

A19 / A184 Testo's Junction Improvement TR010020

7.16 Written Submission of Applicant's case put orally at Compulsory Acquisition Hearing (1) on 18 January 2018

Planning Act 2008

Rule 8(1)(k)

Infrastructure Planning (Examination Procedure) Rules 2010



Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

A19 / A184 TESTO'S JUNCTION IMPROVEMENT

The A19 / A184 (Testo's Junction Improvement) Development Consent Order 201[]

**WRITTEN SUBMISSION OF APPLICANT'S CASE PUT ORALLY AT
COMPULSORY ACQUISITION HEARING (1) ON THE 18 JANUARY 2018**

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A19/A184 TESTO'S JUNCTION IMPROVEMENT PROJECT

COMPULSORY ACQUISITION HEARING

18 JANUARY 2018 AT 10.00

THE ROYAL STATION HOTEL, NEWCASTLE

1 Introduction

- 1.1 This document summarises the case put by Highways England (**the Applicant**), at the Compulsory Acquisition Hearing (**CAH**) which took place at The Royal Station Hotel, Newcastle on 18 January 2018.
- 1.2 In what follows, the Applicant's submissions on the points raised broadly follow the Agenda for the CAH set out in the Examining Authority's (**ExA**) letter which was published on the Planning Inspectorate's website on 9 January 2018.
- 1.3 Agenda items 2, 3 and 6 were not discussed at the CAH following confirmation by the ExA that he had no detailed questions in relation to them. This was in light of the information conveyed to the ExA at the start of the hearing by the Applicant (see para 2.2 below) and the absence of any other interested parties or other persons at the hearing with an interest in these matters. As such this note does not address these Agenda items as the Applicant has nothing further to add.

2 Agenda Item 1 - Welcome, Introductions and Arrangements for the OFH

- 2.1 Tom Henderson (**TH**), Partner at Bircham Dyson Bell LLP, who was representing the Applicant at the CAH, introduced the Applicant. In particular, TH introduced Phil Emison (**PE**), a Senior Agent within the Infrastructure Division at Costain, who TH noted would address the ExA on construction matters, Paul Ahdal (**PA**) Project Manager at Highways England who could provide oral evidence on funding and Richard Sowerby (**RS**) the District Valuer.
- 2.2 TH noted that there was an update on the negotiations with National Grid Electricity Transmission plc (**NGET**). TH advised that the Applicant had reached agreement with NGET. The agreement was being executed and the Applicant anticipated there would a letter of withdrawal shortly, which was contingent on the agreement being executed. TH noted that as a result there was no intention to update the Statement of Common Ground (**SoCG**) (**document reference TRO10020/APP/7.5**) with NGET for deadline 3.
- 2.3 In respect of the comments raised by Groundworks in their representations, TH said that the agreement with NGET included a contractual obligation to construct the fence to be erected as part of the Development Consent Order (**DCO**) (**document reference TRO10020/APP/3.1**) works around the Groundworks site.
- 2.4 TH further noted that the side agreement contained protective provisions broadly similar to those in the dDCO but that the provisions of the agreement will remain private. TH noted that there were good reasons for this: NGET and the Applicant do not want to prejudice the discussions concerning

agreements to be reached on future schemes where there is interface between Highways England and NGET, either on Highways England schemes or NGET schemes. TH noted these sorts of arrangements and private commercial side agreements are common practice when promoting major schemes. TH advised that the Applicant's understanding was that NGET is effectively content with the dDCO on the basis that the side agreement has been settled.

3 The Applicant's case for Compulsory Acquisition and Temporary Possession

3.1 Under Section 122 of the Planning Act 2008 (**PA 2008**) the Secretary of State is permitted to authorise compulsory acquisition if the land is required for the development to which the consent relates or is required to facilitate or is incidental to the development. There must, further, be a compelling case in the public interest for compulsory acquisition.

3.2 The Applicant has set out the case for compulsory acquisition and the need for the Scheme more generally in the application documents. Broadly, the Statement of Reasons (**SoR**) (**document reference TR010020/APP/4.1**) sets out why each plot is required and both the SoR and the Planning Statement (**document reference TR010020/APP/7.1**) set out the need for the Scheme as against the relevant national policies and local policies.

3.3 The guidance issued by DCLG sets out a number of "general considerations" which can be summarised under four headings:

1. *"Reasonable alternatives to compulsory acquisition have been explored"*

(a) Chapter 3 of the Consultation Report (**document reference TR010020/APP/5.1**) and Chapter 3 of the Planning Statement set the history of the Scheme in detail. In particular, between 2002 and 2009, several options were developed and consulted on in order for the views of local residents to be heard. A preferred route announcement was made in 2014 and two Statutory Consultations have taken place since allowing the Applicant to further develop the Scheme.

(b) None of the alternative options would obviate the need for compulsory acquisition. A key factor in the selection of the preferred Scheme was that, as the intervention will be carried out online (as opposed to offline), it minimises the footprint of the Scheme and therefore the area of land requiring compulsory acquisition. The scope of the compulsory powers has been carefully drawn to limit the powers to what is necessary. No more land is affected than is necessary for the Testo's Scheme.

(c) In addition, the Applicant has engaged with all of the relevant parties whose land is to be acquired, including in certain cases reaching advanced stages of negotiation to acquire land in advance by agreement.

(d) The Applicant notes paragraph 25 of the DCLG guidance where it is stated that: "Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset"

- (e) The Applicant has included powers in the dDCO so that the Applicant can temporarily use the order land pursuant to Article 29(1)(a)(ii) and then acquire only what is required subsequently. This will ensure that should there be scope to reduce the land take following detailed design of the Scheme this mechanism can be used. It is a commonly used approach in major projects.
2. *“The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire” –*
- (a) Tables 1 to 3 of the SoR set out what each plot is required to be used for and the Land Plans (**document reference TR010020/APP/2.3**) show which land needs to be acquired, have rights acquired in it or be subject to temporary use.
3. *“They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.”*
- (a) The Funding Statement (**document reference TR010020/APP/4.2**) sets out how the Scheme has the requisite funds including government commitments to fund the Scheme as set out in the Road Investment Strategy (**RIS**).
4. *Legitimate, Proportionate and Necessary*
- (a) DCLG guidance further requires the compulsory acquisition to be for purposes which are legitimate, necessary and proportionate. The comments made in relation to reasonable alternatives show that the Scheme is proportionate. The question of whether the acquisition is necessary and legitimate is bound up with the question of whether there is a compelling case in the public interest. An interference with human rights can only be justified in such circumstances. There are broadly four reasons why there is such a public interest in the Scheme:
- (i) The Scheme will improve journey times, network resilience and journey time reliability primarily by altering the existing roundabout Testo's Junction and replacing it with a grade separated junction allowing the A19 to run freely over the top of the A184 and reducing congestion on the roundabout. The Scheme further builds resilience for future population growth.
- (ii) The Scheme will improve safety by reducing the accident rate at the Testo's Junction. As set out more fully in Section 4 of the Planning Statement, the monetary benefits of reducing accidents is equivalent to just over £10 million.
- (iii) The Scheme maintains access for local traffic whilst improving the conditions for strategic traffic. The Scheme has been designed to ensure the minimal impact on local access routes and, indeed, increases connectivity for local residents who use the NMU routes. Section 4 of the Planning Statement sets out that the monetised benefits to vehicles users from improved traffic flow is equivalent to £97.0 million.

- (iv) The Scheme will help support economic development objectives for the locality and wider North East Region and will provide improved physical linkages between existing and planned employment sites, educational facilities and local communities, a number of which are amongst the most deprived areas in the country.

- 3.4 TH confirmed that the powers applied for in the dDCO would remain even if an agreement has been reached with a landowner. This is because it could lead to complications in updating the dDCO and side agreements may fail. Therefore compulsory acquisition powers were necessary.
- 3.5 TH confirmed that a statement would be submitted to the ExA setting out the Applicant's progress on land negotiations with landowners for the Scheme.

Interface with Downhill Lane Junction

- 3.6 In respect of queries raised by the ExA on the interface with the Downhill Lane Junction Scheme (**DLJ**) and whether there was land included in the Testo's application purely as a result of the DLJ scheme, TH confirmed that the Applicant was not taking any land beyond that which was necessary to deliver the Testo's scheme.
- 3.7 PE confirmed that land has not been included in the Scheme application to accommodate DLJ works. PE said that it would not be efficient or convenient to use Testo's temporary land for DLJ materials storage because the work on DLJ would be predominantly south of DLJ and the materials would be stored near to the DLJ works.
- 3.8 In response to a question from the ExA PE confirmed that the Testo's construction compound was envisaged to be used for the project management and engineering teams for both Testo's and DLJ. PE confirmed that the construction would be phased so that those employed to undertake works on Testo's (for example the structures team) would be retained for the DLJ project rather than employing a separate team for DLJ. PE said that they anticipate 75 staff to be based in the site offices within the construction compound for the Testo's Scheme and if the schemes are delivered concurrently there may be 12 additional staff for DLJ. PE said there was no extra land required for Testo's because of DLJ. In respect of the Testo's temporary land shown on the land plans this was required for construction works for Testo's alone.
- 3.9 In summary TH confirmed that there is a clear compulsory acquisition case for Testo's for every plot of land in the Book of Reference (**BoR**) (**document reference TRO10020/APP/4.3**), even if DLJ were to fall away. The two schemes were being promoted as standalone schemes and were not contingent on one another.
- 3.10 TH further noted that the potential shared use of construction compound is viewed by the Applicant as mitigation for cumulative effects and therefore the beneficial effects should be emphasised.
- 3.11 In response to a request by the ExA PE referred to each plot of land shaded green on the land plans and confirmed that the plot was required for the Scheme alone, rather than for the Scheme and DLJ.
- 3.12 In respect of Plot 2/9b PE confirmed that the reason for its inclusion was for environmental mitigation works as set out in the Environmental Statement (**ES**) (**document reference TRO10020/APP/6.1**) paragraphs 9.9.12 to 9.9.16.

3.13 In respect of Plot 2/5g, PE advised that the land would be used for the permanent removal of the embankment and demolition of West House Farm Accommodation Bridge. TH further confirmed that the plot was also required temporarily to stop up the bridleway that passes through the plot in addition to removing structures, for demolition of the bridge and for removal of earth works. TH confirmed that from a compulsory acquisition perspective, the basis for which that land is required was therefore made out. The land will be reinstated in accordance with the landscaping scheme to be secured under Requirement 5.

3.14 TH further confirmed for the ExA that the land shaded blue on the land plans (land to be used temporarily and rights to be acquired permanently) would also be used for temporary construction works as were permitted under Article 29 of the dDCO. TH took the ExA to plot 2/1d and confirmed that for example there would be a temporary haulage route through the plot, and construction activities for the mainline. TH confirmed that again, any land shaded blue on the land plans was required for the Testo's scheme alone and not for DLJ.

4 Agenda Item 5

4.1 TH confirmed that as far as the Applicant was concerned, Northern Gas Networks had no concerns in respect of the Application.

4.2 The ExA requested that the Applicant contact all the affected statutory undertakers in relation to whether the test(s) in section 127 of the PA 2008 were satisfied. TH noted that whilst the Applicant would contact all of the statutory undertakers as requested it may take some time to get a response (*post-hearing note - the ExA is referred to the cover letter submitted at Deadline 3 wherein the Applicant explains why it is inappropriate to do so given the application of section 127 of the PA 2008 only subsists where there is a representation by a statutory undertaker which has not been withdrawn at the end of the examination*).

4.3 TH confirmed that there was no other special category land required for the Scheme, including crown land. TH confirmed that the Applicant would update the BoR were the situation to change.