
NORTH LONDON WASTE AUTHORITY

NORTH LONDON HEAT AND POWER PROJECT

EN010071

WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE AT THE COMPULSORY ACQUISITION HEARING ON 6 JULY 2016

The Planning Act 2008 The Infrastructure
Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009
Regulation 5 (2) (d)

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July 2016

North London Heat and Power Project

Application Reference: EN010071

Summary of Oral Representations Made On Behalf Of the Applicant at the Hearing Held on 6 July 2016 on Matters relating to Compulsory Acquisition (The “hearing”)

Submitted By the Applicant on 18 July 2016 (To Meet Deadline 7 of the Examination Timetable)

General notes

1. All references in this document to the “Applicant” making a representation are a reference to what was spoken by the person speaking on behalf of the Applicant during the Hearing.
2. This summary follows the order of items on the agenda for the Hearing issued by the Examining Authority on 28 June 2016.

Agenda item	Summary of Oral Representation made on behalf of the Applicant	Speaker on behalf of the Applicant
1. Clarification of matters relating to the land plans a. Plot 17 is shown on the land plan (B_0005) as only partly for temporary possession, but the entry in schedule 12 of the draft DCO implies temporary	(a) Plot 17 on land plan B_0005 The Applicant explained that the part of plot 17 shown on plan B_0005 as being required for temporary possession is a hedge. After speaking to its team of technical advisors, the Applicant is now happy to amend land plan B_0005 and Schedule 12 of the draft DCO so that the power to temporarily possess and use land no longer applies to the part of plot 17 currently shown cross-hatched on plan B_0005. The Applicant may need to push through this hedge, but it is	Michael Humphries QC

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<p>possession covers the whole plot, whilst the entry in the CA powers roadmap indicates temporary possession is not intended at all.</p> <p>b. Drawing C_0018 – the approximately 7 meters wide strip referred to in article 2 as part of the Order land is not included in the book of reference.</p>	<p>satisfied that it will be able to do this by relying on other powers in the DCO.</p> <p>(b) Drawing C_0018</p> <p>The Applicant confirmed that it would delete references to this drawing from the relevant provisions in the next draft of the DCO. No amendment would be needed to the book of reference.</p>	
<p>2. Clarification of description of particular plots in the Statement of Reasons, the CA powers roadmap and schedules of the draft DCO.</p> <p>a. Plot 6 (Deephams Farm Road) is proposed for compulsory acquisition of leasehold and freehold interests and therefore extinguishment of existing</p>	<p>(a) Plot 6 (Deephams Farm Road)</p> <p>The Applicant explained that Biffa, Lidl and Bestway do not benefit from private rights over plot 6. The Applicant also confirmed that no other party uses Deephams Farm Road and that it was currently an access solely into the Edmonton EcoPark.</p> <p>(b) Plots 4, 11, 12, 17, and 31</p> <p>The Applicant confirmed that it would amend Table 5 of the Statement of Reasons so that it contains a justification for compulsorily acquiring new rights over these plots.</p>	<p>Michael Humphries QC</p> <p>Stewart Scott (Stephenson Harwood LLP)</p>

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<p>rights. These include access for users of the industrial premises to the north of the application site such as Biffa, Bestway and Lidl. Are new rights to be granted to such users to enable access to their premises via Deephams Farm Road to be maintained?</p> <p>b. Plots 4, 11, 12, 17, and 31 are listed in schedule 10 of the draft DCO, but no justification for them appears to be provided in table 5 of the Statement of Reasons (SoR).</p> <p>c. In a situation where CA powers would be used by London Waste Limited (LWL), how would these operate in practice when LWL itself has the rights in plots to be extinguished (paragraph 2.3.2 of the</p>	<p>(c) Compulsory acquisition powers and LWL The Applicant explained that if LWL did receive the benefit of the compulsory acquisition powers, it would not need to exercise compulsory acquisition powers against itself. As it is currently not known whether compulsory acquisition powers would be transferred to LWL, it is necessary to keep powers to extinguish LWL rights. It is not unusual to include this power over plots belonging to the promoter in order to ensure that unknown interests are captured. The Applicant has therefore preserved the ability to choose between two options: (i) the Applicant exercises the compulsory acquisition powers; or (ii) LWL exercises the compulsory acquisition powers.</p> <p>(d) The Applicant confirmed there were some missing words in paragraph 8.7.1 of the Statement of Reasons. The Applicant confirmed that it would insert the words “not be able to” After the word “would”, so that the sentence would read “Without obtaining the proposed powers, the Applicant would not be able to bring forward the Authorised Development....”</p> <p><u>Additional points raised by the ExA:</u></p> <p>(e) Ballast Phoenix - The ExA sought confirmation of when the Ballast Phoenix lease would expire. The Applicant confirmed that the lease expired in December 2015, but that Ballast Phoenix are</p>	

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<p>Funding Statement)?</p> <p>d. Clarify paragraph 8.7.1 of the SoR.</p>	<p>occupying on an extended arrangement. The Applicant is in the process of dealing with a formal lease to document Ballast Phoenix's occupation. That lease, when completed, will expire in December 2016.</p> <p>(f) Camden Plant – the ExA stated that as far as he understood, Camden Plant used plots 18, 19 and 20 to go through plot 16 but that Camden Plant had no interest over these plots and that there was a planning enforcement notice against Camden Plant. The ExA asked how the Applicant would extinguish those rights. The Applicant explained that the lease plan it had received the night before the hearing from Camden Plant was unclear and that as far as it was aware, Camden Plant did not have rights over plot 16. From a practical perspective, the Applicant believed Camden Plant's access can only be over Lower Hall Lane and not through plot 16. The Applicant had only received a copy of a lease with Camden Plant the night before the hearing (it is an unregistered lease) and explained that it was still reviewing that lease to see what access it had been granted and how it could deal with that in practice. Should it be the case that Camden Plant does have access rights through plot 16, the Applicant explained that it is for situations like this that the powers in Article 21 are useful as Article 21 will allow the undertaker to temporarily suspend any rights necessary to carry out the authorised development . In response to the ExA's question as to whether the Applicant expected Camden Plant to exist by the time the authorised development is carried out, the Applicant explained that: (i) there is a current planning enforcement notice issued against Camden Plant;</p>	

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	<p>(ii) Camden Plant has not made any representations during the Examination; (iii) the Applicant has been asking Camden Plant for a copy of its lease for a number of months with little success. A copy of the lease was finally sent to the Applicant the night before this hearing; and (iv) all the Applicant can do, therefore, is secure the necessary powers to enable it to carry out the project.</p> <p>(g) Article 19 – Transport for London queried why the schedule setting out plot numbers to be compulsorily acquired had been removed from the draft DCO. The Applicant explained that the power to compulsorily acquire is clearly limited by Article 19(4) so that the undertaker cannot compulsorily acquire land over which the undertaker was acquiring new rights and land which the undertaker has the power to temporarily possess. The intention is for the power to compulsorily acquire land in Article 19 to be a residual power. Whilst the Applicant thinks the wording in Article 19 is sufficiently clear, the Applicant stated it was happy to review the wording to see if a minor tweak could be made to put this beyond all doubt.</p>	
<p>3. Kennet Properties Limited - plots 6 and 34 (acquisition of freehold interests and new rights).</p>	<p>Thames Water and Kennet Properties Ltd had sent an email to the ExA to confirm it would not be attending the hearing. The Applicant stated it believed Thames Water and Kennet would have appeared at the hearing if there was a problem with the private agreement negotiations that are currently taking place with the Applicant. The Applicant believes the private agreement negotiations with Thames and Kennet are extremely well advanced and the Applicant would be surprised if those negotiations were not concluded in a timely</p>	<p>Michael Humphries QC</p> <p>Stewart Scott (Stephenson Harwood LLP)</p>

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	<p>manner. The Applicant is negotiating options, leases, licences and various other agreements; there are ten draft agreements in total being negotiated. The Applicant cannot speak for Thames and Kennet as to why they have chosen not to attend the hearing, but the Applicant does not read it as indicating that they think there is a fundamental problem.</p> <p>Plots 6 and 34</p> <p>The Applicant explained that in relation to Kennet’s representation about the compulsory acquisition of plots 6 and 34, the Applicant was currently in private agreement negotiations to purchase the freehold interests for plots 6, 9, 10 and 34 from Kennet.</p> <p>In terms of Thames and Kennet in general, the Applicant was also negotiating a lease and option agreement for the temporary laydown area and the various other agreements (some of which also covered the restoration of the temporary laydown area) which cover how the project would interfere with their interests. All these negotiations are substantially progressed.</p> <p>The Applicant confirmed that no changes to the draft DCO were necessary in light of the above; it is not unusual for a promoter to retain compulsory acquisition powers to deal with any issue of default if (for whatever reason) these plots cannot be transferred or leased due to unforeseen or unknown problems with the title. The Applicant would therefore still need a residual power to compulsorily acquire</p>	

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	<p>those plots. The Applicant does not anticipate needing to exercise these powers, however, the private agreements say that if the Applicant successfully purchases or leases the relevant interests (and successfully completes various other agreements), it will not need to use its compulsory acquisition powers in relation to those interests. The agreements will also oblige Kennet and Thames to withdraw their objections to the scheme once the relevant agreements are entered into. If their representations are not withdrawn by the time Examination ends, the ExA would still have the Applicant's representations these parties were willing to sell / lease their interests to the Applicant.</p>	
<p>4. Thames Water Utilities Ltd – plots 16, 18, 19, 20, (temporary possession and acquisition of new rights) and plot 22 (acquisition of new rights).</p>	<p>The summary of the Applicant's representations above also cover Thames' interests in these plot numbers.</p>	<p>Michael Humphries QC Stewart Scott (Stephenson Harwood LLP)</p>
<p>5. Canal and River Trust – plot 11 (temporary possession), plots 13, 17 and 23 (acquisition of new rights).</p>	<p>The Applicant confirmed that whilst the Statement of Common Ground did not cover the representations made by CRT, the Applicant had sent CRT a template settlement agreement for CRT to amend so that the agreement dealt with its concerns. The Applicant awaits CRT's revisions to the draft agreement and it is pressing CRT for this (the last chaser was sent at the beginning of that week). CRT has made a representation that CRT protective provisions in the draft</p>	<p>Michael Humphries QC Stewart Scott (Stephenson Harwood LLP)</p>

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	DCO be replaced with the protective provisions benefitting CRT that were in the Knottingley DCO. There are a number of points the Applicant has raised on this directly with CRT and both parties are in discussion over the necessary amendments to the provisions.	
6. Zayo Group UK Limited – plot 8 (temporary suspension of rights).	At the hearing, Zayo confirmed that it was looking to enter into a settlement agreement with the Applicant over the next 7 to 10 days, after which its objections would be resolved. The Applicant responded to explain to the ExA that Zayo owns cables that run beneath plot 8. The proposed junction improvement works on plot 8 and any resurfacing works carried out on Ardra Road on plot 8 would mean that Zayo’s rights to access and maintain its cables may need to be temporarily suspended whilst those works are carried out. The Applicant believed that this would be very easily resolvable and that it would come down to a question of liaison. Zayo would also have the benefit of the protective provisions in the draft DCO, in addition to the agreement.	Michael Humphries QC
7. National Grid Electricity and Gas - interests in the whole application site, apart from plots 3 and 5, mainly concerning existing utility services which are subject to temporary suspension of	The ExA noted that the main plot belonging to National Grid that was affected was plot 4. The Applicant explained that it needs the ability to protect National Grid’s gas governor during the works and that there is no intention to compulsorily acquire National Grid’s gas governor on plot 4. The intention is for the private agreement to cover any concerns National Grid may have in this respect; this is a prime example of how a private agreement that addresses issues	Michael Humphries QC

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rights, extinguishment of rights and acquisition of new rights.	such as this can complement the protective provisions in the draft DCO, in order to give National Grid comfort that the Applicant's works will not prevent National Grid from operating.	
8. Transport for London – plots 24, 26, 27, 28, 29 and 31 (acquisition of new rights).	The Applicant disagreed with Transport for London's (TfL) representation at the hearing that there had been insufficient engagement by the Applicant with TfL. The Applicant confirmed to the ExA that it had been maintaining a record of all communications between it and TfL and according to that record, private agreement negotiations with TfL were very advanced. The Applicant was surprised to hear TfL represent that negotiations had not commenced. The Applicant also submitted that it was not sure whether the person speaking on behalf of TfL at the hearing (Angus Walker of Bircham Dyson Bell) had himself been involved in the negotiations. The Applicant confirmed it recognised that TfL had rights that needed to be protected. The Applicant had been dealing with Bircham Dyson Bell (who are acting for TfL) for some time and it genuinely understood that a settlement agreement was almost agreed.	Michael Humphries QC
9. Lee Valley Regional Park Authority (LVRPA) – plots 15 and 21 (acquisition of new rights).	LVRPA made a representation at the hearing that it was pleased with the progress of private agreement negotiations with the Applicant and that it was optimistic that an agreement would be reached. In response to this representation, the Applicant said there are three agreements currently being negotiated by the Applicant with LVRPA. A settlement agreement was being negotiated that would address LVRPA's representations. A lease of plots 14, 15 and 21 was being	Michael Humphries QC

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	negotiated and the Applicant understood that LVRPA has approved the principle of the lease subject to the terms being correctly negotiated. A management plan relating to LVRPA's land was also being negotiated, which would cover matters such as security barriers, cleaning up litter etc.	
10. Any other business	The Applicant agreed with the ExA's request that updates of where private agreement negotiations have reached with the parties discussed at the hearing be submitted to the ExA. The ExA requested that a long stop date of Deadline 8 be applied to conclude these negotiations. Updates would be sent to the ExA at Deadline 7 and possibly outside the formal examination deadlines, where appropriate and where agreements have been reached.	

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