

Riverside Energy Park

Oral Summaries for the Compulsory Acquisition Hearing (18 September 2019)

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RIVERSIDE ENERGY PARK ("REP")

WRITTEN SUMMARY OF THE APPLICANT'S ORAL CASE PUT AT THE COMPULSORY ACQUISITION HEARING

WEDNESDAY 18 September 2019 AT 10.00am

1. BACKGROUND

- 1.1 The Compulsory Acquisition Hearing ("**CAH**") was held on 18 September 2019 at 10:00am at Slade Green Community Centre, Chrome Road, Erith, DA8 2EL.
- 1.2 The ISH followed the agenda published by the Examining Authority ("**ExA**") on 10 September 2019 ("**the Agenda**").

2. AGENDA ITEM 1 – INTRODUCTION

- 2.1 The ExA: - Mr Jonathan Green
- 2.2 The applicant is Cory Environmental Holdings Limited (the "**Applicant**"):
 - 2.2.1 Speaking on behalf of the Applicant: - Richard Griffiths (Partner at Pinsent Masons LLP) and Alex Booth QC (of Counsel; Francis Taylor Buildings)
 - 2.2.2 Present from the Applicant: -
 - (a) Andy Pike (Director).
 - 2.2.3 The Applicant's consultant as set out below: -
 - (a) Stuart Cooper (Ardent).

3. PROCEDURAL MATTER

- 3.1 The Applicant commenced proceedings by requesting a direction of the ExA.

- 3.2 On 19th August 2019, the ExA) made a direction for the Applicant to advertise the 'hearing notice', in accordance with the Infrastructure Planning (Examination Procedure) Rules 2010 ("**Examination Regs**") by no later than Wednesday 28th August 2019, which provided 20 days advertisement.
- 3.3 Regulation 13(6) of the Examination Regs requires the Applicant to:
- 3.3.1 post and maintain a notice of the hearing in a conspicuous place close to the land in which the application relates (Regulation 13(6)(a));
 - 3.3.2 post and maintain a notice of the hearing in one or more places where public notices are usually posted in the area which the proposals contained in the application relate (Regulation 13(6)(b)); and
 - 3.3.3 publish a notice of the hearing by local advertisement in the area which the proposals contained in the application are to have effect (Regulation 13(6)(c)).
- 3.4 The notices referred to in Regulation 13(6)(a) were erected on 28 August 2019 and similarly the advertisement required by Regulation 13(6)(c) was posted in the Bexley News Shopper on the same date. Unfortunately there was an administrative error which meant that the notice required by Regulation 13(6)(b) was not posted on the 28 August 2019 and this error did not come to the Applicant's attention until 4 September 2019 when multiple notices were duly posted.
- 3.5 The Applicant takes the view that whilst regrettable absolutely no prejudice has been caused by this omission. All persons with an interest in land were notified by the Planning Inspectorate of the dates for the hearing and in addition notices were posted and advertised pursuant to Regulations 13(6)(a) and (c). Further the notices required by Regulation 13(6)(b) were posted 13 days in advance of the hearing.
- 3.6 Regulation 13(6) provides a discretion to the Ex A to direct that a shorter period than the 21 days required by the Examination Regs is acceptable for the purposes of advertising the hearings pursuant to the Examination Regs. The Applicant asked that the ExA use his discretion to direct that the posting of the notices on the 4 September 2019 was acceptable for the purposes of Regulation 13(6)(b). The ExA declined to do so, explaining that he had already exercised his discretion to allow the requirements of Regulation 13(6) to be complied with within 20 days of the CAH. He was not convinced that he could re-exercise that discretion.
- 3.7 The ExA however confirmed that he agreed with the Applicant that the omission had not caused prejudice to any third parties in the context of the CAH. The ExA indicated that he would need to consider the issue afresh in the context of the DCO Drafting ISH on the 19th September.

4. **AGENDA ITEM 2 – SUMMARY OF OUTSTANDING OBJECTIONS AND PROGRESS WITH NEGOTIATIONS ON ALTERNATIVES TO CA**

| Ref | Issue raised by the ExA | Applicant's Response |
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| 2 | Summary of outstanding objections and progress with negotiations on alternatives to compulsory acquisition. | <p>The Applicant updated the ExA on the status of those parties that had maintained objections to the Application on the basis that their land was or is subject to the application for powers of compulsory acquisition. The update was provided in respect of the different elements of the Proposed Development.</p> <p><u>Main Site:</u></p> <p>At the last CAH there were four parties that had outstanding objections. These were as follows:</p> <p>Western Riverside Waste Authority ("WRWA") - The Applicant and WRWA have reached agreement and on the 16 September WRWA formally withdrew its objection to the Application;</p> <p>Wernick & Sons (Holdings) Limited and Wernick Event Hire Limited – The Applicant and Wernick have reached agreement and Wernick (both companies) have formally withdrawn their objection to the Application;</p> <p>SAS Depot Limited – The Applicant and SAS Depot Limited have reached agreement and on the 17 September the company formally withdrew its objection to the Application; and</p> <p>London Power Networks Plc¹ ("LPN") – LPN continue to have an outstanding objection to the Application, which includes grounds relating to compulsory acquisition of its interests in land/apparatus. The Applicant believes that the objection can be addressed by agreeing protective provisions with LPN. The Applicant sent draft protective provisions to LPN in February 2019 and there have been constructive discussions with LPN's 'parent', UK Power Networks Limited ("UKPN") which were very well advanced at the time of the CAH. Only one outstanding issue remains to be resolved which it was anticipated would be resolved by the end of the Examination. <i>(Following the CAH the Applicant and UKPN agreed the protective provisions and these will be included in the dDCO to be submitted at Deadline 8).</i></p> <p><u>Main temporary compound:</u></p> |

¹ LPN has UK Power Networks Limited as its parent company. Similarly South Eastern Power Networks Plc also has UK Power Networks Limited as its parent company.

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| | | <p>At the last CAH there were two parties that had outstanding objections. These were as follows:</p> <p>LPN – please refer to the position referred to above; and</p> <p>Creekside Developments (Kent) Limited – The Applicant and Creekside have reached agreement and on the 18 September 2019 it formally withdrew its objection to the Application. The Applicant committed to submitting the withdrawal letter into the Examination.</p> <p><u>Electrical connection route:</u></p> <p>The Applicant's understanding of the purpose of the CAH was to update the ExA on the status of negotiations in respect of those parties which maintained an objection to the Application on the grounds of the application for powers of compulsory acquisition over their land. Therefore, the Applicant only intended to update the ExA in respect of those parties who object to the Application on the grounds of it including an application for powers of compulsory acquisition; it indicated it did not propose to summarise the position reached in respect of other parties that objected to the Application on other grounds. The ExA confirmed that it approved of this approach.</p> <p>The position in respect of those parties that maintained an objection to the Application on the grounds of its including powers of compulsory acquisition was summarised as follows:</p> <p>Ingrebourne Valley Limited – Ingrebourne were affected by the changes to the Order land at Deadline 2 and the plots in which they have an interest were reduced in size. Ingrebourne had subsequently been provided with a draft option agreement which they had confirmed is acceptable to them. Ingrebourne had confirmed that they had withdrawn their objection to the Application and a formal withdrawal letter would be provided.</p> <p>Mazhar Mohammad - Mr Mohammad objected to the Application on the basis that the compulsory acquisition of rights for the electrical connection across his land would curtail his ability to develop it in the future. As a consequence of his objection and subsequent discussions with Mr Mohammad the Applicant had reduced the parcel size in respect of those plots of which Mr Mohammed was the freehold owner. The Applicant provided Mr Mohammad with a draft option agreement and he has instructed solicitors to work toward agreeing that option agreement. He formally withdrew his objection to the Application on 17 September 2019.</p> <p>South East Power Networks Plc ("SEPN") – SEPN is part of the same group as LPN and therefore the</p> |
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| | | <p>position set out in respect of LPN above applies for SEPN. The ExA asked whether UKPN, LPN and SEPN would each have distinct protective provisions within the dDCO. It was confirmed by Richard Griffiths that they would not and they would all take the benefit of UKPN's protective provisions set out in Schedule 10, Part 7 of the dDCO. Paragraph 78 of that part sets out the protective provisions contained therein apply to utility undertakers which include UKPN, LPN and SEPN.</p> <p>Network Rail Infrastructure Limited ("Network Rail") – The Applicant confirmed that Network Rail had indicated that if protective provisions could be agreed between the Applicant and Network Rail that it would be able to withdraw its objection to the Application. Until recently there had been two outstanding matters which had prevented agreement on the Protective Provisions. However those matters had been conceded by the Applicant on 10 September 2019 and is the Applicant understood that the Protective Provisions were now in an agreed form.</p> <p>Network Rail has recently communicated to the Applicant that it will not formally withdraw its objection until such time a framework agreement can be entered into. This agreement would chiefly require that the agreed version of the protective provisions be included in the made DCO. The Applicant's solicitor has made representations to Network Rail's solicitor on this point. The position of Network Rail had not been communicated previously and this was very late in the examination for it now to be raised; in any event such agreement was unnecessary in the Applicant's view. The protective provisions prevent the applicant from acquiring any Network Rail property without its consent and therefore it is unnecessary for the framework agreement to be entered into in advance of the objection being withdrawn. Despite chasing, Network Rail had not confirmed its position in advance of CAH.</p> <p>The ExA raised the operation of Section 127 of the Planning Act 2008 if the relevant representation and written representation of Network Rail was not withdrawn by the end of the examination.</p> <p>The Applicant did not consider that the Secretary of State would be prevented from granting development consent on the basis that there was an outstanding objection from Network Rail at the end of the examination. Section 127(3) prevents the Secretary of State granting development consent unless she is satisfied that in doing so there would be no serious detriment to Network Rail's undertaking.</p> <p>The protective provisions included at paragraph 43(4), Part 5 of Schedule 10 prevent the Applicant from acquiring new rights over Network Rail's property without its consent. In a scenario whereby Network Rail has consented to the Applicant acquiring rights over railway property it is impossible to see how</p> |
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| | | <p>there could be any serious detriment to Network Rail's undertaking.</p> <p>The ExA queried whether it was right to say that Section 127 would not be engaged at all in this scenario. The Applicant confirmed that, pursuant to Section 127(1) of the Planning Act 2008, where Network Rail had an outstanding objection at the end of the examination, Section 127 would formally be engaged. However, it asserted that on the basis of the current draft of protective provisions the ExA could confidently recommend to the Secretary of State that no serious detriment would be caused to Network Rail. The ExA agreed with this assessment.</p> |
| | Other matters | <p>The ExA asked for the Applicant to expand on the position reached with London Borough of Bexley ("LBB"). The Applicant confirmed that it is seeking to acquire rights in land in which LBB is the owner. These plots are adjacent to the highway and LBB is minded to adopt those plots as highways maintainable at the public expense. In those circumstances the electrical connection would be installed pursuant to street works powers under the New Roads and Street Works Act 1991. If the plots were not adopted then LBB would prefer to reach agreement with the Applicant in respect of an option agreement. In either scenario the Applicant would wish to retain powers of compulsory acquisition within the dDCO. LBB did not maintain an objection to the compulsory purchase powers sought by the Applicant.</p> |

5. **AGENDA ITEM 3 - UPDATE ON SCHEDULES 3 – 9 OF THE DRAFT DEVELOPMENT CONSENT ORDER**

| Ref | Issue raised by the ExA | Applicant's Response |
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| - | The Ex A noted that Schedule 7 of the DCO submitted at Deadline 5 included new plots (12/06(a), 12/06(b), 12/17(a) and 12/17(b)) which had not been included previously. Please could the Applicant explain? | <p>It was explained in the Schedule of Changes (REP5-007) that the changes made to Schedule 7 of the DCO were to reflect the updated Book of Reference and Land Plans submitted at Deadline 4.</p> <p>The new plots referred to were created to refer to subsoil rights within the adopted highway and to allow for a scenario whereby the Proposed Development needed to be located below the extent of the highway. They do not include any additional land not previously included in the Order limits and are wholly within the Order limits as defined at the point of the Application.</p> |

6. **AGENDA ITEM 4 – PARTIES WHO MAY BE AFFECTED BY THE PROJECT**

| Ref | Issue raised by the ExA | Applicant's Response |
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| | No matters were discussed under this Agenda item. | |

7. **ANY OTHER BUSINESS**

| Ref | Issue raised by the ExA | Applicant's Response |
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| | The Ex A noted that there had been amendments to the Order land at Deadline 2. Those changes in the vicinity of the jetty and River Thames did not appear to have been explained in any document to the examination. Could the Applicant comment on this? | <p>The amendments to the Order limits in the vicinity of the jetty/river Thames was amended at Deadline 2 at the request of the PLA. This is recorded in section 2.3 of the Statement of Common Ground with the Port of London Authority (REP2-52).</p> <p>It was always the position that the jetty and the river Thames was excluded from land that could be subject to compulsory acquisition or temporary possession. The Order limits were originally drawn to include these areas so it was clear to the public that the Proposed Development would involve the use of the river and jetty for the purposes of the Proposed Development. However, it was decided following the position agreed with Port of London Authority, that the Order limits would be revised to reflect the position reached with them.</p> |