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**Subject:** TR010016 - WRITTEN REPRESENTATION OF EPIC (NO.2) LIMITED Email 1 of 3  
**Date:** 23 April 2019 19:30:02  
**Attachments:** [TR10016 Summary of Written Representation - EPIC 23 4 19 FINAL.pdf](#)  
[TR10016 Written Representation - EPIC 23 4 19 FINAL.pdf](#)

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Dear Sir/Madam

Please find attached the Written Representation of EPIC (No.2) Limited and Summary.

To follow are:

Appendices A-D of the Written Representation (in email 2 of 3)

Appendices E-G of the Written Representation (in email 3 of 3)

EPIC (No.2) Limited have included a request in their Written Representation to make oral representations at the following:

- 1 Compulsory Acquisition Hearings during week commencing 3 June 2019 and 15 July 2019
- 2 Issue Specific Hearings during week commencing 3 June 2019 and 15 July 2019
- 3 Any further scheduled Issue Specific Hearings or Compulsory Acquisition Hearings related to the proposed Order.

EPIC (No.2) Limited consider that Highways England could reach a negotiated agreement with EPIC to secure necessary mitigation, without which the identified impacts of the proposed Scheme would be unacceptable. If this was achieved, the objection of EPIC could be removed. On this basis, EPIC request that they are scheduled to make oral representations at the oral hearings identified in the schedule for week commencing 15 July 2019, rather than week commencing 3 June 2019 in order to provide sufficient time to conclude such an agreement should Highways England be minded to do so.

Yours sincerely

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**Planning Act 2008 (as amended) – Section 55**

**Application by Highways England for an Order Granting Development  
Consent for the A63 Castle Street Improvement Scheme**

**PINS Reference TR010016**

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**WRITTEN REPRESENTATION OF EPIC (NO.2) LIMITED**

**KINGSTON RETAIL PARK**

**Deadline 1: Dated 23 April 2019**

**Interested Party Unique Reference Number: 20018241**

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## 1. INTRODUCTION AND OBJECTION

- 1.1 EPIC (No.2) Limited (“**EPIC**”) own and control the freehold interest of Kingston Retail Park under title number HS287149 (“**Kingston Retail Park**”) (see **Appendix A**). EPIC is the landlord to numerous tenants on Kingston Retail Park. Kingston Retail Park is a key retailing destination that supports hundreds of jobs in the local community.
- 1.2 EPIC object to the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (“**proposed Order**”). EPIC has no objection to the principle of the proposed Order or the provision of A63 (Castle Street) Improvement Works (the “**Scheme**”) but object to compulsory acquisition of its land (both temporary and permanent) and the relevant works adjacent to the Kingston Retail Park and this representation is primarily concerned with matters related to the proposed compulsory acquisition. EPIC has raised its concerns with Highways England and would be willing to withdraw its objection in the event an appropriate agreement was entered into between EPIC and Highways England that satisfactorily addressed the concerns of EPIC.
- 1.3 EPIC submitted a relevant representation on 19 December 2018. EPIC continue to rely on this representation and this Written Representation supplements the relevant representation already submitted.
- 1.4 EPIC wish to make oral representations at the following hearings:
- 1.4.1 Compulsory Acquisition Hearings during week commencing 3 June 2019<sup>1</sup> and 15 July 2019
  - 1.4.2 Issue Specific Hearings during week commencing 3 June 2019<sup>2</sup> and 15 July 2019
  - 1.4.3 Any further scheduled Issue Specific Hearings or Compulsory Acquisition Hearings related to the proposed Order.

## 2. SUMMARY OF IMPACTS ON KINGSTON RETAIL PARK

- 2.1 Pell Frischmann has been commissioned by EPIC to review and identify the impacts of the proposed Scheme and their report is attached at **Appendix B**.
- 2.2 It must be assumed that Highways England will utilise the powers sought to the fullest extent and EPIC considers that the powers sought by Highways England are excessive and disproportionate. Based on the findings of the report of Pell Frischmann and the knowledge of EPIC, it is considered that the Scheme, as currently proposed and without any mitigation being secured, will have the following impacts:
- 2.2.1 **Service Yard** – the proposed solution for service vehicles to access the western service yard does not allow a realistic route option for HGV traffic. Under Option A, unless amendments are made to the Streets, Rights of Way and Access Plans there will be a permanent loss of access to the western service yard from the highway;

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<sup>1</sup> Subject to a request to make representations at the hearings week commencing 15 July 2019

<sup>2</sup> Subject to a request to make representations at the hearings week commencing 15 July 2019

- 2.2.2 **Loss of Car Parking Spaces** - The loss of car parking spaces permanently and the loss of between 50 to 175 car parking spaces during the construction period and in particular, Highways England could stop parking and access to the units of Mothercare and Carphone Warehouse;
  - 2.2.3 **Vehicular Access routes during construction:** No assessment of the alternative routes that would be taken by vehicles during construction. There is the potential for junction capacity issues to be created that would impact on service vehicles and customers trying to access the retail park;
  - 2.2.4 **Signage** - No clarity has been provided on signage strategy to ensure vehicular traffic understands the alternative routes to access the retail park and to ensure that eastbound A63 traffic is diverted via the Daltry Street / Madeley Street / Rawling Way / Hessele Road Roundabout;
  - 2.2.5 **Pedestrian Routes** – no pedestrian routes into the retail park from Mytongate Roundabout have been provided during construction works and no evidence that the existing routes will be reinstated on completion of highway works;
  - 2.2.6 **Pedestrian Access** - Pedestrian crossings over Mytongate Junction are to be removed during construction with the shortest diversion greater than 1km. There is a loss of a realistic pedestrian access from the city centre during construction;
  - 2.2.7 **Totem Poles** – the location and agreement to move Totem Poles during construction works and on completion of the highway works have not been confirmed;
  - 2.2.8 **Hoarding** - the construction hoarding impedes visibility of the retail park with no confirmed solution offered by Highways England during the construction period;
- 2.3 Details of the impacts are set out in detail in the report of Pell Frischmann. The consequent effects on Kingston Retail Park is unacceptable, both on the business of EPIC and their tenants, details of which are set out below and in paragraph 5.4 of the Pell Frischmann Report.
- 3. DESCRIPTION OF EPIC'S INTEREST AND WORKS AFFECTING KINGSTON RETAIL PARK**
- 3.1 EPIC owns the freehold interest to Kingston Retail Park. The details of the current tenants are illustrated on the plan at **Appendix C**. In addition to its freehold interest in Kingston Retail Park, it is presumed that EPIC owns the sub-soil beneath the highway immediately adjacent to its registered interest (under the presumption that EPIC own up to the middle of the highway).
  - 3.2 Currently the main vehicular access to Kingston Retail Park is from Kingston Street. Access from the A63 is via the Mytongate Junction with vehicles accessing the site by travelling along Commercial Road and Kingston Street. Kingston Retail Park has two service yards with the western service yard accessed via Spruce Road, with leads directly onto the A63 and the eastern service yard access accessed from Commerical Road. Kingston Retail Park is highly visible from the A63, with attractive landscaping and signage and can be easily accessed by pedestrians from the city centre via the Mytongate roundabout.
  - 3.3 Highways England propose to permanently acquire areas of EPIC land to the north of the Kingston Retail Park that is currently used for landscaping and car parking spaces as a result of the A63 being widened under the proposed Order. The service yard of Kingston Retail Park will

be altered as a result of amendments to the access to it and will also be impacted by the proposed diversion of the YW sewer.

- 3.4 Highways England seek to acquire temporary possession of large areas of EPIC’s land. No time period has been specified for such possession other than the limitations contained in Article 29 of the proposed Order. The proposed Order also provides for broadly drafted powers of access for survey and investigation, the provision of associated works and its construction and maintenance.

*WORK AREAS*

- 3.5 Highways England are proposing to undertake the following works in relation to land belonging to EPIC:

3.5.1 Work number 9 (Option A only): *“The demolition of the Arco premises and clearance of land for use as a site compound”*

3.5.2 Work number 10: *“The diversion of statutory undertakers’ apparatus (YW sewer) along Waverley Street, Arco’s site and across and along the north side of A63 Hessle Road to Cogan Street.”*

3.5.3 Work number 15: *“The construction of a new westbound A63 on-slip and retaining wall, to the west of Mytongate Junction”*

3.5.4 Work number 16 (Option A only): *“The construction of a new access road from Lister Street to local businesses”*

3.5.5 Work number 18: *“Alterations to Kingston Retail Park car park.”*

3.5.6 Work number 44 (Option B only): *“Alterations to (Arco’s) car park and service roads, including modifications to St James Street, Waverley Street and Spruce Road”*

- 3.6 Plans of the work areas relevant to Kingston Retail Park are at **Appendix E**.

*LAND ACQUISITION*

- 3.7 Highways England are proposing to acquire the following land belonging to EPIC:

3.7.1 For Option A Highways England seek:

(a) the permanent acquisition of plot reference 3/5a, 3/5d, 3/5h and (sub soil) 3/1ak.

(b) the temporary acquisition of plot references 3/5b, 3/5c, 3/5e, 3/5f, 3/5g, (subsoil) 3/1c, 3/1aj, 3/1bb, 3/1bc

3.7.2 For Option B Highways England seek:

(a) the permanent acquisition of plot references 3/5d, 3/5h and 3/5i.

(b) the temporary acquisition of plot references 3/5e, 3/5f, 3/5g, 3/5j, 3/5k, 3/1ck, (subsoil) 3/1c, 3/1bb, 3/1bc

- 3.8 Plans of the plots relevant to Kingston Retail Park are at **Appendix D**.

- 3.9 It should be noted that some (but not all) of the plots are for the same areas but have different references depending on whether they are in Option A or Option B.

*STOPPING UP AND RIGHTS OF WAY*

- 3.10 In addition, Highways England are proposing to carry out the following works in relation to the service yard access to Kingston Retail Park. The two options provide different approaches depending on whether the Arco site is used as a compound. In Option A<sup>3</sup> the service yard access is changed from the A63, to a new road from Lister Street. In Option B, the service yard is still accessed from the A63 via Spruce Road but there is some realignment. The proposals include:
- 3.10.1 Option A – point numbers 3/6, 3/L, 3/k and 3/15. This includes the stopping up of Spruce Road up to the boundary of the entrance to the service yard of Kingston Retail Park<sup>4</sup>. It does provide for a new road access from Lister Street but the plans do not show the new road being provided as highway to the boundary of Kingston Retail Park<sup>5</sup>. Unless it is amended, the right of access to the western service yard from the highway will be lost. This is critical and must be amended.
- 3.10.2 Option B – point numbers 3/28, 3/5 and 3/15
- 3.11 Plans of the plans relevant to Kingston Retail Park are at **Appendix F**. A document showing the area where the western service yard can no longer be accessed from the proposed new highway under Option A is attached at **Appendix G**.

#### 4. THE CONSEQUENCES OF THE LIKELY IMPACTS ON KINGSTON RETAIL PARK

- 4.1 The report of Pell Frischmann sets out (at paragraph 5.4) the implications of the identified likely impacts of the Scheme on Kingston Retail Park. This is on the basis if mitigation measures proposed by EPIC are not provided. At its worst it will mean that Kingston Retail Park is no longer viable and will cease operating. For example, this might occur if the western service yard could not be accessed or Highways England took possession of the part of the car park and western service yard for the entire construction period as it seeks to be authorised to do so. Other impacts, whilst not necessarily likely to cause Kingston Retail Park to cease operations could have significant effects, such as the approach to construction hoarding, totem poles and signage.
- 4.2 The identified likely impacts of the Scheme on Kingston Retail Park demonstrate that, unmitigated and viewed as a whole, there will be a significant effect on the business of EPIC and their tenants. The Scheme as proposed will mean that the ability of EPIC to retain current tenants and attract new retail tenants will be greatly diminished. The Scheme as proposed will affect the ability for EPIC to attract and retain customers. At a time of great uncertainty in the retail market, it is incumbent on Highways England to ensure that any impacts are ameliorated as far as possible.
- 4.3 As a consequence, EPIC strongly disagrees with the assessment in the Environmental Statement of Highways England. In table 14.8 the impact is assessed as “*A slight adverse effect, which is not considered to be significant.*”. This is said to be following mitigation but this is limited to what is described as minimising as far as possible the area of land take. The extent it has been limited to is not considered to be sufficient mitigation and robust and effective mitigation must be offered and secured.

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<sup>3</sup> It is understood that Option A is the preferred and most likely option.

<sup>4</sup> From point 3/K to point 3/L on Streets, Rights of Way and Access Plans Sheet 3 and in accordance with Article 13 and Schedule 4, Part 1 of the proposed Order

<sup>5</sup> From point 3/5 to point 3/6 on Streets, Rights of Way and Access Plans Sheet 3 and in accordance with Article 13 and Schedule 4, Part 1 of the proposed Order

## 5. MANNER OF IMPLEMENTATION

- 5.1 Highways England has not provided sufficient justification or evidence to demonstrate why all of EPIC's land is required for the delivery of the scheme to which the proposed Order relates. Highways England is seeking powers that are excessive and disproportionate. It is evident that Highways England has chosen (and has been noted by other interested parties) to follow a 'broad brush' approach which appear to be driven for reasons of expediency and to secure costs savings for Highways England, rather than only utilising powers of compulsory acquisition to the extent they are specifically necessary for the implementation of the Scheme and in the public interest. This approach is considered to be ill-conceived as it results in far greater impacts than should otherwise be the case. Also (although not a matter for the examining authority) the perceived cost saving for Highways England is unlikely to materialise in relation to the land of EPIC due to the substantial compensation that would be likely to be awarded in the event compensation was awarded by the Upper Tribunal, since far greater disturbance is caused than that would be in the case of a proportionate approach.
- 5.2 An example of the 'broad brush' approach relates to Work number 18 and the temporary possession of (amongst others) plot number 3/5e (5,326 square metres) which is the majority of the northern end of the main car park, including up to the front entrances of units occupied by Mothercare and Carphone Warehouse, as well as plot 3/5c (620 square metres) which includes the northern end of the service yard for Kingston Retail Park. The period of temporary possession is unlimited other than by Article 29 of the proposed Order<sup>6</sup>. The justification for the possession of such a large area for an unlimited period is unclear<sup>7</sup> but appears to be on the basis to ensure 'flexibility' for Highways England should it want to provide amendments to the car park and service yard layout as it sees fit. The consequences of the possession of these plots for the entire construction period (as has to be assumed) on the interests of EPIC and their tenants would be clearly excessive and disproportionate to the public interest. This is far from the "clear idea" that the statutory guidance<sup>8</sup> requires Highways England must have of how this land is intended to be used.
- 5.3 It has not been demonstrated that all reasonable alternatives to compulsory acquisition (including modifications to the Scheme) have been explored nor has Highways England demonstrated that the proposed interference with the rights of EPIC is for a legitimate purpose, and that it is necessary and proportionate. A review of paragraph 5.5 of the Statement of Reasons reveals that the focus of attention has been on alternatives to the promotion of the Scheme from a 'broad brush' approach and has failed to consider how impacts might be avoided for each interested party, such as EPIC. Highways England has failed to consider alternatives or modifications that would obviate the need to acquire all of EPIC's land, when a lesser extent could achieve the same purpose.

## 6. NEGOTIATION AND THE MITIGATION OF IMPACTS

- 6.1 EPIC considers the identified impacts of the Scheme can be mitigated, provided suitable mitigation was offered and secured. Whilst this may be possible through the DCO process, it

<sup>6</sup> Article 29 and Schedule 7 of the draft DCO specifies the period of temporary possession to be "the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7",

<sup>7</sup> Annex A of the Statement of Reasons merely says "Alterations to Kingston Retail Park car park"

<sup>8</sup> "Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land" Department of Communities and Local Government, September 2013

would be better obtained through a negotiated agreement. EPIC considers that efforts of Highways England to negotiate a private agreement have been insufficient.

#### *INSUFFICIENT EFFORTS AT NEGOTIATION*

- 6.2 There have been a few meetings and a limited exchange of information between Highways England and EPIC in relation to the proposed Order. However, these meetings and the exchange of information have not been sufficiently meaningful. It is evident that due to the complexity of the potential impacts of Highways England utilising excessive powers of acquisition, that the securing of rights, interests and mitigation measures through the conclusion of a private agreement to acquire EPIC's land would be a much more preferable route for both EPIC and Highways England. The failure to sufficiently progress negotiations has meant that EPIC has now had to incur significant costs in relation to the formal process for the proposed Order, when Highways England should have commenced the process as a last resort. It is acknowledged that Highways England has limited resource and numerous other parties to negotiate with but it appears from the relevant representations of other significant interested parties that Highways England has ignored the approach advocated by the statutory guidance. Since the land of EPIC is a critical element in delivering the scheme, Highways England must seek to meaningfully engage with EPIC to conclude a negotiated agreement as soon as possible and only rely on the powers of compulsory acquisition if those attempts have failed. This is further demonstrated by Highways England describing the status of negotiations as "non-applicable" in paragraph 4.9.3 and Annex B of the updated Statement of Reasons (March 2019).
- 6.3 It is noted that the examining authority have stated in their letter dated 5 April 2019 to Shulmans LLP that they are content for the client of Shulmans LLP to request to make submissions at the Compulsory Acquisition Hearing week commencing 15 July 2019 rather than week commencing 3 June 2019. Since Highways England has failed to meaningfully engage with EPIC, costs savings could be made if EPIC were to make representations at the Compulsory Acquisition Hearings in the week commencing 15 July 2019, rather than week commencing 3 June 2019. This should provide sufficient time for Highways England to meaningfully engage and an appropriate agreement concluded and a request is made for the Compulsory Acquisition Hearing addressing Kingston Retail Park be held on week commencing 15 July 2019 rather than 3 June 2019. Should Highways England fail to meaningfully engage in the interim, it is requested that further submissions can be made later in the process.

#### *MITIGATION OF IMPACTS*

- 6.4 The Pell Frischmann report sets out at paragraph 5.3 the type of mitigation that should be provided by Highways England to ensure that the identified impacts are capable of being mitigated. It is considered that the mitigation identified is best secured through a negotiated agreement since it identifies specific matters that effect Kingston Retail Park only. This includes a reduction in the area of land take, controls over construction phasing and management, car park and servicing yard design, signage strategy, pedestrian access, location of totem poles, details of construction hoarding, amongst other matters.
- 6.5 EPIC is conscious that whilst Highways England has provided some documents for discussion (the latest of which was sent on the evening of Thursday 18 April 2019, just before the Easter holidays), insufficient progress has been made towards concluding the heads of terms of a settlement/compromise agreement and is considered that a negotiated agreement could be concluded in the near future.



6.6 Should Highways England fail to agree a suitable negotiated agreement, EPIC reserves the right to make further representations to the examining authority (both written and at the oral hearings), to request the removal and amendment of EPIC's land sought to be acquired and the associated work areas and requesting the revision of the proposed Order in order to secure necessary mitigation.

**7. LIST OF APPENDICES**

7.1 In the following appendices are attached to this Written Representation:

- 7.1.1 Appendix A – Title Plan HS287149
- 7.1.2 Appendix B – Report of Pell Frischmann
- 7.1.3 Appendix C – Plan of tenants at Kingston Retail Park.
- 7.1.4 Appendix D – Extract of Land Plans
- 7.1.5 Appendix E – Extract of Work Plans
- 7.1.6 Appendix F – Extract of Rights of Way Plans
- 7.1.7 Appendix G – Identification of area of highway not provided

**TEMPLE BRIGHT LLP**

**23 APRIL 2019**