

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

<b>Reference Number:</b>	2583
<b>Author:</b>	Mark Fiander
<b>Department:</b>	Development
<b>Contact:</b>	Mark Fiander (Job Title: Regeneration Team Leader, Email: mark.fiander@nottinghamcity.gov.uk, Phone: 01158 761714)
<b>Subject:</b>	Stopping up of highways to enable development to be carried out at Oakford Close, Aspley
<b>Total Value:</b>	£1,000 (Type: Capital)
<b>Decision Being Taken:</b>	That the Head of Neighbourhood Management in exercise of Area Committee executive powers under delegation 82(b) authorises the Traffic Manager, Development and Growth to apply for an order under Section 247 of the Town and Country Planning Act 1990 to stop up (permanently close) the highways at Oakford Close shown cross-hatched on the plan at Appendix 1.

**The 2007 development and stopping up order**

1. The highways shown cross-hatched on Appendix 1 (together with additional highways referred to at paragraph 2 below) previously served a sheltered housing complex which was demolished by the Council. The site was then sold to a developer in 2006 and in 2007 planning permission (reference 07/01170/PFUL3) was granted to build 51 new dwellings on the site. In order to implement that permission, the developer made an application to the Government Office for the East Midlands (GOEM) for a stopping up order under Section 247 of the Town and Country Planning Act 1990. In 2008 GOEM published a draft order to stop up the cross-hatched highways, and the order also required the provision of new highways to replace those which the order authorised to be stopped up. The development commenced in 2008 but came to a halt after only 28 dwellings had been built on the southern part of the site (which are shown on the plan at Appendix 1). Although the highway surfaces, kerbs and drains were removed in preparation for the development on the northern part of the site, because the development (including the new highways) was never finished the GOEM order under which the highways within the site would be stopped up did not become effective.

2. (It should be noted that due to complications with the 2008 GOEM order detailed above, a fresh order will be required in the future formally to stop up the highways on the southern part of the site. Because those highways have already been built upon, stopping up powers under planning legislation cannot be used. Instead an application will need to be made to the Magistrates Court under highways legislation.)

**The 2016 development and stopping up order**

3. Under the "Building a Better Nottingham" programme, Nottingham City Council in partnership with Nottingham City Homes proposes to build new Council housing on the northern part of the site. The proposed development (under planning reference 16/00648/NFUL3) is shown on the plan at Appendix 2. It is currently under consideration and consists of 21 bungalows.

4. Since the location of some of the proposed bungalows and gardens in the new scheme coincide with the existing highways, it is necessary to stop up the highways to enable the development to be carried out.

5. As the highways to be stopped up include carriageway and footway as well as footpaths, the Council does not have the statutory power to make the necessary order itself. An application to the Department for Transport (DfT) for an order under section 247 of the Town and Country Planning Act 1990 to stop up all of the highways affected by the development will need to be submitted.

6. The power to apply for a stopping up order under section 247 of the Town and Country Planning Act 1990 rests with the Corporate Director for Development and Growth under delegation 159 of the Council's Constitution, and that power was sub-delegated to the Traffic Manager, Development and Growth on 23rd October 2014.

7. A parallel power to approve the making of an application for footpath closures on grounds of development is contained in the terms of reference of Area Committee, together with the power to approve highway environmental improvements of a local nature. Under delegation 82(b) certain officers, including the decision-maker in this particular matter, may exercise executive powers in place of the Area Committee where a decision is required before the next meeting of the Area Committee, subject to consultation with the Committee's Chair and to report for information to the next available Area Committee meeting.

8. Subject to planning permission being granted, site preparation work is provisionally scheduled to start at the end of August 2016 and the development due to be completed by the end of July 2017. To enable this timescale to be met, an application for a stopping up order is required ahead of the next meeting of West Area Committee which is scheduled to take place on 14th September 2016.

**Briefing notes documents:** Appendix 1 - plan showing highways to be stopped up.pdf, Appendix 2 - plan showing the development.pdf

**Other Options Considered:** As no other legislation is available to the City Council to stop up the highways at Oakford Close on the grounds of development alone, the only other option is to not proceed with the application for an order at all. The developer would then either have to abandon these development proposals or, if it did proceed with the proposed development, could only do so by unlawfully obstructing the highway.

**Background Papers:** None.

**Published Works:**

- 1) Portfolio Holder Decision 1780 - Purchase of vacant land at Oakford Close, Broxtowe - 22/12/2014
- 2) Officer Decision 1790 - Acquisition of land at Oakford Close, Broxtowe, NG8 - 23/12/2014
- 3) Delegated Decision 2503
- 4) Report to Executive Board 20/10/15 (New build tender awards for sites in the Building a Better Nottingham Council housing programme)

**Affected Wards:** Aspley

**Colleague / Councillor Interests:** None.

**Consultations:**

**Date:** 10/08/2016

**Ward Councillors:** Graham Chapman, Carole McCulloch, Patience Ifediora

Councillor McCulloch supports the decision. Councillors Chapman and Ifediora were consulted but do not have a comment on the decision.

**Date:** 11/08/2016

**Area Committees:** Area 3: Aspley, Bilborough and Leen Valley

As this decision is being taken under Scheme of Delegation 82(b), Councillor McCulloch, the Chair of West Area Committee, was consulted. She supports the decision.

Those not consulted are not directly affected by the decision.

**Crime and Disorder Implications:** There are no crime and disorder implications to this decision.

**Equality:** EIA not required. Reasons: An EIA is not required as the decision does not involve a new or changing policy. The new highways to be provided at Oakford Close as a replacement for those authorised to be stopped up will be suitable for disabled citizens.

**Decision Type:** Officer

**Executive Decision?** Yes

**Scheme of Delegation Reference Number or Other Source of Delegation:** 82(b)

**Subject to Call In:** No  
The call-in procedure does not apply to the proposed decision because the delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The Chair of the Overview and Scrutiny Committee (or Vice-Chair) in his/her absence has been consulted and agreed both that the decision proposed is reasonable in all circumstances and that it should be treated as a matter of urgency.

**Person Consulted:**  
**Consultation Date:** 01/01/0001

**Advice Sought:** Legal, Finance

**Legal Advice:**

1. The decision seeks approval to apply to the Secretary of State for Transport for an order under section 247 of the Town and Country Planning Act 1990. The Secretary of State has a discretionary power to make an order under this legislation where he considers it is necessary to enable development authorised by a planning permission to be carried out.
  
2. An order is required under this provision because the highways to be extinguished on the development site include footways and carriageways, and only the Secretary of State has the power to make orders in relation to these types of highway (the Council's own powers are limited to orders for extinguishment of footpaths and bridleways).
  
3. Although planning permission for the development under ref. 16/00648/NFUL3 has not yet been granted, section 253 of the Town and Country Planning Act 1990 allows the Secretary of State, where the planning application has been lodged already and is made by a local authority, to take preliminary steps regarding the making of an order under section 247 in advance of the grant of the planning permission.
  
4. A draft order can be prepared and published under this anticipatory procedure, so that the objection period for the highway stopping up order can run in parallel with the consideration of the planning application. However, no final order under section 247 can be made to stop up the highways until planning permission has been granted.
  
5. It is considered that the statutory test in section 247 is met in that the development cannot be carried out unless the highways are stopped up.
  
6. It is considered that the decision is within Area Committee's terms of reference in the Council's current Constitution. The exercise of the Executive power under delegation 82(b) by the decision maker is considered to be justified in the light of the circumstances set out at paragraphs 7 and 8 of the "Reasons for the Decision" part of this report. It is noted that the requirement of consultation with the Area Committee Chair has already been complied with, and that a report for information will be taken to the next available Area Committee meeting.

Advice provided by Judith Irwin (Senior Solicitor) on 24/08/2016.

**Finance Advice:**

This decision is to apply to the Department for Transport to close some adopted highway and footpaths in order to enable the development new Council housing development sites. The cost of the decision will be £1,000 to cover the application cost. This will be met from the funding allocated to the capital scheme as approved by Executive Board on 20 October 2015.

Advice provided by Ian Greatorex (Finance Project Manager) on 15/08/2016.

**Signatures:**

Heidi (Head of Neighbourhood Management)
SIGNED and Dated: 30/08/2016