

National Infrastructure Planning
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For the attention of David Morgan and Peter Widd

**CMS Cameron McKenna Nabarro
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8 January 2019

Your ref TR010023
Our ref ADSX/JORC/NIIN/CAP/043917.00025

Dear Sirs

**Written Representation in advance of Compulsory Acquisition Hearing
Application by Suffolk County Council (the "Promoter") for an Order Granting Development
Consent for the Lake Lothing Third Crossing (the "Project")
Interested Party: B.S. Pension Fund Trustee Limited
Land: Plot 1-04**

Please accept this letter as a Written Representation on behalf of B.S. Pension Fund Trustee Limited (the Interested Party) following receipt of the Planning Inspectorate's Examination Timetable and procedure letter dated 17 December 2018, in accordance with Rule 8.

We also refer to our letters dated 20 December 2018 and 26 November 2018 and the Relevant Representation submitted by the Interested Party on 20 September 2018 ("**Relevant Representation**") (enclosed). These documents shall form part of the Interested Party's written representation.

1. SUMMARY OF SUBMISSIONS

- 1.1 The Interested Party reiterates the submissions made in the Relevant Representation and the letter of 26 November 2018. We understand that progress of the voluntary agreement for acquisition of the Land remains substantially the same as that set out in the Relevant Representation and letter dated 26 November 2018, save that the Promoter has now agreed to pay the relevant fees of the Interested Party's compulsory purchase adviser.
- 1.2 This written representation relates to limited progress being made with an agreement to acquire the Land. The only data relevant to this is the correspondence between the Promoter and the Interested Party which is described in the Relevant Representation and herein.

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2. SUMMARY OF RELEVANT REPRESENTATION AND LETTER DATED 26 NOVEMBER 2018

- 2.1 The Interested Party owns the freehold of the Land and the retail site in its immediate vicinity is let to and occupied by Wickes Building Supplies Limited. Their key concern is to ensure that the value of the Interested Party's asset is properly protected in respect of potential impact from the construction and operation of the Project.
- 2.2 The Interested Party is prepared to enter into in to a voluntary agreement with the Promoter to enable the Land to be acquired to be acquired to facilitate the Project subject to the agreement of appropriate terms. The Interested Party's costs of engaging with the Promoter on this agreement and the CPO process must be comprehensively covered to protect the interests of the subscribers to the pension fund.
- 2.3 Such an agreement must also regulate the time at which the Land will be acquired to provide certainty for the Interested Party on the future of this important asset. It will also address the amenity, operational and value implications of a DCO on the Land.
- 2.4 The Interested Party has received heads of terms for a Land and Works Agreement. However the Promoter has been slow to progress the agreement to acquire the land in a timely manner, engage in negotiations with the Interested Party, or respond to the initial points raised by the Interested Party on these documents despite many months having elapsed. There has been little change since the record of engagement published in the Compulsory Acquisition Negotiations Tracker dated June 2018 (Document Reference 4.4) was published despite the submission of the Relevant Representation setting out the Interested Party's concerns and the oral representations made by the Interested Party's representative at the Open Floor Hearing on 5 December 2018.
- 2.5 The Interested Party notes that Promoter is under a duty to take reasonable steps to acquire a property by agreement before doing so by compulsion (para 2 DCLG 2015 Circular). It shall object to the acquisition of the Land by compulsion unless the Promoter is willing to engage in through, timely and comprehensive negotiations.

3. COMPLIANCE WITH RELEVANT RULES AND REGULATIONS

- 3.1 S10(4) Infrastructure Planning (Examination Procedure) Rules 2010/103 requires any person, other than the applicant, who submits a written representation to identify in their written representation:
- 3.1.1 those parts of the application with which they agree; and
 - 3.1.2 those parts with which they do not agree, and must state the reasons for such disagreement.
- 3.2 The Interested Party's disagreement with the Promoter's application is limited to the Promoter's attempted inclusion of compulsory acquisition powers in the DCO in relation to the Land.
- 3.3 Specifically, in relation to the Land, the Interested Party disagrees with the following parts of the Promoter's Statement of Reasons, dated June 2018 (Document Reference 4.1) ("**Statement of Reasons**"):

- 3.3.1 Paragraph 12.3.8 – *"To date, the Applicant has engaged in extensive consultation and negotiations (as explained in the Compulsory Acquisition Negotiations Tracker (document reference 4.4) with all owners and occupiers of the land required for the Scheme, in order to try to avoid the need for compulsory acquisition wherever possible."* The Interested Party disagrees that the Applicant has "engaged in extensive consultation and negotiations" in regard to the acquisition of the Land. Notwithstanding the Interested Party's positive engagement with the Promoter, the Promoter has been slow to progress draft documents or engage in negotiations with the Interested Party. The Promoter's engagement to date demonstrably falls short of the threshold of "extensive".
- 3.3.2 Paragraph 12.5.3 – *"the Applicant considers that its application for powers of compulsory acquisition, as included in the Application, meets the conditions set by sections 122(2) and 122(3) of the Act and that there is compelling case in the public interest for powers of compulsory acquisition to be included in the development consent order, in the event that development consent for the Scheme is granted."* The Interested Party disagrees that there is a compelling case in the public interest for powers of compulsory acquisition, in relation to the Land, to be included in the DCO. The applicant has not demonstrated that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored (2013 DCLG Guidance paragraph 8), in particular, it has not properly engaged in the negotiation of a voluntary agreement with the Interested Party for acquisition of the Land.

4. COMPULSORY ACQUISITION AS A TOOL OF LAST RESORT

- 4.1 The Promoter notes in its Statement of Reasons that powers of compulsory acquisition would be:
- 4.1.1 "[only] used in circumstances where acquisition by agreement proved impossible" (paragraph 12.5.2)
- 4.1.2 "a tool of last resort" (paragraph 12.5.2)
- 4.2 The Interested Party is concerned that the Promoter may use compulsory purchase powers, which should be a "last resort" in a situation where agreement was possible. Correspondence with the Promoter to date and their limited responses is clear evidence that reasonable steps have not been exhausted. The Promoter should not be able to rely on compulsory purchase powers in the DCO in relation to the Land, until it can demonstrate it has taken reasonable steps to acquire the land by agreement.

Yours faithfully



CMS Cameron McKenna Nabarro Olswang LLP

cc. National Infrastructure Planning Case Team (LakeLothing@pins.gsi.gov.uk)

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20 December 2018

Your ref TR010023
Our ref NIIN/JORC/043917.00025

Post and Email

Dear Sirs

**Application by Suffolk County Council (the "Promoter") for an Order Granting Development
Consent for the Lake Lothing Third Crossing (the "Project")
Interested Party: B.S. Pension Fund Trustee Limited
Land: Plot 1-04**

We write on behalf of the Interested Party following their letter dated 26 November 2018 regarding the Project and the receipt of the Rule 8 letter on 17 December 2018.

The Interested Party is hereby providing notice of its wish to speak at the compulsory acquisition hearing.

The Interested Party does not wish to speak at a subsequent open floor hearing or attend the accompanied site inspect on 12 February 2019.

We should be grateful if you would kindly confirm receipt of this letter to Nicola Insley nicola.insley@cms-cmno.com +44 20 7524 6018 as soon as possible.

Yours faithfully


Nicola Insley

For and on behalf of CMS Cameron McKenna Nabarro Olswang LLP

cc. National Infrastructure Planning Case Team (LakeLothing@pins.gsi.gov.uk)

UK - 621635610.1

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1. About you and anyone you may be representing

*** Please select the option which best describes why you are completing this form and then add the relevant address. Only one person or organisation can become an interested party per form. (Each interested party needs to be registered with their own form).**

- I am completing this form for myself to give my own personal views.
- I am completing this form for the organisation I work for, either on a paid or voluntary basis, to give its views.
- I am completing this form on behalf of another person or organisation and I have their permission to represent their views. I give both their contact details and my own below.

Personal Details

Name **B.S. Pension Fund Trustee Ltd**

Address

Address

Address

City or town

County

Postcode

Country **United Kingdom**

Email

Please re-enter email to confirm

Telephone number

Agent or representative contact details (these details will be used for correspondence)

Name

Organisation name (only if applicable) **CMS Cameron McKenna Nabarro Olswang LLP**

Address

Address

Address

City or town

County

Postcode

Country **United Kingdom**

Email

Please re-enter email address to confirm

Telephone number

The Planning Inspectorate aims to communicate with people by email wherever possible, as electronic communication is more environmentally friendly and cost effective for the Planning Inspectorate as a Government agency, given the volume and frequency of letters it needs to send to interested parties during an *examination*. Therefore, if you provide an email address we will use this. You can change your mind later provided you give us 7 days notice, either in writing or by email.

2.

Your representation

The Planning Act 2008 process is primarily a written *examination* process and if you are registered as an *interested party* you will have an opportunity to make a *written representation* about the application when the *examination* begins.

In this form, your *representation* must include an outline of the principal submissions you intend to make in relation to the application. You cannot reserve a right to make a representation later without providing an outline of the points you intend to submit at this stage.

Please note that your *representation* **must not** include material:

- that is vexatious or frivolous
- about compensation for compulsory acquisition of land or of any *interest* in or right over land
- about the merits of policy set out in a designated national policy statement.

The information you include in the representation section of this form will be used by the *Examining Authority* to carry out their initial assessment of principal issues and to decide the best way to examine the application.

Here you must provide an outline of the main points you intend to make in relation to the application. Failure to provide this will mean that we are unable to register you as an interested party. Please aim to limit this section to no more than 500 words.

- * Please confirm that you have read and understood the above text for the submission of your representation.

Your representation:

The British Steel Pension Scheme (BSPS) is administered by B.S. Pension Fund Trustee Limited. The day-to-day administration of the Scheme is supervised by the Trustee board, who are directors of the Trustee Company; which is a managing corporate trustee owned by the directors on behalf of the membership. The Scheme is a registered Pension Scheme under Section 153(9) of the Finance Act 2004.

B.S. Pension Fund Trustee Limited's (BSPF) owns the freehold of plot 1-04. Plot 1-04 and the retail site in its immediate vicinity is let to and occupied by Wickes Building Supplies Limited (Wickes) on a lease from BSPF which expires on 23 June 2030. BSPF's asset is part of a portfolio of UK Property owned by BSPF for the benefit of its subscribers.

One of key concerns is to ensure that the value of BSPF's asset is properly protected in respect of potential impact from the construction and operation of the Lake Lothing Third Crossing. From a review of the application material provided, the project has the potential to adversely affect:

- access to the unit let to Wickes by customers on foot and in vehicles;
- delivery and other service access to the unit currently let to Wickes by small and large vehicles; and
- the amenity enjoyed by its current and potential future tenants as a result of noise, odour, dust and traffic disruption caused during the implementation of the proposed development consent order (DCO).

BSPF would object to the inclusion in the DCO of powers for the compulsory acquisition of land or rights that BSPF has an interest in given the current economic importance of protecting pension fund assets in the UK.

BSPF is prepared to enter into in to a voluntary agreement with the promoter of the DCO to enable plot 1-04 to be acquired to facilitate the construction and operation of the Lake Lothing Third Crossing subject to the agreement of appropriate terms. BSPF's costs of engaging with the promoter on this agreement and the CPO process must be comprehensively covered to protect the interests of the subscribers to the pension fund.

Such an agreement must also regulate the time at which the land will be acquired to provide certainty for BSPF on the future of this important asset. It will also address the amenity, operational and value issues raised in the bullet points set-out above.

BSPF notes it has begun to engage positively with the promoter in relation to agreeing an undertaking for its CPO adviser's fees and has received heads of terms for a Land and Works Agreement. However the promoter has not progressed these documents in a timely manner, engaged in negotiations with BSPF, or responded to the initial points raised by BSPF on these documents despite several months having elapsed.

BSPF notes that promoter is under a duty to take reasonable steps to acquire a property by agreement before doing so by compulsion (para 2 DCLG 2015 Circular). It shall object to the acquisition of its land by compulsion unless the promoter is willing to engage in through, timely and comprehensive negotiations.



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26 November 2018

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Our ref NIN/JORC/CAP/043917.00025

Post and Email

Dear Sirs

Application by Suffolk County Council (the "Promoter") for an Order Granting Development Consent for the Lake Lothing Third Crossing (the "Project")
Interested Party: B.S. Pension Fund Trustee Limited
Land: Plot 1-04

We write on behalf of the Interested Party following their submission of a Relevant Representation on 20th September 2018 (the "**Relevant Representation**") and receipt of the Rule 6 letter on 6th November 2018.

1. PRELIMINARY HEARING

- 1.1 The Interested Party confirms that [a representative] from CMS shall do the following on its behalf:
- 1.1.1 attend the Preliminary Meeting (no special requirements)
 - 1.1.2 speak at the Preliminary Meeting on Item 3 and Item 5 on the Agenda with specific regard to the following:
 - (a) item 3(5)(i) Compulsory Acquisition and Other Land matters on whether all of the land and rights proposed to be compulsorily acquired satisfies the conditions set out in sections 122(2) and 122(3) of the Planning Act 2008; and
 - (b) The reasons why the lead members of the Examining Authority must schedule a Compulsory Acquisition Hearing to understand the impacts of the Scheme

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on the Interested Party in the context of the Promoter's conduct and management of the compulsory acquisition Interested Parties' Land to date.

2. COMPULSORY ACQUISITION OF THE LAND

- 2.1 The Interested Party owns the freehold of the Land and the retail site in its immediate vicinity is let to and occupied by Wickes Building Supplies Limited (“Wickes”).
- 2.2 One of key concerns is to ensure that the value of BSPF's asset is properly protected in respect of potential impact from the construction and operation of the Project. From a review of the application material provided, the Project has the potential to adversely affect:
- 2.2.1 access to the unit let to Wickes by customers on foot and in vehicles;
 - 2.2.2 delivery and other service access to the unit currently let to Wickes by small and large vehicles; and
 - 2.2.3 the amenity enjoyed by the Interested Party's current and potential future tenants as a result of noise, odour, dust and traffic disruption caused during the implementation of the proposed development consent order (“DCO”).
- 2.3 The Interested Party is prepared to enter into in to a voluntary agreement with the Promoter to enable the Land to be acquired to be acquired to facilitate the Project subject to the agreement of appropriate terms. The Interested Party's costs of engaging with the Promoter on this agreement and the CPO process must be comprehensively covered to protect the interests of the subscribers to the pension fund.
- 2.4 Such an agreement must also regulate the time at which the land will be acquired to provide certainty for the Interested Party on the future of this important asset. It will also address the amenity, operational and value issues raised at paragraphs 2.2.1-3 above.
- 2.5 The Interested Party has engaged with the Promoter in relation to agreeing an undertaking for its CPO adviser's fees and has received heads of terms for a Land and Works Agreement. However the Promoter was slow to progress these documents in a timely manner, engage in negotiations with the Interested Party, or respond to the initial points raised by the Interested Party on these documents despite many months having elapsed and the submission of the Relevant Representation setting out the Interested Party's concerns.
- 2.6 The Interested Party notes that Promoter is under a duty to take reasonable steps to acquire a property by agreement before doing so by compulsion (para 2 DCLG 2015 Circular). It shall object to the acquisition of the Land by compulsion unless the Promoter is willing to engage in through, timely and comprehensive negotiations.

3. A COMPULSORY ACQUISITION HEARING

- 3.1 The Interested Party hereby notifies the lead member of the Examining Authority that it wishes to be heard at a Compulsory Acquisition hearing in accordance with Section 92 Planning Act 2008 2008 (as amended) (“PA 2008”).
- 3.2 A Compulsory Acquisition hearing is vital in the context of the concerns raised by the Interested Party at paragraph 2 regarding the Promoter's failure to progress the documents necessary to reach

an agreement with the Interested Party to acquire the Land, and the Promoter's duty to take reasonable steps to do so before acquiring the land by compulsion.

- 3.3 The right to exercise compulsory acquisition powers can only be granted if the Secretary of State is satisfied that the conditions set out in s122 and s123 of the PA 2008 are met. A Compulsory Acquisition Hearing will ensure adequate examination of the provisions set out within the DCO seeking to authorise the compulsory acquisition of the Land. It will enable the assessment of whether the conditions relating to the Land being acquired for the Project are met and whether there is a compelling case in the public interest for the Land to be acquired compulsorily.

If it would be helpful to discuss these issues please contact Nicola Insley on 0207 524 6018 or Nicola.insley@cms-cmno.com on behalf of the Interested Party at any time.

Yours faithfully

CMS LLP

For and on behalf of CMS Cameron McKenna Nabarro Olswang LLP

cc. National Infrastructure Planning Case Team (LakeLothing@pins.gsi.gov.uk)
Suffolk County Council, c/o Jon Barnard Project Manager Lake Lothing 3rd Crossing, Endeavour House,
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