

Application by Esso Petroleum Company Limited for the Southampton to London Pipeline Project

Deadline 6 submission submitted on behalf of the Independent Educational Association Limited

Planning Inspectorate Reference No: EN70005

Interested Party Reference No: 20022533

1. Introduction

1.1. This representation is submitted on behalf of the Independent Educational Association Limited (IEAL) and provides.

1.1.1. The IEAL's summary of its attendance at the Compulsory Acquisition Hearing held on 24 February including a number of post-hearing notes.

1.1.2. The IEAL's proposed amendments to the amended Requirements in the draft DCO submitted by the Applicant at Deadlines 4 and 5.

1.1.3. The IEAL's comments on the Site Specific Plan for St James School submitted at Deadline 4.

1.1.4. The IEAL's comments on the Applicant's Comments on Responses submitted for Deadline 4 which were submitted by the Applicant at Deadline 5 (namely the IEAL's response to the Applicant's comments on the Alan Baxter Report submitted by the IEAL at Deadline 4)

2. IEAL's Summary of Oral Submission made by Mark Warnett of Carter Jonas at the Compulsory Acquisition Hearing held on 24 February

2.1. Mark Warnett, Partner at Carter Jonas, represented the IEAL at the Hearing. He explained that the IEAL was seeking to reach an agreement with the Applicant and added that such discussions are without prejudice to the IEAL's position that a material variation should be sought to the DCO application for the IEAL's preferred alternative route through the School site.

2.2. Mr Warnett explained that the IEAL's solicitors, Addleshaw Goddard, sent draft heads of terms for an agreement with the Applicant to the Applicant's solicitors, Veale Wasbrough Vizards, on 22 January 2020 and despite a number of chasing emails, no draft agreement, or response to the heads of terms, had been received.

2.3. Mr Warnett added that the IEAL remains committed to engaging in discussions with a view to reaching an agreement notwithstanding that the DCO Application has a significant adverse impact on the School.

2.4. Post Hearing Notes:

2.4.1. At Deadline 6, the IEAL is still waiting for the Applicant to respond to the draft heads of terms sent to their solicitors on 22 January. This is despite assurances given by the Applicant at the Compulsory Acquisition Hearing on 24 February that they would expedite the response to the IEAL's draft heads of terms and the production of a draft agreement for the IEAL to review. The IEAL notes that, at the hearing, the ExA stated its expectation that there should be no interested parties still waiting for draft documentation by Deadline 6. The IEAL submits that the Applicant's failure to engage in meaningful negotiations with the IEAL for the voluntary acquisition of property interests supports the IEAL's view that the Applicant has not made genuine efforts to acquire such interests by negotiation and that they are not therefore seeking compulsory acquisition powers as a last resort.

2.4.2. The IEAL submits that the Applicant has not demonstrated "that all reasonable alternatives to compulsory acquisition [...] have been explored" as required by Department of Communities and Local Government *Guidance related to procedures for the compulsory acquisition of land* dated September 2013.

3. The IEAL's proposed amendments to the amended Requirements in the draft DCO submitted by the Applicant at Deadlines 4 and 5.

- 3.1. The IEAL notes that a new Requirement 17 (Site Specific Plans) has been added to the Requirements at Schedule 2, Part 1 to the draft Order. It also notes that the Applicant submitted a Site Specific Plan (**SSP**) in relation to the School at Deadline 4 **[REP4-054]**. The IEAL notes that Requirement 17 provides for changes to the Site Specific Plans, including the SSP, to be agreed by the relevant planning authority. The IEAL submits that it makes no sense for the planning authority to approve changes to the SSP; it is the IEAL that understands the impacts of the Pipeline Project on the School; the local authority has no knowledge or understanding of the impact of the Pipeline Project on the School. The IEAL also notes that Requirement 5 (Code of Construction Practice) provides for changes to the CoCP to be agreed with the relevant planning authority which would include circumstances where the CoCP applies to the School.
- 3.2. Accordingly, the IEAL asks that Requirements 5 and 17 are amended so that they read as follows.

5. Code of Construction Practice

5. The authorised development must be undertaken in accordance with the code of construction practice, or with such changes to that document as agreed by the relevant planning authority, or to the extent that it applies to St James Senior Boys' School, with the Independent Educational Association Limited, provided that any such changes must be—

- (a) necessary or desirable to reflect a change or update in legislation, guidance or good practice; or
- (b) confined to a specific location along the route of the authorised development.

17. Site Specific Plans

17. The authorised development must be undertaken in accordance with the site specific plans, or with such changes to those plans as agreed by the relevant planning authority, or in relation to the site specific plan that applies to St James Senior Boys' School, with the Independent Educational Association Limited, provided that any such changes must be—

- (a) necessary or desirable to reflect a change or update in legislation, guidance or good practice; or
- (b) confined to a specific location along the route of the authorised development.

4. IEAL's comments on the Site Specific Plan in respect of St James School [REP4-054]

- 4.1. The IEAL notes the SSP provided by the Applicant and, notwithstanding the IEAL's objection to the Applicant's proposed route through the School grounds, notes that the Applicant proposes:
- 4.1.1. A reduction of working width in sensitive locations.

4.1.2.A commitment to surface working outside of school term time, and to “consult with St James School management team/Board of Governors to coordinate the construction timetable to reduce impacts”.

4.2. However, the IEAL has a number of significant concerns about the SSP:

4.2.1.At paragraph 3.4.4 the SSP states: “The stringing out area in the playing fields is not anticipated to be used if the use of an auger bore is agreed with Network Rail.” The IEAL has received no confirmation that the Applicant has reached agreement with Network Rail on this issue which suggests the reduced working areas are unconfirmed.

4.2.2.The Order Limits encroach into the boundary of the IEAL's proposed new Assembly Hall. The IEAL notes that a reduced working width of 5 metres is proposed in relation to the works that immediately adjoin the site of the proposed Assembly Hall as shown on the map at paragraph 3.1 of the SSP. The IEAL asks that an express commitment not to exceed the proposed working widths is added to the SSP.

4.2.3.The SSP states, at paragraph 2.1.4 that "Esso intends on constructing the works (Open Cut and trenchless crossing) outside of term-time" and at paragraph 3.2.1, that "It is intended for works to take place outside of term time". The IEAL asks that these paragraphs are amended to provide an enforceable obligation that no works will take place during term time and that the entire School site will be reinstated to the same condition that it was before the Applicant started works at the site before a new term starts.

4.2.4.The pipeline route passes through land identified by the IEAL for an all-weather sports pitch. Specifically, the working width passes along the length of the south western boundary of the proposed sports pitch, where fencing and flood lights (with concrete bases) will be located. The Applicant has stated, in conversations with the IEAL, that the sports pitch can be constructed over the pipeline and that the Order (if granted) will not sterilise the sports pitch. However, to date no documented commitment has been provided by the Applicant and the IEAL asks that an appropriate commitment is included in the DCO whether in the SSP or otherwise.

5. IEAL's response to the Applicant's response to the Alan Baxter report on the IEAL's proposed Alternative Route

5.1. The ExA will recall that having reviewed the Applicant's Deadline 3 submissions, the IEAL instructed engineering consultancy Alan Baxter to produce a detailed assessment of the Applicant's preferred route (**Preferred Route**) and the Applicant's reasons for refusing to seek powers to construct the IEAL's preferred alternative route through the School grounds. The Alan Baxter report was submitted at Deadline 4 **[REP4-081]**.

5.2. At Deadline 5 the Applicant submitted its response to the report prepared by Alan Baxter **[REP5-021]**. The ExA is referred to pages 57-58 of that document. We attach a further report from Alan Baxter that sets out the IEAL's response to the Applicant's response.

5.3. As detailed in previous representations submitted by the IEAL, the Applicant has not properly considered the IEAL's proposed Alternative Route nor provided a compelling justification why the Alternative Route is not viable or deliverable. As detailed in the Alan Baxter reports, the Alternative Route provides a significant advantage compared to the Applicant's Preferred Route, due to the higher ground levels in the area of the Alternative Route which will result in a reduced impact from the high local water table.

- 5.4. In order to justify the compulsory acquisition of land interests, the Applicant is obliged to demonstrate it has properly considered alternatives and that the use of compulsory acquisition powers is necessary rather than simply convenient or desirable.
- 5.5. The IEAL submits that the Applicant has not properly considered the Alternative Route which would not require compulsory purchase powers to be obtained as the IEAL is willing to grant the Applicant the necessary rights to construct and operate the pipeline along that route. Accordingly, the grant of compulsory acquisition powers in respect of the School site is not justified.

Addleshaw Goddard LLP

5 March 2020