC 12	Applicant's Costs Application
DOC 13	Mark Fitch Response to Cllr Love Note, dated 28 October 2021
DOC 14	Martin Whybrow Amended Statement
DOC 15	Chris Farrell Amended Statement
DOC 16	Cllr Jim Martin Amended Statement – District Councillor
DOC 17	Cllr Jim Martin Amended Statement – Town Councillor
DOC 18	Grahame Wickenden Amended Statement
DOC 19	Local Transport Note 1/07, dated March 2007 – Traffic Calming
DOC 20	SPP Closing Submissions
DOC 21	[2001] EWCA Civ 1293
DOC 22	Applicant's Closing Submissions
DOC 23	[2013] EWHC 2847 (Admin)
DOC 24	Site Visit Driving Routes
DOC 25	Site Visit Walking Routes