

From: [REDACTED]
To: [A63 Castle Street: A63castlestreet@PINS.gsi.gov.uk](mailto:A63.Castle.Street@A63castlestreet@PINS.gsi.gov.uk)
Subject: RE: TR010016 - A63 Castle Street Improvement Scheme - Hull
Date: 20 March 2019 12:26:36
Attachments: [Letter to the Planning Inspectorate 05.10.2018.pdf](#)

Further to my e-mail below I confirm I will also be attending the Open Hearing on the afternoon of Tuesday the 26th March to represent my clients.

Brief details of the procedural matter we wish to raise on Tuesday are as follows.

It is unlawful to include alternative sites for the compound in the DCO. We sent a letter to PINS regarding this issue on the 5 October last year. A further copy of this letter is attached.

Although we have received an acknowledgement of receipt we have had no reply to this letter.

The consequence of the unlawful inclusion of alternative sites in the DCO is becoming more serious as the letting of my client's site ('Site B') is frustrated by its inclusion in the DCO and this is resulting in potential financial loss to my client which, if my client's site is subsequently removed from the DCO may not be compensated. (Removal of my client's site from the DCO could occur because my client's site is not the preferred site - its inclusion is only to cover the possibility that 'Site A' is not acquired, even though the acquisition of Site A could be pursued by compulsory purchase). The inclusion of alternative sites in the DCO is an abuse of the process and in the circumstances we request that the Inspector deals with this procedural issue next Tuesday.

Please could you pass a copy of this email and the attached letter to the Inspector before the meeting next Tuesday.

Kind regards

Amanda Beresford



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From: Amanda Beresford
Sent: 19 March 2019 14:39
To: A63 Castle Street <A63Castlestreet@planninginspectorate.gov.uk>; A63castlestreet@PINS.gsi.gov.uk
Subject: RE: TR010016 - A63 Castle Street Improvement Scheme - Hull

Thank you for the notification of the A63 Application Preliminary Meeting to be held on the 26th March. Please note that I will be attending to represent my clients Princes Quay Estates Limited, Princes Quay Retail Limited and Princes Quay Developments Limited.

Kind Regards

Amanda Beresford

From: A63 Castle Street [<mailto:A63Castlestreet@planninginspectorate.gov.uk>]
Sent: 22 February 2019 13:44
To: Amanda Beresford <aberesford@shulmans.co.uk>
Subject: TR010016 - A63 Castle Street Improvement Scheme - Hull

**Planning Act 2008 – Section 88 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 6
Application by Highways England for the A63 Castle Street Hull Junction Improvement Project.**

Notice of Preliminary Meeting, availability of Relevant Representations and notification of hearings

Your Ref: 20018209

Please find below a website link to the Rule 6 letter giving notice of, and the agenda for, the Preliminary Meeting. This letter includes notice of an Open Floor Hearing to be held on 26 March 2019.

<https://infrastructure.planninginspectorate.gov.uk/wpcontent/ipc/uploads/projects/TR010016/TR010016-000279-A63%20Rule%206%20letter%20Final.pdf>

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If this link does not open automatically, please cut and paste it into your browser.

All documents in relation to this project can be viewed here:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/a63-castle-street-improvement-hull/>

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Yours Sincerely

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A63 Castle Street Project Team

National Infrastructure Planning
The Planning Inspectorate, Temple Quay House, Temple Quay, Bristol BS1 6PN
Direct Line: 0303 444 5000
Helpline: 0303 444 5000

Web: <https://infrastructure.planninginspectorate.gov.uk/> (National Infrastructure Planning)
Web: www.gov.uk/government/organisations/planning-inspectorate (The Planning Inspectorate)

Twitter: @PINSgov

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Our Ref: AB/BA/P33459.11

Your Ref:

The Planning Inspectorate
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5 October 2018

Dear Sir

URGENT

DCO Application – A63 Castle Street Improvement – Hull

We act for Prince Quay Retail Limited.

We understand that a DCO application for A63 Castle Street improvement – Hull was received by the Planning Inspectorate from Highways England on 20 September 2018 ("the Application"). We further understand that the Planning Inspectorate is currently reviewing the application and deciding whether or not to accept it and that the acceptance decision should be made by Thursday 18 October.

We understand that objections to the application cannot be made until after the application has been registered and should the application be registered our clients will be making appropriate representations at that time. However our clients are concerned that there are errors in the application of which you should be aware and which should lead to the application not being registered. It is therefore appropriate for you to consider the contents of this letter prior to determining whether or not to accept the application.

The reason why the application is flawed is as follows:

It proposes two alternative sites for the location of a temporary (several years) materials batching and bentonite production plant compound ("the Compound"), a preferred site, Site A (known as the Arcos Site) and an alternative site, Site B (known as the Staples Site). Our clients owns Site B.

The inclusion of two alternative Sites is contrary to relevant Development Consent and Compulsory Purchase law and policy and the application should not therefore be registered.

Section 122 of the Planning Act 2008 provides as follows:

"An order granting Development Consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met".

In subsection (2) the conditions are that the land is:

- (a) required for the development to which the Development Consent relates;
- (b) required to facilitate or is incidental to that development; or
- (c) replacement land which is to be given in exchange for the order land under sections 131 or 132 of the 2008 Act; and

In subsection (3) the condition is: that there is a compelling case in the public interest for the land to be acquired compulsorily.

Policy guidance is contained in the DCLG Document "Planning Act 2008, Guidance relating to Procedures for the Compulsory Acquisition of Land". This provides as follows:

Paragraph 11 sets out the considerations which the Secretary of State will take into account in deciding whether the condition in subsection (2) has been met. It states:

- In respect of whether the land is required for the development, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.
- In respect of whether the land is required to facilitate or is incidental to the proposed development, the Secretary of State will need to be satisfied that the development could only be carried out to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken is no more than is reasonably necessary for that purpose and that it is proportionate.

The inclusion of alternative Site B for the Compound is in breach of these statutory and policy requirements. The fact that there is a preferred Site A makes it impossible to demonstrate that Site B is required for the development to which the development consent relates. The inclusion of a Site B alternative is also contrary to the policy provision that the Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development. Highways England's position is that Site A alone can satisfy this requirement.

It is not possible to demonstrate that Site B is required to facilitate or is incidental to the development as Site A is the preferred site and on Highways England's position can fulfil this function. The Secretary of State cannot be satisfied that Site B is no more than reasonably necessary for that purpose and that it is proportionate because it is Highways England's position that Site A can fulfil the purpose.

Further there can be no compelling case in the public interest for Site B to be acquired compulsorily as there is an alternative Site A which is preferred by Highways England.

Accordingly, it would be unlawful to accept an application that includes the alternative Site B. Since Site A is the preferred site Highways England should rely on demonstrating that Site A is required for the development or is required to facilitate or is incidental to the development and that there is a compelling case in the public interest for its acquisition. No such case can be made in respect of Site B in view of the preference for Site A. It is understood that Highways England have included both sites merely to cover the possibility that it may not be possible to acquire Site A by private treaty however in that event the compulsory purchase of Site A should be pursued.

The approach of including alternative sites amounts to an abuse of the use of Development Consent and Compulsory Purchase powers. Inclusion of a site in a DCO for compulsory acquisition means the landowner suffers loss because they cannot deal with the site, there are

public disbenefits flowing from its inclusion and if it is ultimately not included in the DCO the owners will have no right to compensation and none in any event for the long period for which it has been "blighted". All of this is unnecessary given the existence of an alternative and preferred site – Site A

We look forward to receiving your confirmation that this letter will be taken into account in deciding whether or not to register the application and that the application accordingly should not be registered for the reasons given above.

Yours faithfully

A solid black rectangular redaction box covering the signature of the sender.

SHULMANS LLP