

PUBLIC PATH STOPPING UP ORDER REPORT



Application Number	15/01785/S257	Item	08
Date Valid	22/09/2015	Ward	St Peter & The Waterfront

Site Address	BRETONSIDE BUS STATION, BRETONSIDE PLYMOUTH		
Proposal	Stopping up of footpaths associated with the Drake Lesiure redevelopment of Bretonside Coach Station		
Applicant	Peter Brett Associates		
Application Type	Section 257 Application		
Target Date	17/11/2015	Committee Date	Planning Committee: 09 June 2016
Decision Category	Committee		
Case Officer	John Douglass		
Recommendation	Confirm Public Path Stopping Order		

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EXECUTIVE SUMMARY:

This report presents to members for consideration a Public Path Order which seeks to extinguish public rights of access to the subways at either end of the Exeter Street viaduct which lead from the Bretonside Bus Station to the north side of Exeter St, as well as a public footpath which runs along the western boundary of the site from Bretonside to the western subway. A copy of the order, including a map identifying the relevant parcels of land is appended to this report.

The order was applied for by Peter Brett Associates on behalf of Drake Circus Leisure Ltd, who are promoting the redevelopment of the Bretonside site as a leisure complex comprising multiplex cinema and restaurants, for which planning permission has already been secured (permission 15/01163/FUL, which varied the original permission 15/00159/FUL).

The subways (areas 1, 2, 4 & 5 on attached map) will be physically retained, but will effectively become private spaces used as a fire escape and access for shoppers from the new car park to the footway outside Primark. The footpath (area 3) will no longer be accessible following implementation of the planning permission. Officers consider that the stopping up is necessary to implement the planning permission.

The planning permission provides for alternatives to the subways in the form of an improved surface level crossing at the St Andrew's Cross end, and a new surface level crossing at the Charles Cross end of the viaduct. The order secures the new crossing as alternative before access to the relevant subway is withdrawn. A condition attached to the planning permission also secures 24hr access through the scheme from Exeter St to Bretonside.

The only relevant objection to the order was withdrawn after the alternative provision was proposed, and officers consider that the alternative provision is adequate (in fact it represents an improvement when the routes through the scheme secured through the planning permission are taken into account). Officers recommend that the committee resolves to confirm the order as drafted and attached to this report.

1. Description of site

The site comprises subways at either end of the Exeter Street viaduct which lead from the Bretonside Bus Station to the north side of Exeter St, as well as a public footpath which runs along the western boundary of the Bus Station site from Bretonside to the western subway. A copy of the order, including a map identifying the relevant parcels of land is appended to this report.

2. Proposal description

The proposal is for Public Path Order which seeks to extinguish public rights of access to the subways and footpath shown in the attached map. The subways (areas 1, 2, 4 & 5 on attached map) will be physically retained, but will effectively become private spaces used as a fire escape (areas 1 & 2) and access for shoppers from the new car park to the footway outside Primark (areas 4 & 5). Footpath (area 3) will no longer be accessible following implementation of the planning permission.

The order provides for alternatives to these routes in the form of surface level signalised crossings across the carriageway of Exeter St viaduct deck level, and related alterations to the adjacent footways on Exeter Street viaduct deck level. These works are all as set out in planning permission 15/01163/FUL. Condition 34 of this permission also secures 24 hour a day public access between Exeter St and Bretonside by way of two routes through the proposed development.

The order allows for areas 1, 2 and 3 to be stopped up upon commencement of development [in recognition of the fact that there is an existing crossing in this location and it is not a significant diversion from Exeter St to Bretonside at this point via St Andrew's Cross]. Areas 4 and 5 will only be stopped up once Plymouth City Council has confirmed that the improvement works (including the new crossing near Charles Cross) has been provided to its reasonable satisfaction.

The order was made on 24 February 2016 following Executive Decision reference number T7 15/16. This report seeks members' approval to confirm the order.

3. Pre-application enquiry

None

4. Relevant planning history

15/00159/FUL - Demolition and strip out of existing commercial units under Exeter Street and redevelopment of the Bretonside Bus Station to include a cinema (Use Class D2), food and beverage uses (Use Class A3, A4, A5), car parking, landscaping, public realm improvements, external seating and associated highway works – APPROVED 14 May 2015.

15/01163/FUL - Variation of conditions 2 (approved plans), 9 (Extinguishment of the Highway), 14 (Landscape Design proposals), 15 (Soft Landscaping works), 19 (Cycle Storage), and 21 (Exeter Street viaduct) of planning permission 15/00159/FUL to allow for minor material amendments to the design and layout of the main cinema block, landscaping and associated highway works – APPROVED 16 September 2015.

5. Consultation responses

Public Right of Way Officer:

No objections

Highway Authority:

No objection subject to ensuring that public highway rights are maintained in the event that the development scheme does not proceed and that the stopping up is complete only after the alternative routes and crossings referred to above have been fully secured.

6. Representations

The order was subject to formal consultation by way of 5 x site notices, a press advertisement, and letters to the statutory consultees:

- Openreach BT
- Cyclists Touring Club
- Drake Circus Leisure Limited
- Open Spaces Society
- PCC Economic Development
- Ramblers Association
- Byways & Bridleways Trust
- British Horse Society
- Auto Cycle Union Limited.

No representations were received from any of the statutory consultees.

No representations were received from members of the public during the formal consultation period. However, two public representations were received when the application was first received and publicised by way of the weekly list.

The first queried what provision is to be made for visiting coach operators to the city. This comment, however, is not relevant to this application. The arrangements for providing these alternative facilities are currently being progressed by the Council's Transport Officers.

The second objected to the stopping up of areas 4 and 5 (subway near Charles Cross) on the basis that there is no above ground crossing point in this location for pedestrians. As 'they are unlikely to walk to the other end of the viaduct' the objector considers that this 'will result in dangerous attempts to cross the road where no crossing exists'.

Officers contacted the objector to explain that the planning permission includes a new crossing at this point and that the order requires it to be provided before this subway can be stopped up. In response the objector formally withdrew their objection on 26 April.

Members are therefore advised that there are no relevant objections to the order outstanding.

7. Relevant Policy Framework

Section 257 (1) of the Town and Country Planning Act 1990 provides that any footpath or bridleway can be stopped up or diverted in order to implement a planning permission provided that the competent authority (in this case the Local Planning Authority) is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted. Under part (2) of section 257, the competent authority can ensure that the order: creates an alternative highway as a replacement; requires works to the relevant footpath or bridleway; preserves any rights of statutory undertakers to relevant apparatus; or requires financial contributions in respect of the cost of works.

Section 259 of the same Act sets out that any order made under section 257 shall not take effect until confirmed. Where an order is subject to opposition it must be confirmed by the Secretary of State but if it has not been opposed it can be confirmed by the authority who made it – in this case the Local Planning Authority.

8. Analysis

Is the stopping up necessary to enable development to be carried out in accordance with the permission granted?

The scheme for which planning permission was granted relies on the extinguishment of public rights of access to the land in question. This is largely because these areas will be used as vehicle circulation areas so would either be unavailable, or would no longer be safe for public pedestrian use.

Are alternative routes necessary (and acceptable)?

The existing surface level crossing close to St Andrew's Cross already provides an alternative to the subway route covered by areas 1 & 2, and the planning permission will provide for the improvement of this facility.

The planning permission provides for a new pedestrian crossing close to Charles Cross, which is to be provided in association with the additional signals being proposed on Charles Cross roundabout. This facility is considered necessary by way of replacement for the subway, and the order therefore ensures that access to the subway will not be removed until such time as the new crossing facility has been provided.

The planning permission also secures two public routes which will permit 24 hour public access from Exeter St to Bretonside through the development. One of these features lifts so, unlike the existing subway accesses, is fully accessible.

The order therefore secures improved public accessibility across the Exeter St viaduct, and the planning permission secures further additional improvements.

Is it necessary to preserve right for Statutory Undertakers?

Legal officers do not consider it necessary to preserve any rights of access.

Other Issues

The only legal test that needs to be satisfied for an Order application under Section 257 is that the Order is *necessary* to enable development to be carried out should planning permission for that development be granted. Officers consider that the relevant tests have been met. Therefore, whilst it is not for consideration as part of this application, members are requested to note that the highway authority, when considering the planning application for redevelopment, did not raise any

objection to the proposed removal of public access to the subways, or to the signals needed in association with the additional surface level crossing at the eastern end of the viaduct.

9. Human Rights

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

10. Local Finance Considerations

Stopping up would have positive (albeit not significant) financial implications by reducing lighting, cleaning and surface maintenance costs associated with the existing subways. The applicant has agreed to cover the council's reasonable costs in processing and advertising the order.

11. Planning Obligations

Not applicable.

12. Equalities and Diversities

The Equalities Impact Assessment carried out to support the Executive Decision revealed that the proposal would have positive impacts by replacing existing subways (reliant on steps) with new/improved surface level crossings, and a route through the development which features a lift. This improvement will be of particular benefit to the 'disability' and 'gender (including marriage, pregnancy and maternity)' protected characteristics by making access easier for those who are less mobile or in wheelchairs, less mobile due to pregnancy, or using buggies, prams etc.

13. Conclusions

Officers conclude that the stopping up is necessary to implement the planning permission, and that the order adequately secures the necessary alternative crossing and access arrangements. Its drafting ensures that the subway facilities will only be removed if/when construction of the development starts, and the subway near Charles Cross will only be removed once the new crossing facility is in place.

For these reasons, officers recommend that members of the committee agree that legal officers confirm the order.

14. Recommendation

In respect of the application dated **22/09/2015** and the submitted drawings, it is recommended to: **Confirm the public path stopping up order.**

15. Conditions

N/A

APPENDIX I: PUBLIC PATH STOPPING UP ORDER (MADE 24 FEBRUARY 2016)



TOWN AND COUNTRY PLANNING ACT 1990, SECTION 257

PLYMOUTH CITY COUNCIL FOOTPATHS AT BRETONSIDE BUS STATION AND EXETER STREET SUBWAYS PUBLIC PATH STOPPING UP ORDER

This order is made by Plymouth City Council under section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to stop up the footpaths to which this order relates in order to enable development to be carried out in accordance with planning permission granted under Part 3 of the Town and Country Planning Act 1990, namely planning permission 15/01163/FUL (which permits a variation of conditions 2,9,14,15,19 and 21 of planning permission 15/00159/FUL to allow for minor material amendments for the demolition and strip out of existing commercial units under Exeter Street and the redevelopment of Bretonside Bus Station to include a cinema (Use Class D2) food and beverage uses (Use Class A3 A4 A5), car parking, landscaping, public realm improvements, external seating and associated highway works.

BY THIS ORDER

1. The footpaths over and (in respect of subways) under the land shown by bold black edging and marked as Areas 1-5 on the attached map and described in Part 1 of the Schedule to this order ("the Schedule") shall be stopped up as provided below.
2. The highway over the land described in Part 2 of the Schedule and shown hatched black on the attached map shall be improved to the reasonable satisfaction of Plymouth City Council by the provision of surface level signalised crossings across the carriageway of Exeter Street viaduct deck level and related

alterations to the adjacent footways on Exeter Street viaduct deck level, [as permitted by planning permission 15/01163/FUL].

3. The stopping up of the footpaths in Areas 1, 2 and 3 shall have effect on the commencement of development pursuant to planning permission 15/01163/FUL.
4. The stopping up of the footpaths in Areas 4 and 5 shall have effect on the date on which Plymouth City Council certify that the terms of Article 2 have been complied with.
5. Where immediately before the date on which the footpaths are stopped up there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SCHEDULE

PART I

Description of site of existing path or way

- a) **Area 1 as indicated on the map**
The public footpath comprising the steps from the western subway under the Exeter Street viaduct deck level to Exeter Street viaduct deck level. The width of the footpath is 2.5 metres and the length is 15 metres. Grid references are 248047 054505;
- b) **Area 2 as indicated on the map**
The public footpath comprising the western subway under Exeter Street viaduct deck level between the steps (Area 1) and adjacent footpath (Area 3). The width of the footpath is 2.8 metres and the length is 17 metres. Grid References are 248057 054500.
- c) **Area 3 as indicated on the map**
The public footpath which runs along the western boundary of Bretonside bus station. The width of the footpath is 3.5 metres and the length is 60 metres. Grid References are 248063 054490 and 248096 054444;
- d) **Area 4 as indicated on the map**
The public footpath comprising the steps from the eastern subway under Exeter Street viaduct deck level to Exeter Street viaduct deck level. The width of the footpath is 3.8 metres and the length is 10 metres. Grid References are 248160 054595;
- e) **Area 5 as indicated on the map**
The public footpath comprising the eastern subway under the Exeter Street viaduct deck level between steps. The width of the footpath is 3.8 metres and the length is 34 metres. Grid References are 248155 054593 and 248175 054565.

PART 2

Description of site of existing highway to be improved

That part of Exeter Street viaduct deck level comprising carriageway and footpaths as shown hatched black on the attached map. The width of the area to be improved is 7 metres and the length is 180 metres. Grid references are 248047 054474-248189 054572.

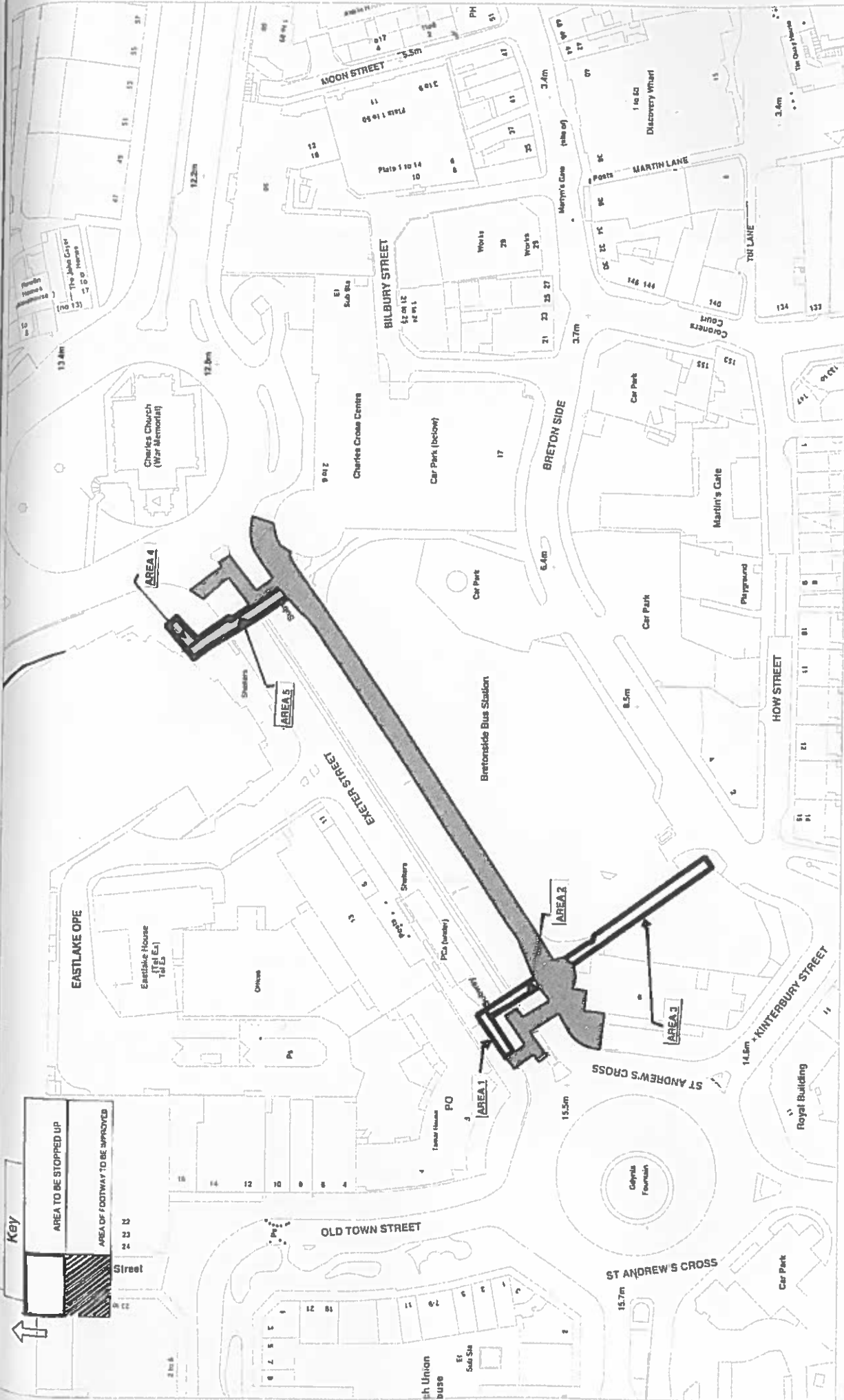
THE COMMON SEAL of)
Plymouth City Council was hereunto)
affixed in the presence of:-)



A. Cribb

Plymouth City Council Authorised Signatory

Dated: 24th day of February 2016



Map reference: SX4854NW

DRAWING REF:

February 2016

TITLE
Exeter Street

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