



Preliminary Meeting Note

Summary of key points discussed and advice given

Application: Lake Lothing Third Crossing

Reference: TR010023

Date: 5 December 2018

Venue: Ivy House Country Hotel, Ivy Lane, Oulton Broad, Lowestoft NR33 8HY

This meeting note is not a full transcript of the Preliminary Meeting. It is a summary of the key points discussed and responses given. An audio recording of the event is available on the National Infrastructure Planning website.

In attendance from the Planning Inspectorate:

- David Morgan (Examining Authority)
- Peter Widd (Examining Authority)
- Richard Price (National Infrastructure Case Manager)
- Manveer K Phull (National Infrastructure Case Officer)

1. Welcome and introductions

David Morgan (DM) opened the meeting at 10.00am, introducing himself as the lead member of the Examining Authority (ExA), appointed by the Secretary of State for Housing, Communities and Local Government, to examine the application for development consent made by Suffolk County Council (SCC) for the proposed Lake Lothing Third Crossing. Following the Examination, the ExA would report to the Secretary of State for Transport (SoST) who would take the final decision about whether or not development consent should be granted.

DM introduced **Peter Widd (PW)** as the second member of the ExA. In the course of the day, the ExA would be supported by **Richard Price (RP)** (Case Manager) and **Manveer K Phull (MP)** (Case Officer). **MP** would take a note of the meeting which would be published on the National Infrastructure Planning website following the Preliminary Meeting. If there were any procedural enquiries to be made in the course of the day, these should be addressed to **RP** or **MP**.

RP gave housekeeping instructions and set out emergency arrangements and facilities details for the venue.

2. Participation at Examination events and the public record

DM explained that digital audio recordings of all Preliminary Meetings and hearings in the Planning Act 2008 process are published on the National Infrastructure Planning website and retained for the public record. This is so that any member of the public

who is interested in an application and Examination can find out what has happened, whether they are able to attend a particular meeting or not.

DM explained that the digital recordings can contain attendees' personal information to which the General Data Protection Regulation (GDPR) applies. If attendees choose to participate in the hearing process, it is important that they understand they will be recorded and that therefore they consent to the retention and publication of the digital recording. The Planning Inspectorate's practice is to retain and publish the recordings for a period of five years from the Secretary of State's decision on the Development Consent Order.

DM explained that the ExA will only ever ask for information to be placed on the public record that is important and relevant to the planning decision. It will only be in the rarest of circumstances that the ExA might ask an Interested Party to provide personal information of the type that most people would prefer to keep private or confidential. But to avoid the need to edit digital recordings, the **DM** requested for participants to try their best not to add information to the public record that they wish to be kept private and confidential. If the ExA or a participant genuinely considers that there is no alternative to the disclosure of such information, a process would be agreed to enable the representation to be made available without it forming part of the public record. The normal way to do this is to ask an Interested Party to make general oral submissions, but to include the private/ confidential information that the participant needs to support it in a written document. Whilst the written document will also need to be published, it can be redacted before publication takes place.

DM explained that if a participant began to make oral submissions either at the Preliminary Meeting or in a hearing in the course of the Examination that appeared likely to include information that would normally be kept private, the ExA would check with the Interested Party to ensure the participant's consent to the retention and publication of that material. If the participant did not consent, the ExA would offer the participant the opportunity to provide a written submission, as summarised above.

DM explained that the only official records of the Preliminary Meeting would be the audio recording and accompanying note. Any peripheral media arising from the meeting such as tweets, blogs and communication would not be accepted as evidence. If anyone intended to film, record or live stream the meeting there was no impediment to doing so. However protocols needed to be observed in terms of sensitivity to others who may not be wished to be filmed.

DM asked if any attendees did not consent to being filmed. No attendees responded to refuse consent.

3. The purpose of the Preliminary Meeting

DM summarised the Applicant's scheme which had been directed into the PA2008 process by the SoST in his letter dated 22 March 2016. Following this direction, the application was to be treated as a Nationally Significant Infrastructure Project (NSIP) which required permission in the form of a Development Consent Order (DCO).

DM and **PW** had been appointed by the Secretary of State for Housing, Communities and Local Government as the ExA to examine the application and report to the SoST with a recommendation about whether to grant development consent. The ExA would have six months to examine the application and a further three months to prepare its

report and recommendations to the SoST. The SoST would then have a further three months to take his decision about whether to grant development consent.

DM re-emphasised that the purpose of the Preliminary Meeting was to consider representations about how the application should be examined, and in particular the draft Examination Timetable provided at Annex C of the Rule 6 letter¹. Representations about the merits of the Proposed Development would not be heard. The merits of the Proposed Development would be explored in the course of the Examination following the Preliminary Meeting; including at the Open Floor Hearing scheduled for later that day.

4. Introduction of attendees

DM invited those attendees who intended to speak at the meeting to introduce themselves.

Michael Bedford (MB) introduced himself as Queen's Counsel instructed by Pinsent Masons on behalf of the Applicant. **Jon Barnard** introduced himself as SCC's Project Manager for the application. **MB** outlined the distinct roles of SCC as both the Applicant and a Statutory Party in the Examination process. **MB** was representing SCC as the Applicant. In attendance was a separate representative of SCC representing SCC as a Statutory Party. **MB** explained internal governance arrangements were in place which ensured the distinct roles were compartmentalized within SCC.

Graham Gunby (GG) introduced himself as the representative of SCC as Statutory Party. **GG** explained that if there were any matters in the course of the meeting relating to the regulatory responsibilities of SCC they should be directed to **GG** instead of the Applicant.

Peter Goatley introduced himself as Counsel instructed by Brian Greenwood on behalf of Associated British Ports (ABP).

Isabella Tafur (IT) introduced herself as Counsel instructed by Bryan Cave Leighton Paisner LLP on behalf of Northumbrian Water Ltd.

Richard Glover introduced himself as a partner at Squire Patterns Boggs UK LLP representing Statuslist Ltd.

Jamie Childs introduced himself as a solicitor at Howes Percival LLP who were representing a number of clients including Overseas Interests Inc, Waveney Fork Trucks Limited, Lift Truck Rentals Limited, Nexen Lift Trucks Limited, Oakes Recruitment Limited, Team Oakes Limited and Hitech Grand Prix Limited.

Andrew Sawbridge introduced himself as a solicitor at Cameron McKenna Nabarro Olswang LLP representing B.S Pension Fund Trustee Ltd.

Chloe Glason introduced herself as an associate at Birkett LLP representing Lings Motor Group.

¹ The invitation to the Preliminary Meeting, available here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010023/TR010023-000541-TR010023%20Rule%206%20letter%20-%20Cover%20FINAL.pdf>

5. The Examination process

DM explained that whilst the PA2008 and secondary legislation, together with government guidance, provide the statutory framework within which the ExA must operate, it is up for the ExA to decide how to examine the application.

DM explained that National Policy Statements (NPS) have primacy in carrying out examinations, and taking decisions, in the PA2008 process. The relevant NPSs for this application are the NPS for National Networks and the NPS for Ports; both sponsored by the Department of Transport. It is not the ExA's role to consider the merits of the NPSs, which have been subject to previous consultations and parliamentary debate; only to consider the merits of the application within parameters of the NPSs. The PA2008 makes clear that the Secretary of State must decide the application in accordance with relevant NPSs, subject to certain provisions. Applications should not breach international obligations and the adverse impact of the Proposed Development must not outweigh its benefits.

DM explained that the Examination process under the PA2008 is inquisitorial, as opposed to adversarial. This means there would be no cross-examination of witnesses unless expressly permitted by the ExA. The ExA's role is to focus on evidence and justification rather than the assertions that may or may not be made. It is a principally written process, and on that basis the main body of the evidence informing the ExA's considerations will come from Written Representations that are made by Interested Parties; responses by Interested Parties to Written Representations made by other Interested Parties; Local Impact Reports (LIR); Statements of Common Ground; and written answers to the ExA's written questions.

DM summarised that it is the ExA's responsibility to probe, test and assess the evidence that is put before the Examination in Written Representations and at any subsequent hearings that are scheduled to take place. Representations made by Interested Parties should set out why they support or oppose the application, or indicate particular elements of the application with which they agree or disagree. In either case representations should be well-reasoned and where appropriate supported by evidence.

DM explained that outside of the written framework, there were anticipated to be a number of hearings that would be scheduled in order to examine particular issues through oral representations. The PA2008 process provides for three types of hearings that can take place:

1. Open Floor Hearings (OFH) which must be held if requested by any Interested Party. **DM** highlighted that an OFH was scheduled to take place following the Preliminary Meeting at 2.00pm. OFHs are generally only precipitated on the basis of a request made to the ExA, however the ExA had itself called that day's OFH as a forum for beginning to explore some issues. Having initiated it, the ExA had formally notified parties of the OFH in its Rule 6 letter.
2. Compulsory Acquisition Hearings (CAH) which also must be held if an Affected Person makes a request to the ExA to do so.
3. Issue Specific Hearings (ISH) which are only held if the ExA thinks that they are necessary to ensure the robust examination of a particular issue.

DM summarised that the Applicant had brought to the Planning Inspectorate's attention that it had not carried out its duties in respect of providing notification about the OFH following the Preliminary Meeting. The Applicant had been proactive in requesting this matter was placed on the public record. On the basis that the ExA had undertaken its necessary notifications, **DM** and **PW** were provisionally satisfied that no Interested Parties had been unduly prejudiced by the Applicant's oversight. Further consideration would be set out in the ExA's Procedural Decision (the Rule 8 letter) following the Preliminary Meeting.

DM explained that at least one ISH would be held in the course of the Examination dealing with the draft DCO. It would be held on a without prejudice basis insofar as the holding of the hearing would not imply that the ExA had made any judgement or reached any conclusion about whether or not the DCO should be made. Irrespective of the ExA's recommendations it is necessary to provide the SoST with a draft DCO that is fit for purpose in the event that the SoST determines that development consent should be granted.

DM drew attention to the potential award of costs against parties who behave unreasonably in the course of the Examination.

6. Initial Assessment of Principal Issues

DM drew attention to Annex B in the Rule 6 letter which had set out the ExA's Initial Assessment of Principal Issues (IAPI) arising from its reading of the application documents and representations received to date. Whilst the IAPI was intended to provide a framework for the Examination, it was not an entirely comprehensive or exclusive list. All relevant matters and important matters would be considered in the course of the Examination.

DM asked if there were any points attendees wished to raise in respect of the IAPI.

IT for Northumbrian Water Ltd asked for the ExA to give consideration to identifying construction impacts (specifically on local businesses) as a principal issue.

Lowestoft Cruising Club (LCC) drew attention IAPI no. 6 which dealt with maritime and port operation matters. ABP had suggested a list of amendments and additions to that section and LCC queried whether these had been approved by the ExA. **DM** stated that whilst the ExA was aware of these representations, no decisions had been taken in respect of the IAPI at that stage.

MB for the Applicant considered that the IAPI provided in the Rule 6 letter had embraced all the various points that other parties had raised in recent representations, including construction. The note preceding the IAPI at Annex B made clear that construction impacts were embraced in the IAPI.

DM summarised that the ExA would consider all representations about the IAPI and would publicise its Procedural Decision in the Rule 8 letter following the Preliminary Meeting.

7. Draft Examination Timetable

DM drew attention to the draft Examination Timetable at Annex C of the Rule 6 letter. Representations had been received from the Applicant comprising proposed change to

specific deadlines. The Applicant's representations were under consideration by the ExA and confirmation of the final Examination Timetable would be provided in the Rule 8 letter following the Preliminary Meeting.

MB for the Applicant stated an additional matter that had not been covered in its previous representations. The Applicant requested for the ExA to consider moving Deadline 4 from 22 January 2019 to the 29 January 2019. This would assist all parties in preparing full submissions based on the significant volume of complex material expected to be submitted to Deadline 3. The Applicant also offered to provide an updated Book of Reference to Deadline 4 in the Examination Timetable in order to inform a potential CAH in February 2019.

IT for Northumbrian Water Ltd endorsed the Applicant's request for Deadline 4 to be moved to 29 January 2019.

DM clarified that Deadline 7 in draft Examination Timetable would be amended from the 19 April 2019 to the 18 April 2019 to account for Good Friday.

8. Site inspections

DM summarised the role of site inspections in the PA2008 process; the main purpose being to see features of the Proposed Development in the context of evidence submitted to the Examination. The ExA had carried out an Unaccompanied Site Inspection on 30 November 2018 as summarised in its published note². Dates and times had been set for an Accompanied Site Inspection (ASI) in the draft Examination Timetable at Annex C to the Rule 6 letter.

DM emphasised that ASIs are not an opportunity for Interested Parties to present evidence or to make representations to the ExA. It is only an opportunity for Interested Parties to point out particular features referred to in submissions, but not to provide further comments. Interested Parties were asked to provide notice of their wish to attend the ASI scheduled for 12 February 2019 by Deadline 2 in the Examination Timetable. That notice should include details of any relevant physical features that they wished the ExA to inspect. An itinerary for the ASI would be published in accordance with the Examination Timetable.

9. Any other matters

DM invited attendees to make any other representations in respect of procedural matters.

RG questions the unitary government that is to form and how it is to play out in relation to proceedings and applicant.

Phil Perkin for Waveney District Council (WDC) explained that from 1 April 2019, WDC and Suffolk Coastal District Council would merge to form one council to be called East Suffolk Council. The merge was not expected to have any effect on the Examination. **JB** for the Applicant clarified that East Suffolk Council would be a district council and not a unitary authority. SCC would not be affected by the changes.

² Available here: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010023/TR010023-000554-TR010023%20Note%20of%20Unaccompanied%20Site%20Inspection.pdf>

No other matters were raised.

10. Closing remarks

DM confirmed that the Rule 8 letter, amongst other things confirming the finalised Examination Timetable, would be sent to Interested Parties in due course. The Rule 8 letter would be accompanied by the ExA's first written questions.

DM expressed the ExA's hope to progress with the Examination in a constructive way, with co-operation and involvement of all relevant parties, and thanked attendees for their contributions.

Close of Preliminary Meeting