

**Fieldfisher LLP ("Fieldfisher") together with Baker Rose Consulting LLP ("BRC") acts for BOC Limited ("BOC") (Interested Party Reference Number 20049365) at Compulsory Acquisition Hearing 2 ("CAH 2")**

**1. Summary of Oral Submission**

- 1.1 Fieldfisher confirmed on behalf of BOC that the latest status in respect of the protective provisions is that following submission by Fieldfisher of its comments on the draft protective provisions on 6 December 2024, Fieldfisher has on 13 January 2025 (during the course of CAH2) received without prejudice correspondence relating to those protective provisions at 11:13.
- 1.2 BOC's position remains as described in the Written Representations submitted on 3 October 2024 and as reserved in the representations made at CAH1.
- 1.3 BOC continues to have no objection to the Application in principle, provided that appropriate protective provisions are inserted on the face of the Order or preferably a comprehensive compromise agreement is agreed and entered into.
- 1.4 BOC has an extensive network of pipelines and pipeline related infrastructure producing and supplying industrial gases to key stakeholders at Teesside. This infrastructure is critical to:
  - BOC's operations and business; and
  - the business of its customers at Teesside who rely on the gases its produces.
- 1.5 On 24 November 2024, BOC attended a presentation by the Applicant in respect of the Applicant's works' proposals as to the Tees Crossing. BOC has buried nitrogen lines through the two existing tunnels under the Tees as well as a currently dormant pipeline. The Applicant currently proposes to use micro-tunnelling, high directional drilling or both (albeit the detail of these works is not yet available). The presentation raised serious concerns within BOC engineering as to the potential impact of such works on its infrastructure at this location.
- 1.6 Fieldfisher returned its comments on the protective provisions to the Applicant's solicitor on 6 December 2024 (including new drafting to deal with the Tees Crossing) on a without prejudice basis and a microbore tunnel risk register assessment analysing the levels of risk associated with the current plans highlighting the particular areas of concern where further consultation and agreement was needed.
- 1.7 It is BOC's view that the negotiations for protective provisions are not being progressed in a sufficiently timely manner.
- 1.8 BOC is of the view that there is no compelling case for the compulsory acquisition of land and rights over its facility on Teesside in the absence of adequate protective provisions being provided by the Applicant.
- 1.9 We would remind the Applicant that the use of compulsory purchase powers is a matter of last resort and that negotiations for the relevant rights should take place.
- 1.10 The Guidance on the use of CPO powers under the Planning Act 2008 states:

- Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.
  - The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.
- 1.11 The ExA will recall that that at CAH1 most of those appearing observed that there had been little or slow progress in resolving their concerns and/or reaching agreement. Unfortunately, that appears to still be the case.
- 1.12 The deadline for responses to action points arising from hearings held during the week commencing is 22 January 2025.
- 1.13 We also wish to suggest that in the absence of any meaningful progress by the 6 February 2025 (being the date on which the Applicant's solicitor is due to reply) and prior to 28 February 2025 (on which date the Order is due to be confirmed) it may be of assistance to the ExA to programme a further hearing date in order to address protective provisions .
- 1.14 To the extent that no protective provisions are agreed between the parties, BOC will need to ask the Inspectorate to amend the Order to include protective provisions drafted by Fieldfisher on behalf of BOC in order to adequately safeguard its business and operations.
- 1.15 Hereward Philpot KC submitted that:
- 1.15.1 The Applicant had been meaningfully engaging for a significant period of time; and
- (a) that the last version of the protective provisions returned by Fieldfisher were on non-standard terms and had required a significant redraft by the Applicant's solicitor; and
  - (b) that there had been significant meetings between the parties on a principal to principal basis; and
  - (c) that the Applicant rejected the statement that the protective provisions were not being progressed with due alacrity.
- 1.15.2 Emily Tetley-Jones of Fieldfisher on behalf of BOC submitted that:
- (a) BOC did not accept the interpretations of timings as outlined by Hereward Philpot KC; and
  - (b) Fieldfisher did not intend to take up the Inspectorate's time on the matter during the hearing but suggested submitting a timeline as to the progress of negotiations to date.