

THE PLANNING ACT 2008

**M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT CONSENT
ORDER APPLICATION**

TR010019

Written Summary of Second Issue Specific Hearing Dealing With Compulsory Acquisition

Date: 12 February 2016

**Venue: Holiday Inn Maidenhead/Windsor, Manor Lane, Maidenhead, West Berkshire, SL6
2RA**

ISH - Compulsory Acquisition

INTRODUCTION

Question 2 - Representations from affected persons

1. *Neil Morgan, Slough MotoX Parc*

1.1 *Mr Morgan submitted that the current Scheme plans state that the MotoX Parc will be unable to operate for a year due to the construction of the Scheme, but in reality Mr Morgan believes there will also be a period of rebuilding of the Parc over and above that 12 month term. As such, he submitted that the Scheme is likely to result in a suspension in operations at the Parc for 18 months.*

Highways England Response

1.1 Slough MotoX Parc have the best understanding of the work which they need to undertake before their operation can recommence following the rebuilding of Recreation Ground bridge. Highways England cannot comment on the likely duration of the work. Highways England have undertaken at meetings and in their response at Deadline VI to work with Slough MotoX Parc to minimise the temporary land occupation period. However, the duration of the bridge construction works is estimated to be a period of approximately one year. Once ground investigation and detailed design has been finalised, detailed construction planning will take place and Highways England will review methodologies and sequences, working with Slough MotoX Parc to minimise the construction duration and impacts on Slough MotoX Parc.

2. *Mr. and Mrs. Hakesley*

2.1 *The Hakesleys have now seen detailed drawings of the Scheme works. The temporary and permanent land take is roughly 25% of the entire site. The Hakesleys are concerned that they will not be able to operate during construction of the Scheme, which is due to be a period of three years. The Hakesleys submitted that if they did try to trade during construction, customers would be faced with construction traffic turning into Amerden lane and various disruption, including noise, works and traffic. The Hakesleys were concerned that this would result in detrimental reviews of the caravan park. The Hakesleys submitted that the impact on the business would be significant in the long term and that rebuilding the business post 2021 would not be viable.*

Highways England Response

2.2 A site meeting with the Hakesleys and their surveyor took place on 12 January 2016 to enable Highways England to better understand the likely impact of the Scheme on the caravan park. The Hakesleys and their agent have subsequently been provided with more detail of the works in their immediate vicinity, including likely construction vehicle movements in Amerden Lane. Further discussions are to be held shortly between the Hakesleys surveyor and the surveyor advising Highways England to discuss the likely impacts on the caravan park and the extent to which this can be reflected in a compensation claim.

3. *Douglas Bond of Woolf Bond Planning, representing Anita Thomas and Bloor Homes*

3.1 *These issues relate to compound number 5. Highways England has confirmed that this site is to be the main construction compound for the Scheme. The landowners are concerned with the alignment of the compound and their desire to promote the site through the local plan for a future residential development.*

3.2 *Since the last hearings in November the parties have been in discussions and negotiations. There is now a draft agreement which it is hoped can be agreed before the close of the Examination. That agreement will provide a mechanism for securing a compound with a revised layout on this site. That agreement includes the preparation of a planning application for a reoriented compound which is being agreed with Highways England. If permission is granted, Highways England will commit to using this reoriented compound. The landowners expressed a concern regarding the time periods for how long the compound will remain on the site, as the owners are concerned that the Scheme could prejudice the implementation of the development proposals, which are being promoted via the emerging local plan.*

Highways England Response

3.3 Highways England has set out its position in relation to Bloor Homes in its response to the Examining Authority's second written questions on compulsory acquisition at Deadline V (REP5-004).

3.4 The Examining Authority is presented with two options. The first, is that an agreement will be signed and the Objection will fall away. In this instance notice to the Examining Authority that the Objection is withdrawn will be sent in writing as

soon as possible (noting how close we are to the end of the Examination). However, such private contractual arrangements are outside of the DCO process and the timing and grant of a satisfactory planning permission cannot be guaranteed. The land sought under the DCO for the provision of construction compound 5 is required for delivery of the Scheme, as the principal construction compound for the Scheme. As such, it is vital to ensure the delivery of the Scheme that the current proposals for powers of compulsory acquisition for Construction Compound 5 are provided for in the DCO, whether or not a private agreement is entered into with Bloor Homes.

- 3.5 Alternatively, the agreement between the parties will not be reached and the Objection will stand. In either of these events, what is being requested by Highways England as part of the Application for development consent does not change. The location of construction compound 5 within the Scheme and the request for powers of compulsory acquisition over that land remains unchanged. Whilst Highways England is seeking to come to a private agreement with Bloor Homes out of a desire to be mindful and understanding of local stakeholders' redevelopment desires and long term plans, Highways England maintains that the tests for the grant of powers of compulsory acquisition are met in relation to the land sought for Construction Compound 5. In particular, Highways England submits that the temporary powers sought over this land amount to a proportionate interference with Bloor Homes' property rights.
- 3.6 To that end, the Examining Authority should have regard to the fact that any residential development on this site does not form a part of the emerging local plan, which has not yet been adopted. The site still remains in the green belt, which is subject to an "exceptional circumstances" test if it sought to be removed from the green belt. Consequently, the owners' desires for a residential development at this location remain inchoate, which goes to the weight to be attached to the development proposals, when considering whether the temporary powers sought over this land amount to a proportionate interference with Bloor Homes' property rights.
- 3.7 In relation to Bloor Homes' concerns regarding the timings for the use of construction compound 5, Mr Clarke, on behalf of Highways England, explained that the compound will be required for a construction period of 5 years with an on-going maintenance period of an additional 12 months (so six years in total) following completion of the works. The majority of the compound site will be vacated after five years (following commencement of the authorised works) and only a small part of the site will be required for the maintenance period of 12 months. On questioning, Mr

Clarke stated that it would be fair to say this period would likely end in 2023. However, this is only true if work begins as currently scheduled. If there are delays, then the 6 years minimum period would not start until the actual construction works start

- 3.8 It was also noted that during the 5 year construction there may be the ability to make the compound smaller and a phased hand back of the land would be coordinated with the owners.

Question 1 - Update from the Applicant on outstanding compulsory acquisition issues

4. Thames Water ("TW")

- 4.1 *Craig Broadfoot on behalf of TW stated that the main issue is to ensure access to the major sewage treatment works. TW's principal concern is a lack of assurances relating to access, on which TW would like clarity in the protective provisions. TW explained that the protective provisions currently state that Highways England will not prevent "reasonable" access, but TW stated that it cannot have long periods of interference. When asked by the Examining Authority if TW had a minimum amount of time in mind TW stated it required 24 hour access.*
- 4.2 *TW also suggested that Old Lane bridge could be used instead for access. However, TW were unaware of whether the bridge is structurally suitable for such access.*

Highways England Response

- 4.3 Howard Bassford, on behalf of Highways England explained that, in regards to the sewage works, the protective provisions as drafted by Highways England propose that Highways England will not unreasonably obstruct access and require TW to be given 56 days' notice of the proposed location and duration of works and requires that Highways England comply with TW's reasonable requirements for ensuring its continued access.
- 4.4 Highways England cannot agree to the TW's request for removal of the reasonableness requirements currently provided for in the protective provisions. There will be times, due to the nature of the works proposed, and to protect the health and safety of users, that access will need to be restricted by Highways England. Consequently, whilst Highways England is happy to accept an obligation not to unreasonably prevent access, it cannot accept an obligation not to prevent access at any time.

- 4.5 Further, in circumstances where it will be necessary to prevent access, TW is protected by the requirement in the protective provisions for 56 days' notice to be given to TW of any works that would affect access and the need to comply with TW's reasonable requirements to ensure continued access. Highways England cannot consent to the deletion of the word reasonable here, as it would allow Thames Water to impose any requirements whatsoever, no matter how unreasonable or disproportionate they may be.
- 4.6 Ultimately, if TW considers Highways England's proposals to be unreasonable, they can either choose to accept the interference, seek to impose reasonable requirements or take the matter to arbitration. Highways England explained that reasonableness in this regard is a well understood concept and depends on the circumstances of the case.
- 4.7 Further, in considering the reasonableness of the requirements for access in this location, Highways England noted that the ES site road plan (sheet 9 of 13) shows that this is an offline bridge replacement. The new bridge will be built and opened before the old bridge is closed and removed. There should therefore be a bridge open at all times at this location, apart from short durations to enable tie in works. However, it is not possible at this stage of the design process to provide the sort of detail that TW has requested in relation to the exact timing of the works, and the dates and times of any interruption that may be required. That information will be provided to TW on the basis of the requirement to provide 56 days' notice to TW, as currently provided for in the protective provisions.
- 4.8 In regards to the use of Old Slade Lane as an alternative access route, Highways England explained that Old Slade Lane was not suitable for use by traffic, as it currently not designed to take vehicles. The replacement of that structure to enable an alternative access to be provided would be unnecessary and wholly disproportionate to the issues before the Examining Authority, particularly in light of the protective provisions offered to protect TW's undertaking.
- 4.9 Highways England looks forward to receiving the information requested by the Examining Authority in relation to TW's access requirements. In relation to the need to respond in an emergency, given the short duration of any likely interruption, Highways England is confident that provision could be made and reasonable requirements could be proposed, in accordance with the terms of the protective provisions as drafted.

Question 1 continued - Update from the District Valuer on behalf of Highways England.

5. Ms Giles explained on behalf of Highways England that negotiations are on-going with all parties. Highways England are undertaking site inspections and are undertaking meetings with landowners, most recently attending a meeting with Railway Pension Nominees' Limited on 08 February 2016.
6. Ms Giles explained that Highways England are progressing matters with all of the agents who have contacted Highways England and anticipate that further contact will be forthcoming from agents in the coming weeks in relation to the negotiation of the payment by Highways England of agents' "reasonable fees". Ms Giles confirmed that Highways England has not received contact from any new parties since the hearings in November. However, she explained that this is normal in the compulsory acquisition process, in that landowners prefer to delay agreeing terms for the acquisition of their land until entry is actually taken in the expectation that land values may rise, and that entry is at some point in the future.
7. *The ExA asked if there been progress with:*
 - 7.1 *Affinity Water?*
 - 7.2 *Slough Allotment Federation?*
 - 7.3 *Louisa and John Maxwell Watters?*
8. *The ExA asked if those points need to be reflected in an updated book of reference?*

Highways England Response

9. There has been no further contact or progress with the parties mentioned in 6.1 to 6.3 above.
10. Highways England explained that they had contact those landowners whose land had now been removed from the Order Limits, and that all of those changes were reflected in the last submitted Book of Reference.

Other Points

11. *The Examining Authority asked HE to explain why s127/s138 applications have been made?*

Highways England Response

- 11.1 Highways England acknowledged that following amendments to s.127 and 138 of the Planning Act 2008, it is no longer a requirement for the Secretary of State to issue a

certificate under those sections, and therefore there is no need for an application to be made or hearings to be held. However, for the development consent order to include provision authorising the compulsory acquisition of statutory undertakers' land or rights in land, the Secretary of State does have to record his satisfaction that the conditions in s.127(3) and s.138(4) have been met. Consequently, Highways England considered that it would assist the Examining Authority in making its recommendations, and the Secretary of State in recording his decision, on this matter, if submissions were made on how those conditions are met in this case.

12. *The Examining Authority asked for an update on the s135 applications.*

Highways England Response

- 12.1 Following the email from the Department for Transport ("DfT") dated 11 February 2016, which was submitted to the Examination, Highways England is confident that s.135 consent is not required for the land listed in the Book of Reference as belonging to the Secretary of State for Transport. However, put this issue beyond all doubt, Highways England have requested that a certificate under paragraph 5(3) of Schedule 3 of the Infrastructure Act 2015 be issued by DfT, to confirm that the necessary property, rights and liabilities have been transferred to Highways England.
- 12.2 Unfortunately, Highways England has not been able obtain s.135 consent in relation to the land belonging to the Secretary of State for the Environment, Food and Rural Affairs, as the Department for the Environment, Food and Rural Affairs maintains that it does not own the land. Highways England noted the chain of emails with the Government Clearing House that was submitted at Deadline V, which shows the issues that have been experienced in relation to this matter. As a result, an application will be made to the Treasury under s.227(6) of the Planning Act 2008 as to what authority is the appropriate Crown authority under s135 in this case. Unfortunately, Highways England does do not anticipate that there will be a satisfactory resolution to this issue before the end of the Examination. However, Highways England noted that there is a precedent for s.135 consent being granted post the close of the Examination, as occurred in relation to the Able Marine Energy Park Development Consent Order. Highways England will keep the Examining Authority informed as to any progress that is made in this regard.