

Southampton to London Pipeline Project

Deadline 6

Written Summary of Oral Submissions at Compulsory
Acquisition Hearing on 24 February 2020 (CAH2)

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Southampton to London Pipeline Project EN070005

Applicant's Written Summary of Case at the Compulsory Acquisition Hearing held at the

Village Hotel, Farnborough on the afternoon of Monday 24 February 2020

1 Agenda Item 1: Introduction

- 1.1 This document summarises the case put forward orally by Esso Petroleum Company, Limited ("**the Applicant**") at the compulsory acquisition hearing which took place at the Village Hotel, Pinehurst Road, Farnborough GU14 7BF from 3pm on Monday 24 November 2019 ("**the CA Hearing**").
- 1.2 The Applicant was represented at the CA Hearing by:
 - 1.2.1 Alexander Booth QC of Francis Taylor Building;
 - 1.2.2 Jonathan Anstee De Mas of the Applicant;
 - 1.2.3 James Taylor of the Applicant;
 - 1.2.4 Adrian Webb of Fisher German LLP; and
 - 1.2.5 Tom McNamara of BDB Pitmans LLP.
- 1.3 This written summary of case follows the order in which items were address by the Examining Authority ("**ExA**") at the CA Hearing. Reference should also be made to the document setting out the Applicant's responses to the action points published by the Inspectorate following the CA Hearing (**Document Reference 8.81**).

2 Agenda item 2: Section 122 and 123 of the Planning Act 2008

- 2.1 The ExA sought an update from the Applicant on the current status of voluntary negotiations for the land interests and rights required in order to deliver the project.
- 2.2 Mr Booth confirmed that the broad position was as follows:
 - 2.2.1 there were now 115 option agreements signed and exchanged. Mr Booth noted that this figure represents an increase of 35 to that reported to the ExA at the first Compulsory Acquisition hearing;
 - 2.2.2 there were 33 option agreements in respect of which terms are agreed and the agreements were now awaiting signature;
 - 2.2.3 there were 44 option agreements where the drafting is well advanced and the Applicant considered that an agreement was now reasonably imminent;
 - 2.2.4 there were 29 option agreements where discussions in relation to the drafting of the agreement was progressing but those discussions were still at an early stage; and

- 2.2.5 there were 20 instances where Heads of Terms were still to be agreed between the parties.
- 2.3 The ExA then requested an update on the status of negotiations with those landowners who were discussed at the first Compulsory Acquisition hearing in November 2019.
- 2.4 The Applicant provided a summary update in respect of these negotiations as follows.
- Abbey Rangers Football Club*
- 2.5 Mr Anstee de Mas confirmed that a number of meetings had taken place between the Applicant and the Football Club and that the parties were now very nearly there in terms of reaching an agreement in respect of the option agreement. Mr Anstee de Mas confirmed that the agreement would include appropriate provisions to safeguard the Club's ability to continue to carry out football activities on the land.
- Cove Cricket Club*
- 2.6 Mr Anstee de Mas confirmed that there had been very positive discussions between the Applicant and the Cricket Club, principally regarding the issues of access to the site and impacts on the Club's cricket nets. Mr Anstee de Mas therefore confirmed that the Applicant was very confident that an agreement would be reached with the Club before the end of the examination and this sentiment was echoed by the Club's representative, Simon Mole of Carter Jonas, who was also in attendance at the CA Hearing.
- MHA Fleet Limited*
- 2.7 Mr Webb explained that there had been a request from MHA Fleet Limited for the pipeline to be laid within the public highway (along Beacon Hill Road) rather than within the boundary of MHA Fleet's property. Mr Webb explained that the Applicant has now confirmed that this should be achievable, subject to further survey work, and was therefore hopeful of reaching an agreement with MHA Fleet on the terms of an option agreement before the end of the examination.
- Mr and Mrs Hammond*
- 2.8 Mr Webb explained that limited progress had been made in negotiations with the Hammonds, since they are currently abroad and indeed have been for some time. Mr Webb confirmed that, whilst the Applicant would continue to seek to progress negotiations with the Hammonds in the coming weeks, this was likely to be an outstanding issue at the close of examination given current timeframes.
- Judith Ralls*
- 2.9 Mr Anstee de Mas confirmed that there was a recent meeting with Mrs Ralls and that two main concerns had been raised regarding the impact of the project on Mrs Ralls' property. Specifically, these relate to access to the property and to the detailed routing of the pipeline, which has given rise to concerns regarding proposals for a new equestrian facility at the property.

- 2.10 As regards the first of these concerns, Mr Anstee de Mas explained that the Applicant was happy to agree that access would be maintained to Mrs Ralls' property during the period of construction of the pipeline.
- 2.11 As regards the second concern, Mr Anstee de Mas clarified that, in circumstances where the equestrian facility is not built prior to construction of the pipeline, the Applicant was happy to commit to route the pipeline along the western side of Mrs Ralls' property in order to avoid impacting upon the proposed equestrian facility. If, however, the equestrian facility was built out before construction of the pipeline, Mr Anstee de Mas confirmed that the Applicant would be happy to commit to narrow working through the property in order to minimise impacts on the facility.
- 2.12 In view of those clarifications, Mr Anstee de Mas expressed a confidence that an agreement would be reached between the parties before the close of the examination.

Surrey Heath Borough Council

- 2.13 Mr Webb reported positive progress in discussions with Surrey Heath Borough Council and confirmed that the parties were now very close to concluding an agreement as to the rights and interests required over the Council's land in order to deliver the project.

Runnymede Borough Council

- 2.14 Mr Anstee de Mas confirmed that heads of terms were now agreed between the parties, including in relation to proposed environmental mitigation works at Chertsey Meads. As such, Mr Anstee de Mas confirmed that the Applicant was very confident of reaching an agreement with the Council before the end of the examination.

Mr and Mrs Ziv

- 2.15 Mr Webb confirmed that the position remained the same as that reported in the Applicant's Compulsory Acquisition schedule at Deadline 5 (**Application Document 8.9**). That is to say that the terms of the draft option agreement were substantially agreed, however compensation matters remain unresolved. Mr Webb therefore explained that, at this stage, there were limited prospects that an agreement would be concluded before the end of the examination.

Mr and Mrs Simpson

- 2.16 Mr Anstee de Mas confirmed that a very positive meeting had taken place with Mr Simpson and the other garage owners at Stakes Lane on site before Christmas where the Applicant was able to confirm that the garages at Stake Lane would be able to be rebuilt following the pipeline installation which resolved the long term storage concerns. Provisions for alternative temporary storage have been incorporated into the voluntary agreement. Mr Anstee de Mas reported that the drafting of the relevant legal documents was at an advanced stage and that there was a high degree of confidence that an agreement would be concluded before the end of the examination.

Thames Water

- 2.17 Mr Anstee de Mas confirmed that terms had been agreed with Thames Water for the acquisition of land required for one of the valve compounds and associated pipeline easements.

Discussion were ongoing between the parties regarding protective provisions and construction specific issues but the Applicant was confident that an agreement would be concluded by close of the examination.

Rushmoor Borough Council

- 2.18 Mr Anstee de Mas confirmed that, to date, discussions with the Council have primarily focussed on the impacts of construction works at Cove Cricket Club. Since it was the case that very positive progress has been made in that regard, Mr Anstee de Mas confirmed that the Applicant was hopeful that an option agreement would be concluded with the Council before the end of the examination and will continue to seek to engage proactively with the Council in that regard.

Spelthorne Borough Council

- 2.19 Mr Anstee de Mas explained that, in respect of the Council's concerns regarding access to Ashford Community Centre during construction of the pipeline, the Applicant has now confirmed that, to avoid any impact on access, the pipeline would be routed beneath the access. Whilst negotiations on some of the more detailed aspects of the legal drafting were ongoing, Mr Anstee de Mas was therefore confident that an agreement would be concluded before the end of the examination.

St James' School

- 2.20 Mr Anstee de Mas clarified that there were a number of points of ongoing discussion between the parties. However, Mr Anstee de Mas confirmed that there was positive engagement and that legal drafting was now at an early stage of progress. Mr Anstee de Mas noted that there was a further onsite meeting scheduled for Tuesday 25 February 2020 and that the parties were working hard to find a middle ground in order to reach an agreement before the end of the examination.
- 2.21 The ExA requested an update on some of the other landowner negotiations which were not discussed at the first Compulsory Acquisition hearing but which were listed in the Compulsory Acquisition schedule submitted at Deadline 5

Archalyen Property Limited

- 2.22 Mr Webb clarified that Archalyen Property Limited was the registered owner of the land adjoining land that owned by MHA Fleet Limited. Mr Webb confirmed that the Applicant has given the same in principle assurances to Archalyen Property Limited as MHA Fleet regarding the laying of the pipeline in Beacon Hill Road (see paragraph 2.7 of this note). On that basis, Mr Webb indicated that there was confidence that an agreement would be reached with Archalyen and an option agreement secured before the end of the examination.

Janet Gaze

- 2.23 Mr Anstee de Mas confirmed that a meeting was held with Mrs Gaze and her land agent two weeks ago. Mr Anstee de Mas explained that Mrs Gaze had concerns about the routing of the pipeline and its impacts on her property. Mr Anstee de Mas confirmed that the Applicant was working actively to seek to secure an agreement before the end of the examination, however

at this stage the prospects of an agreement being concluded before the end of the examination were poor.

John Sidley Bradley-Hole and Richard Mann

- 2.24 Mr Webb confirmed that there was no update to report since Deadline 5. Despite making all reasonable efforts, Mr Webb confirmed that the Applicant has been unable to establish a current address for the landowner. Mr Webb confirmed that the Applicant would continue with its enquiries, however the likelihood of an agreement being reached before the end of the examination was necessarily very small at this stage.

Mr and Mrs Holt

- 2.25 Mr Webb confirmed that the Applicant has made contact with Mr and Mrs Holt, who have confirmed that they are permanently resident in the United States, have no active interest in the relevant property and do not wish to enter into a voluntary agreement. As a result, Mr Webb explained that there was no realistic prospect of an agreement being reached before the end of the examination.

Tarmac Limited

- 2.26 Mr Webb confirmed that there was a forthcoming meeting scheduled with Tarmac Limited and that discussions were progressing well, such that the Applicant was confident of an agreement being reached before the end of the examination.
- 2.27 The ExA also raised a question regarding the tenant of this land, Mr Colin Rayner, who has made submissions at Deadlines 2 and 5 in the examination timetable but was not listed in the Compulsory Acquisition Schedule submitted by the Applicant at Deadline 5.
- 2.28 Mr Webb confirmed that the Applicant had arranged to meet with Mr Rayner to discuss the concerns which he has raised regarding the routing of the pipeline through the farm. Mr Webb also confirmed that Mr Rayner would be added to the Compulsory Acquisition Schedule to be submitted at Deadline 6.

Tweseldown racecourse

- 2.29 Mr Anstee de Mas confirmed that the Applicant has been actively engaging with Tweseldown racecourse since the inception of the project. Mr Anstee de Mas noted that Tweseldown has now provided its consent to the acquisition of rights under the agreement which has been agreed with the Ministry of Defence, which was indicative of the current positive nature of the engagement with the racecourse.
- 2.30 Mr Anstee de Mas emphasised that the Applicant understands the special nature of the activities undertaken at the racecourse and constraints which exist regarding the programming of events scheduled for the 2021 / 2022 seasons, and that the Applicant was naturally seeking to minimise the impacts of construction works on the racecourse. However, Mr Anstee de Mas explained that it was inherently problematic to seek to make firm commitments at this stage regarding the scheduling of works in the absence of a construction programme.
- 2.31 The ExA also noted that Tweseldown was not noted listed in the Compulsory Acquisition schedule submitted at Deadline 5 and, noting the omission of Mr Rayner, asked the Applicant

to check and confirm that all owners and occupiers of land were accurately noted in the schedule. Mr Booth confirmed that this clarification would be provided at Deadline 6.

Highways England

- 2.32 In response to submissions made on behalf of Highways England at the CA Hearing regarding the application of the powers conferred by article 28 of the draft DCO to roads and operated owned by Highways England, the Applicant confirmed that a response would be provided in writing to Highways England by Deadline 6 as part of the discussions which were ongoing in relation to the proposed Protective Provisions.

3 Agenda Item 3: Crown Land

The ExA requested an update on the progress of negotiations with the Ministry of Defence and the Ministry of Justice and on the position in respect of escheat land.

Ministry of Defence ("MoD")

- 3.1 Mr Booth explained that discussions have proceeded very positively since the first Compulsory Acquisition hearing, noting that the MoD has now withdrawn its request for a closed hearing. Mr Anstee de Mas confirmed that the parties were now very nearly there in terms of finalising and settling the legal agreements and was therefore very hopeful that the agreement would be concluded by Deadline 6.

Ministry of Justice ("MoJ")

- 3.2 Mr Anstee de Mas confirmed that there is one issue which remains subject to ongoing discussion, regarding the access road to HMP Bronzefield. That notwithstanding, Mr Anstee de Mas explained that an agreement was close and that there was a high degree of confidence that an agreement would be reached by Deadline 7 at the latest.
- 3.3 The ExA also asked the Applicant to confirm the position in terms of the written consent required from the Crown under s. 135 of the 2008 Act. In this regard, the ExA asked the Applicant to provide a note explaining how the project could proceed if that consent were not provided and all of the Crown land therefore had to be removed from the Book of Reference or, in the alternative, to provide that written consent.

Land subject to escheat

- 3.4 As regards escheat land, Mr McNamara confirmed that the letter of confirmation provided by Burges Salmon which was submitted by the Applicant at Deadline 4 only related to three of the parcels of land subject to escheat described in the Book of Reference (namely parcels 1036, 1053 and 1069), but that the Applicant had proceeded on the reasonable basis that the same principles described in the Burges Salmon letter would apply to the remaining parcels of escheat land. That notwithstanding, Mr McNamara confirmed that the Applicant was happy to request a further letter from Burges Salmon regarding the remaining plots of escheat land and would endeavour to submit this at Deadline 6.

4 Agenda Item 4: Protective provisions

- 4.1 The ExA requested an update from the Applicant on the progress which has been made in relation to negotiations with affected statutory undertakers.

Southern Water Services Limited

- 4.2 Mr McNamara confirmed that the terms of a private agreement had now been concluded with Southern Water. Accordingly, the Applicant would be asking Southern Water to withdraw its representation.

Post-hearing note: Southern Water has now withdrawn its representation in respect of the application.

Southern Gas Networks

- 4.3 Mr Taylor confirmed that the Applicant continues to make good progress with Southern Gas Networks regarding protective provisions for their benefit and that a meeting was held with representatives of Southern Gas on 20 February to continue the discussions. Mr Taylor confirmed that there were now only a small number of points outstanding between the parties and was therefore confident that an agreement would be reached before the end of the examination.

Cadent Gas

- 4.4 Mr Taylor confirmed that Protective Provisions for the protection of Cadent Gas were now very close to being reached between the parties.

Highways England

- 4.5 Mr McNamara confirmed that negotiations regarding Protective Provisions for Highways England were progressing well and that there were now only a small number of points subject to ongoing discussion between the parties and was confident that an agreement would be finalised before the end of the examination.

Affinity Water

- 4.6 Mr McNamara explained that there had been no progress made with Affinity Water specifically in relation to Protective Provisions.
- 4.7 Mr McNamara confirmed that the Applicant has regularly sought to understand whether Affinity is content with the standard form of Protective Provisions included in Part 1 of Schedule 9 of the draft DCO. The Applicant's team has also provided all relevant technical information to Affinity Water, so far as the Applicant is aware. However, to the extent that Affinity does seek an alternative form of protection, no alternative proposal has been provided by it to date.
- 4.8 As matters stand, Mr McNamara therefore confirmed that there was very limited expectation that Affinity would be withdrawing its representation before the end of the examination.

Network Rail Infrastructure Limited

- 4.9 Mr Booth confirmed that there had been positive discussions between Network Rail and the Applicant, particularly in terms of agreeing a way forward regarding the consent / veto provision in respect of the Applicant's DCO powers which Network Rail was seeking to impose through the Protective Provisions. Mr Booth confirmed that, if these discussions continued to progress in a positive way, there was no reason to suspect that an agreement would not be reached before the end of the examination.

Portsmouth Water

- 4.10 The ExA asked the Applicant to check and confirm the position in relation to Portsmouth Water, noting the discrepancy between the Compulsory Acquisition schedule submitted at Deadline 5, which indicates that a Protective Provisions agreement is in negotiation, and the Statement of Common Ground between the Applicant and Portsmouth Water submitted at Deadline 5, which indicated that the parties agree that no Protective Provisions were required.

South Eastern Power Networks

- 4.11 The Applicant is engaged in positive discussions with SEPN and there are is now only one outstanding point subject to ongoing discussion. The Applicant is confident that an agreement will be reached with SEPN before the end of the examination.

Thames Water

- 4.12 Mr McNamara confirmed that negotiations in relation to Protective Provisions for Thames Water were now progressing after a slow start. Whilst there are points of disagreement between the parties, Mr McNamara confirmed that the Applicant was hopeful that an agreement could be reached before the end of the examination, assuming that negotiations continue to progress in an expeditious manner.

ESP Utilities

- 4.13 Mr Taylor confirmed that the Applicant was now close to finalising the terms of a Protective Provisions agreement with ESP Utilities.

CLH Pipelines

- 4.14 Mr McNamara confirmed that there were discussions taking place with CLH Pipelines' legal team but that there were a number of points still to be agreed between the parties in order to reach agreement. The Applicant will continue to progress these discussions as much as possible in the coming weeks.

Environment Agency

- 4.15 Mr Taylor confirmed that negotiations were progressing very well with the Environment Agency and well as with the Lead Local Flood Authorities, who would also have Protective Provisions for their benefit.
- 4.16 There was a further question from the ExA as to why the Forestry Commission was listed amongst the parties in respect of which there is a Protective Provisions agreement and Statement of Common Ground.

- 4.17 The ExA also reminded the Applicant that, to the extent that an agreement was not reached with statutory undertakers and a representation remains outstanding by the end of the examination, section 127 cases would need to be provided by the Applicant.
- 4.18 Finally, in relation to agenda item 4, the ExA asked the Applicant to confirm by way of submission at Deadline 6 whether the withdrawal of a representation by a statutory undertaker could be achieved through a signed Statement of Common Ground or whether a separate letter would be required.

5 Agenda Item 5: Compulsory Acquisition implications arising from the change request submitted at Deadline 4 and the response to the ExA's request for further information received at Deadline 5

- 5.1 The ExA sought an update in respect of the three minor change requests noted in respect of "Request B" of the Inspectorate's Rule 17 letter dated 6 February 2020.
- 5.2 Mr Booth explained the position in the following terms:
- 5.2.1 each of these changes relates to a request received from a landowner;
 - 5.2.2 as regards the application of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ("**the 2010 Regulations**"), Mr Booth accepted the ExA's position that a change in the powers sought over the affected parcels from temporary possession to compulsory acquisition would constitute "additional land" for the purposes of the 2010 Regulations. This meant that the process set out in the 2010 Regulations would need to be followed if the consent of the affected landowners were not forthcoming. However, to the extent that any of the consents required were not forthcoming, Mr Booth confirmed that the Applicant would not be promoting the change;
 - 5.2.3 the Applicant has taken positive steps to seek the relevant consents from persons with an interest in land affected by the changes. Mr Booth confirmed that an update on the status of obtaining these consents would be provided at Deadline 6.
- 5.3 The ExA asked what the position was regarding those parties listed in the Book of Reference with category two interests in the relevant parcels of land but in respect of which it did not appear, from the Applicant's cover letter at Deadline 5, that the Applicant was seeking express consent.
- 5.4 Mr Booth confirmed that the Applicant had anticipated this issue. Mr Booth clarified that the Applicant was only seeking to change the status, from temporary possession to compulsory acquisition, of those parts of the parcels which were directly affected by the changes. For example, in respect of parcel 229, Mr Booth explained that it was only a very small proportion of the current parcel that the Applicant was now seeking powers of compulsory acquisition over. Mr Booth confirmed that the Applicant would be preparing revised Land Plans and Book of Reference to reflect this and would clarify the position in more detail at Deadline 6.

6 Agenda Item 6: Proposed change to the entrance for construction vehicles to Fordbridge Park and the implications for compulsory acquisition.

6.1 The ExA asked the Applicant to confirm what the current position was regarding the revised access proposal to Fordbridge Park.

6.2 Mr Booth confirmed that this was not in fact a proposed change; the Applicant was not seeking to promote a change to the Order limits or to the DCO application as submitted. Mr Booth confirmed that the Applicant was therefore seeking to continue to promote the DCO on the basis of the Celia Crescent access. The Applicant's position remained that the access via Celia Crescent was appropriate. However, Mr Booth confirmed that the Applicant had listened to Spelthorne Borough Council's concerns and was seeking to agree an alternative proposal with them regarding access along Woodthorpe Road, however this would be outside the DCO application.

6.3 Mr Anstee de Mas also provided an update on discussions with Spelthorne Borough Council. Mr Anstee de Mas confirmed that both parties recognised the benefits of using Woodthorpe Road and were looking to crystallise this arrangement in the land agreement. Mr Anstee de Mas confirmed that the parties were working together positively to reach agreement in this regard.