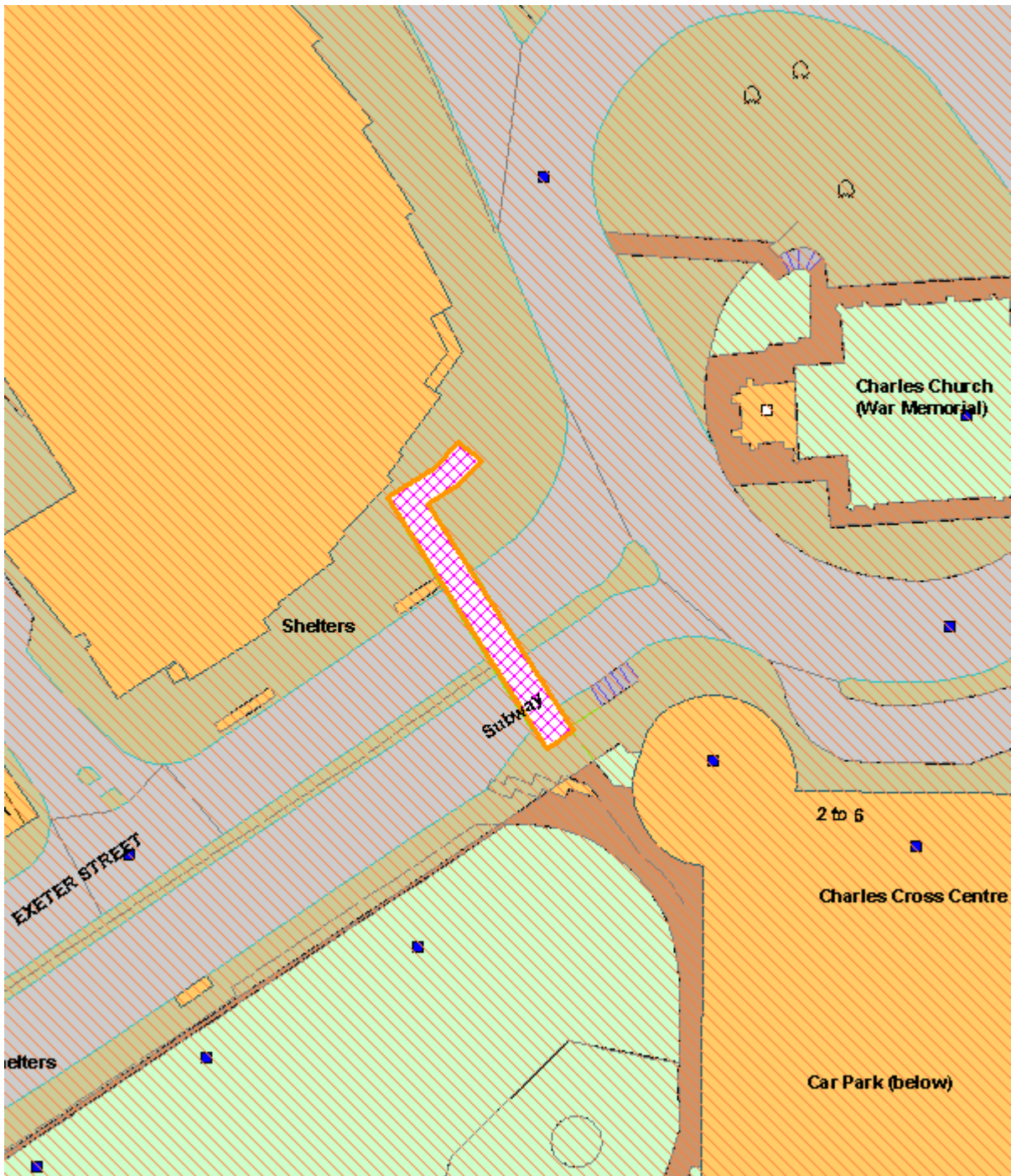


PLANNING APPLICATION OFFICERS REPORT



Application Number	17/01591/S257	Item	02
Date Valid	01.08.2017	Ward	ST PETER AND THE WATERFRONT

Site Address	Bretonside Bus Station Bretonside Plymouth PL4 0BG		
Proposal	Stopping up of footpaths associated with the Drakes Circus Leisure redevelopment (revised order to take account of changes in 17/01409/S73M)		
Applicant	Alan Swan		
Application Type	Section 257 Application		
Target Date	26.09.2017	Committee Date	11.01.2018
Extended Target Date	N/A		
Decision Category	Constitution Other		
Case Officer	Mr John Douglass		
Recommendation	Grant Conditionally		



1. Description of Site

The site comprises the subway at the eastern end of the Exeter Street viaduct which leads from the former Bretonside Bus Station to the north side of Exeter St.

2. Proposal Description

The proposal seeks a Public Path Order under section 257 of the Town and Country Planning Act 1990 to extinguish public rights of access to the subway shown in the attached map. The subway will be physically retained, but will effectively become a private space used as an access for shoppers from the new car park that is part of the proposed Drake Circus Leisure Development (17/01409/S73M) to the footway outside Primark. As part of that

development, the stairs that provide access from the Exeter St footway down to the subway on the south side of Exeter St (outside the Evans cycles store) are also to be removed (filled in). However, this area will remain part of the adopted highway (HMPE) so is not shown for stopping up.

The S257 process requires officers to instruct the legal team to prepare a draft order, which is then subject to a statutory period of publicity and consultation with statutory undertakers. If no objections are received, or objectors are willing to withdraw their objections, then the order can be confirmed by planning committee. If objections are maintained, then the order must be referred to the Secretary of State for determination.

3. Pre-application Enquiry

There have been various pre-application enquiries on the main Bretonside scheme (see planning history) and informal discussions about S257 orders as part of this, but there has been no formal pre-application specific to this application.

4. Relevant Planning History

Consent for the main redevelopment of the Bretonside site into a leisure complex comprising IMAX/multiple cinemas, restaurant units and car parking was first granted (subject to S106) on 14 May 2015 by consent reference 15/00159/FUL. This was then subject to minor material amendments by consent 15/01163/FUL, granted on 16 September 2015 (and subsequently further non-material amendments). Further 'minor material amendments to the scheme were then approved by consent 17/01409/S73M on 01 September 2017. Construction of the scheme is now underway.

An order to permit the stopping up of the two subways (east and west ends of the viaduct) and the public footpaths running along the site's western boundary (from the subway to Bretonside) was confirmed 09 June 2016 and advertised as such on 30 August 2016 following application reference 15/01785/S257. The order refers specifically to planning consent 15/01163/FUL, and therefore only permits stopping up in accordance with its implementation.

Works to commence (implement) consent 15/01163/FUL (as amended) were carried out in June 2017 in the form of demolition works beneath the viaduct. The previous stopping up order therefore permitted the stopping up of the subway and footpath at the western end of the site (identified as areas 1, 2 and 3 on the existing order). The northern subway exit was physically closed with hoardings to allow the demolition works to take place, and remains physically closed (heras fencing around the subway exit at Exeter St level, and hoardings at the bottom of the stairs). Although it can now be lawfully stopped up, the footpath down the western side of the site (area 3 on the existing order), and the stairs up to the southern footway of Exeter St remain open at present.

Although works on site commenced through the implementation of 15/01163/FUL, the applicant now intends to implement the revised version of the scheme consented by the most recent approval 17/01409/S73M.

A S247 stopping up order (reference 'The Stopping up of Highways (South West) (No.16) Order 2016') was also granted by the Secretary of State (Dept for Transport) on 13 July 2016. This permits the stopping up of two small areas of footway on the north side of Bretonside in association with the implementation of 15/01163/FUL. A revised order (reference 'The Stopping up of Highways (South West) (No.40) Order 2017') was made by the Secretary of State on 23 October 2017. This order allows for the stopping up of the same areas of highway in association with revised permission 17/01409/S73M.

5. Consultation Responses

Highway Authority

No objection to the proposal provided that no stopping up shall take place until an alternative new pedestrian crossing of Exeter Street has been provided to the satisfaction of the LPA and confirmed in writing.

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.

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 this area will be used as vehicle circulation within a private shopper car park. Although it will remain technically possible to pass beneath Exeter Street and then emerge to Bretonside, no direct route will be available, and the route through the car park would not be suitable for full public access. The applicant will also wish to lock the car park at times, meaning that this movement would not be possible.

Are alternative routes necessary (and acceptable)

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 drafting of the order therefore ensures that the subway cannot be formally stopped up until such time as the new crossing facility has been provided. In reality it will not be possible to deliver the new crossing before the southern subway stairs are filled in, as engineers dealing with the S278 agreement suggest that this would be the first stage of the works. This means that it may be necessary for there to be no way of crossing Exeter St at this point for short periods of time. It will be possible for the highway authority to allow for

the physical closure of the subway prior to it being formally stopped up through the granting of a temporary traffic regulation order. The highway authority could insist on any temporary measures needed (if any) to cover such periods of time.

Comparing the plan attached to the proposed order (see appendix 1) to that of the existing order it is notable that as well as a replacement crossing, the previous order also secured improvements to the public realm on the southern footway of Exeter St along the site boundary. These wider works were proposed by previous planning consent 15/01163/FUL (which involved the widening of this footway and associated narrowing of the carriageway down to one lane plus cycle lane) but are no longer included in permission 17/01409/S73M. These works were offered by the applicant and secured in the previous order, but were not considered necessary by way of specific mitigation for the loss of the subway. Officers consider the critical alternative to be the new surface level crossing, which remains part of the scheme. This will allow for pedestrian movements from Charles St towards Sutton Harbour via Moon St to the east of the site. Once the 17/01409/S73M scheme is complete the new crossing will align with steps and a footpath leading down between the development and the Staples building, public access to which is secured through a condition attached to the planning permission. Subject to provision of the surface level crossing as proposed by the order, officers raise no objection.

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 proposal would have positive impacts by replacing an existing subway (reliant on steps) with a new surface level crossing. This leads to a route through the development (proposed by 17/01409/S73M) 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 (as previously) 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 facility near Charles Cross will only be formally stopped up once the new crossing facility is in place.

For these reasons, officers recommend that members of the committee agree that the Council's Legal Officers confirm the order.

APPENDIX 1: PUBLIC PATH STOPPING UP ORDER (MADE XXXXX 2017)

14. Recommendation

In respect of the application dated **01.08.2017** it is recommended to **Grant Conditionally**