



Weightmans LLP
Central postal address:
100 Old Hall Street
Liverpool L3 9QJ

T +44(0)345 073 9900
F +44(0)345 073 9950

FAO: Rynd Smith, Lead Member of the
Examining
Authority
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Contact: Suzan Yildiz

T: [REDACTED]

E: [REDACTED]

Office: London (Hallmark)

Our ref: 9008076-901385/ /6571

By email to:

LondonResort@planninginspectorate.gov.uk

Your ref: BCO80001

15 March 2022

Dear Mr Smith,

Appointment of the Examining Authority, invitation to the Preliminary Meeting and Provisional Notification of Hearings

Representations as to upcoming preliminary meeting and examination on behalf of British Transport Police Authority (IP Registration No. 20027915)

We thank you for your recent Rule 6 letters of 14 and 24 February 2022 notifying the preliminary meeting of 29 and 30 March ("PM"), and a provisional timetable of hearings should the examination commence immediately following the PM.

We act for the act for the British Transport Police Authority (BTPA) who are both an interested party (a relevant police authority) under the Infrastructure Planning (Interested Parties) Regulations 2010 (as amended) and affected party by proposed compulsory acquisition of rights over operational police infrastructure and premises. Despite our client being a prescribed consultee and an authority policing rail infrastructure which will be heavily impacted by the London Resort DCO proposals including by intensification of use, the Applicant failed to consult our client at pre-application stage which compounds the current challenges and risk of prejudice to our client and its policing operations to the detriment of the communities which will be impacted the proposals.

Therefore, we write to set out the BTPA representations in respect of the timing of the examination and ancillary issues, and we trust that they will be given due consideration at the PM.

The BTPA does not have an in-principle objection to the London Resort DCO project and recognises the potential to generate socio-economic benefits. Whilst the designation of the Swanscombe Peninsula as

a SSSI site is no doubt a significant development in this regard, our client is not best placed to comment on those matters. The issues of most acute interest to our client centre on assessments of transport and rail impacts due to increased passenger numbers, and consequential impacts on its policing infrastructure and operations which are compounded by proposals for compulsory acquisition of rights over its operational infrastructure and premises.

Context to the BTPA's Operational Remit and Impacts of DCO

Before setting out our representations to the procedural matters, it is important to set out our client's operational context, and the impacts of the DCO upon it, given the extent to it is has been overlooked and misunderstood by the Applicant and the process thus far. This needs to be remedied to avoid adverse consequences for the rail network and the wider public utilising it.

The BTPA are a statutory police authority empowered by the Railways and Transport Safety and responsible for ensuring an efficient and effective police force for the railways. They are funded via direct service agreements with rail operators and bound to provide vital policing of the rail network. Under such agreement and associated leases (which are subject to compulsory acquisition of rights by virtue of the DCO), the BTPA provides significant policing operations from Ebbsfleet International station to HS1 Limited for infrastructure/railways within the area included in the DCO plans. Ebbsfleet is a major commuter hub (including international passengers) with a car park accommodating 6000 cars. Numerous policing teams exceeding 30 officers/detectives operate from Ebbsfleet, which also enables improved responses to HS2 operations.

If consented, the DCO scheme for this nationally significant resort (a first) will significantly impact policing operations and infrastructure at Ebbsfleet International, BTPA's arrangements with HS1 Limited and its capacity to effectively police the network impacted by the DCO. Passenger numbers and policing demands will intensify significantly if the scheme is consented. It will be vital to maintain a visible and adequate police presence at this location and to avoid disturbance to police facilities and operations during both construction and operational phases of the London Resort DCO. In the event that it is consented, effective protective measures and mitigation for impacts on policing operations and capacity of increased passenger numbers will be vital to the safety and security of the rail network, and the communities impacted.

Regrettably no pre-application opportunity was afforded to the BTPA to: –

- (i) evaluate the impacts of the DCO on BTPA's policing operations and rail infrastructure;
- (ii) make any representations as to disturbance to its operational infrastructure and policing; increased demands for infrastructure and policing capacity;
- (iii) the risk of escalation of crime or safety incidents associated with increased rail passenger demand;

- (iv) to influence identification and mitigation of impacts in the Rail / Transport Strategy – e.g. adjustments to the design / layout / phasing / security or any other element of the scheme, or the form of the Order or mitigation through phasing gain.

Since initially registering as an interested party we note that the Applicant and HS1 Limited (whose network the BTPA polices), have jointly commissioned independent experts Steer to assess the Rail Strategy in relation to impacts on the HS1 network and mitigations. By extension all such impacts and lack of mitigation directly impacts our client's operational capacity and ability to safely and effectively police the rail network impacted by the increased passenger numbers. Our client is therefore extremely concerned to learn that the Steer Report found: –

- a. the Rail Strategy is deficient in several key areas and based on a poor evidence base;
- b. the Applicant lacks an understanding of the operations and funding of the HS1 rail system;
- c. in particular the submitted Rail Strategy erroneously assumed Southeastern would provide additional capacity as a commercial response to increased passenger numbers and fails to understand the funding mechanism for HS1 services by reason of government franchise arrangements;
- d. the Steer assessment concluded that HS1 services would be dangerously overwhelmed by the additional passengers travelling to and from the London Resort and that mitigations in the form of a new dedicated shuttle service between the two stations;

The outcomes of the Steer review are salutary and of significant concern to our client. We note in particular HS1 Limited's representations to ExA of 10th January 2022 and their request to afford the parties more time to cooperate to remedy these deficiencies and agree mitigations before commencement of the examination: –

“Based on Steer's independent assessment of LRCH's rail strategy, HS1 remains of the view that there is currently no coherent rail strategy submitted and that without further mitigation the proposed rail mode shares would not be able to be accommodated on the HS1 route and would cause dangerous overcrowding and severe detriment to existing users.”

Consequently, the Applicant and the DCO proposals have clearly failed to understand or mitigate the impacts on policing the intensified usage of that network, the attendant safety implications, and the inevitable additional demand for policing capacity which must be addressed before a meaningful examination can take place.

Unless the adverse impacts of increased passenger numbers and disturbance to existing policing infrastructure are carefully managed by way of adjustments to the DCO, the Rail Strategy and necessary mitigation (including potential section 106 obligations, protective measures and statements of common ground), the scheme will have adverse impacts on policing during construction and throughout its life leading to an increase in passenger safety incidents and potentially crime.

Procedural Matters and Timing of Examination

Turning to procedural matters before the PM, whilst a draft timetable for the examination has been set to follow immediately on conclusion of the PM on 30 March 2022, the decision whether to continue immediately to examination or defer the examination until June/July 2022 has been reserved for consideration at the PM. In this regard, we note the procedural decision of the ExA notified on 5 November 2021. Whilst noting concern about failures of engagement by the Applicant and their proposal to submit additional material in relation to the Swanscombe Peninsula (subsequently designated as an SSSI) the ExA notified interested parties as follows: –

“The ExA has decided that it is still not in a position to finalise the date(s) of the Preliminary Meeting (PM). The ExA anticipates that it will be unable to decide on the date(s) of the PM before May/ June 2022 and that a PM is therefore unlikely to be held before June/ July 2022.”

Our client recognises there has been considerable delay exceeding a year during the pre-examination stage and following validation of the DCO application by the National Planning Inspectorate. Such delays are plainly the outcome of significant failures in pre-application consultations and inadequate assessments and strategies by the Applicant (including the EIA and Rail / Transport Strategy for example). Doubtlessly these delays have a negative impact on affected parties, who in many instances like the BTPA, face a double whammy of compulsory acquisitions of unclear scope and necessity, and significant adverse impacts on their operations as a result of deficiencies in the Transport substantial increase in passenger numbers. Our client shares the frustrations and concerns of other IPs and Aps. However, we do not believe that effective scrutiny of the DCO proposals or collective interests of the affected parties will be served by bringing forward the examination by a mere two or three months. It is possible and important to utilise those months to make progress on outstanding matters.

We have carefully reviewed many of the relevant representations. Unsurprisingly numerous transport and rail undertakers remain extremely concerned by the inadequacies of the Transport / Rail Assessments. In the absence of agreed statements of common ground (“SOCC”) and protective measures, the instant proposals to hasten the examination by mere months in the absence of readiness by the Applicant and by extension interested parties would not be in the interests of effective scrutiny of the proposals. It is far more likely to cause significant detriment to interested and affected parties in combination with existing delays, failures of statutory consultation and engagement, lack of readiness by the Applicant and Ips for examination, and the Inspectorate’s previous unequivocal decision in November 2021 that the examination would not commence until June / July 2022. We therefore have concerns about whether the ExA would be able to conduct an effective, balanced and fair examination of the DCO proposals based on the preliminary timetable notified in the Rule 6 letter of February 2022.

We appreciate the Inspectorate is bound by a statutory requirement under Section 88 of the Planning Act 2008 to complete the examination stage within six months the start date/preliminary meeting.

However, the ExA does have considerable discretion in managing the process. We respectfully request that the PM should be adjourned following the 29th and the examination should not commence until June / July 2022 as previously decided by the ExA.

Simply put in view of the significant matters outstanding, it is not feasible to proceed with a meaningful examination in early April 2022 and immediately following the PM. This view is shared by numerous other IPs such as HS1 Limited, Network Rail, and the Ebbsfleet Development Corporation to name a few. We strongly urge the ExA to reconsider and allow time to enable progress with addressing the shortcomings of the Rail Strategy, protective measures for impacted assets / infrastructure and necessary mitigations.

Launching immediately into an examination with substantive matters outstanding, coupled with significant failures in pre-application stages, as noted by many IPS, would not be in the interests of fairness and would not aid the ExA in scrutinising the principal issues detailed in Annex C of the Rule 6 letter. Having reviewed most of the representations, including the most recent in January 2022, many IPs are concerned by the notable lack of progress with matters including statements of common ground; mitigation in respect of the Rail Strategy, protective measures for assets and critical operational infrastructure of statutory undertakers / APs including the BTPAs. Affording less time to overcome these challenges in order to save two months' from the overall programme for examination runs a high risk of prejudice to interested and affected parties against a background of failures at pre-application and pre-examination stages.

Subject to a clearly defined programme and milestones, adjourning the PM and commencing the examination in June / July would afford the Applicant and IPs/APs a final opportunity to make meaningful progress with significant outstanding matters including: –

- i. **Discussions as to scope of compulsory purchase acquisitions** – the dates for the preliminary CAH1 hearings on 5, 13 and 14 April 2022 appear unrealistic in light of the above representations.
- ii. **Proposals for appropriate asset protections measures** – many IPs/APs have noted that the Applicant has not contacted them with proposals for protective measures. Whilst further delay is far from ideal, such parties cannot merely hope that these proposals come to fruition during examination nor can they assume that the DCO will not be consented. Therefore, the appropriate solution would be to require the Applicant to propose a tightly defined timetable no later than the date of the PM for agreeing such proposals.
- iii. **Negotiations in respect of Statements of Common Ground** – similarly to the above point, the current deadline of 12 April 2022 seems entirely unrealistic and unachievable. Not least because the BTPA are omitted as a named party to SOCGs and related discussions in Annex F, 1D: **Access, highways, land and river transportation effects. We urge that the BTPA is named as**

a relevant IP for these purposes, related hearings and discussions, and the issues should include an additional item (x) as follows: –

“x. Impacts of Rail and Bus Strategies, including impacts of significant intensification of passenger numbers on safety, security and the need for additional policing capacity and appropriate mitigation mechanisms;”

- iv. **Addressing significant shortcomings in the Rail Strategy / Transport Assessment;** and
- v. **Seeking to agree requisite mitigations (including by way of Section 106 obligations)** for the substantial increase in passenger numbers commuting by rail including the HS1 network (as per Steer report commissioned jointly by HS1 Ltd and the Applicant.

In the absence of any proposals for protective measures, mitigations or SOCGs by the Applicant, and the continuing lack of clarity as to the necessity for the acquisition of interests / rights over operational infrastructure (including the BTPA's) the CAH1 hearings in April 2022 seem premature. They would not afford adequate scrutiny or a fair hearing to those most heavily impacted. In the BTPA's case there is a double whammy of impacts which run serious risks of overwhelming the HS1 network and operational policing capacity with attendant risks to public safety and security.

For clarity and going forward the BTPA must be involved in discussions and hearings relating to the following matters with reference to Annex C as to principal issues: –

- 1. land transport (issue 5);
- 2. safety, security, accidents and disasters (issue 15(b));
- 3. compulsory acquisition and related matters (issue 16);
- 4. discussions, deadlines and hearings as to SOCG; and
- 5. any other relevant hearings and programmes as to the above issues.

Given the seriousness of the implications of deficiencies of the submitted Rail / Bus Strategies and significant intensification of passenger numbers on land transport, safety, policing capacity and need for mitigation we respectfully request that these matters are identified expressly among the principal issues. The BTPA should not be prejudiced further by the original failures of the Applicant to consult them in pre-application stages, an omission which is plain to see according to their own Statement of Consultation pursuant to the 2008 Act, which entirely fails to acknowledge our client's role in policing the intensification of passenger numbers on the HS1 Network.

The Applicant must engage with both HS1 Limited and the British Transport Police in respect of its Rail Strategy / Transport Assessment with a view to agreeing any necessary revisions to those strategies, the DCO and mitigation mechanisms for funding of additional policing infrastructure and capacity.

Page 7

Our ref: 9008076-901385 / /6571

Your ref:

It is vital that the parties have an opportunity to consider proposed mitigations and protective measures, and attempt to enter into SOCG before meaningful hearings can take place on compulsory acquisition or transport issues. Rushing the CAH1 in early April and SOCG on 12 April 2022 (albeit we note there may be a longer period to agree these) will not aid the ExA in examining this DCO nor would it serve the public interest.

We trust that our representations will be given due weight and believe that an adjournment of the PM following an initial meeting on 29 March will facilitate progress and still enable commencement of the examination in June / July 2022 as realistically estimated and potential conclusion by Autumn 2022.

We look forward to hearing as to the outcome of the PM and future examination programme. Please also copy any future correspondence on this matter to: –

[REDACTED]

[REDACTED]

Yours sincerely

[REDACTED]

Suzan Yildiz
Principal Associate
For and on behalf of Weightmans LLP