

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**COMMENTS ON APPLICANT'S RESPONSES TO THE EXAMINING AUTHORITY'S
SECOND WRITTEN QUESTIONS REGARDING THE APPLICATION BY SUFFOLK
COUNTY COUNCIL FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE
LAKE LOTHING THIRD CROSSING**

PLANNING INSPECTORATE REFERENCE NUMBER TR010023

ON BEHALF OF:

**20013284 - OVERSEAS INTERESTS INC
20013285 - WAVENEY FORK TRUCKS LIMITED
20013286 - LIFT TRUCK RENTALS LIMITED,
20013287 - NEXEN LIFT TRUCKS LIMITED,
20013288 - OAKES RECRUITMENT LIMITED,
20013289 - TEAM OAKES LIMITED
20013290 - HITECH GRAND PRIX LIMITED**

DATED: 26 APRIL 2019

Introduction and background

- 1 These comments are made in accordance with Item 12 of Annex A to the ExA's Rule 8(3) and Rule 13 letter dated 4 February 2019 and in relation to the Applicant's 12 April 2019 responses to the ExA's Second Written Questions on behalf of each of the above clients (which for the purposes of this summary shall be referred to as the "**Nexen Group**").
- 2 In these comments we refer to the land that our clients' own/occupy (as appropriate) under title number SK264748 as "**the Land**" and the project proposed by Suffolk County Council ("**Applicant**") as the "**Proposed Scheme**".
- 3 The area in which our clients intend to develop which is shown as Plot 3-56 on the Land Plans is referred to below as "**the Development Land**".

Question 1.17: Would the functionality of any services and drainage within plot 3-57 be retained during and following construction of the scheme? Such functionality is questioned in the Nexen Group response to the Applicant's NMC6 proposed change to the scheme [REP7-003, Appendix I]

- 4 The Applicant responded as follows:

Under article 32 of the DCO, any land that is occupied by the Applicant pursuant to the temporary possession powers granted by that article (of which plot 3-57 is an example) must be restored by the Applicant to the 'reasonable satisfaction' of the landowner. Whilst the Applicant does not intend to affect the functionality of services and drainage within that plot during the construction of the Scheme; such functionality would be able to be restored pursuant to that DCO provision (contained in paragraph (4) of that article).
- 5 The Applicant's response to Question 1.17 provides absolutely no guarantees as to the state that Plot 3-57 is to be returned.
- 6 Indeed, the response appears to avoid the fact that Plot 3-57 is in the landownership of PFK Ling Limited and none of the Nexen Group's views on the state that Plot 3-57 should be left in would be taken into account under Article 32 as currently drafted.
- 7 The reality is that the provisions of Article 32 do nothing to preserve the functionality of services and drainage in Plot 3-57 and the Nexen Group (or the local planning authority) would have no action against the Applicant, save for in a claim for compensation.
- 8 Even if we assume that the Applicant was to ensure that any servicing to the Land currently within Plot 3-57 would remain in place and be functional following the Applicant's temporary possession of this Plot, the Applicant's response also does not take into account the fact that it is entirely possible that it may temporarily possess Plots 3-56 and 3-57 at different times or its period of temporary possession of one of these plots may exceed the other.
- 9 If Plot 3-57 was temporarily possessed for a longer period of time than the Development Land this would mean that the lack of any guarantee as to the functionality of any services and drainage would continue to impact on the development of the Development Land even when that site was returned to the Nexen Group.

- 10 We consider that it is appropriate to draw the ExA's attention to the fact that the Nexen Group's rights extend along the whole of the existing private road to the south of the Development Land and therefore the rights that the Nexen Group benefits from over Plot 3-32 will also be affected by the compulsory acquisition of rights in that Plot. It is understood that the current drafting of Article 27(2) means that only rights which are inconsistent with those restrictive covenants being imposed under the DCO are to be extinguished by the operation of the DCO. However, Schedule 6 of the draft DCO draws the purposes for which rights over plots may be required (including Plot 3-32) so broadly it is impossible to establish whether the Nexen Group's existing rights (including of vehicular access) will be "inconsistent" with these covenants or not.
- 11 It is understood that Article 35 means that the rights of access to statutory utilities for statutory undertakers and public communications providers are not affected by the stopping up of streets or private means of access. We also appreciate the provisions of Article 35 of the draft DCO mean that where a private means of access is stopped up under Article 10 of the DCO any statutory utility whose apparatus is under, in, on, over or across the street may, and if reasonably requested to do so by the Applicant either (a) remove this and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or (b) provide other apparatus in substitution for existing apparatus and place it in such a position. The problem that the Nexen Group have with this is that they do not have any direct control over the timing or provision of any substituted or replacement apparatus under this Article.

Question 1.18: It is understood that the ExA is not required to have regard to representations concerning compensation. Nonetheless, in relation to plot 3-56, the Book of Reference identifies Overseas Interests Inc as (with others) being able potentially to make claims under section 10 of the Compulsory Purchase Act 1965, Part 1 of the Land Compensation Act 1973 or Section 152(3) of the PA2008. Having regard to the removal of the public highway connection to the private road which is to the south of plot 3-56, the Applicant is asked to clarify the legal basis on which Overseas Interests Inc (with others as above) might be entitled to compensation for any depreciation in the value of plot 3-56 arising as a result of the scheme

- 12 The Applicant responded as follows:

As part of the proposals for the Scheme, the Applicant will provide a replacement vehicular access to the wider land interest held by Overseas Interests Inc. It should be noted that this replacement access to the wider site (owned by Overseas Interests Inc) ensures that Plot 3- 56 will not be severed from the public highway.

As the Scheme requirements include the permanent acquisition of land and rights over land in part of the wider site, then Overseas Interests Inc would be able to claim for any diminution in the value of any retained land, including plot 3-56 (notwithstanding the fact that plot 3-56 is only required to be subject to a power of temporary possession). In the event that there was any depreciation in the value of the wider site, Overseas Interests Inc could claim for compensation under Section 7 of the Compulsory Purchase Act 1965.

- 13 The Nexen Group's comments on the Applicant's response to this Question 1.18 is without prejudice to the Nexen Group's future claims for compensation and does not

comment on any other heads of claim other than that related to the removal of the highway connection to the private road to the south of the Development Land.

- 14 It is not disputed that, amongst other heads of claim, the Nexen Group will be entitled to a claim related to the diminution in the value of the Land (including the Development Land) arising as a result of the permanent acquisition of land and rights over the Land.
- 15 As set out in the ExA's Question 1.18 the ExA is not required to have regard to representations concerning compensation. However, it is clear that the Proposed Scheme's removal of the separate, unrestricted and established connection of both access and services from the public highway of Riverside Road to the Development Land is a matter which the ExA must have regard to when considering the merits of the Proposed Scheme in its current form.
- 16 As we have stated in previous representations the Development Land lies within an Enterprise Zone. Indeed, the Applicant's Case for the Scheme states that the Proposed Scheme has been "*developed in order to support the Enterprise Zone in fulfilling its potential for economic growth and job creation*" (paragraph 4.7.22) and one of the "scheme objectives" set out at paragraph 4.8 of the Case for the Scheme is to open up opportunities for regeneration and development in Lowestoft. The removal of a separate, unrestricted and established connection of both access and services from the public highway of Riverside Road to the Development Land is in direct conflict with these stated aims of the Proposed Scheme.
- 17 We note that the Applicant remarks that they will provide a "replacement" vehicular access to the wider land interest which is in the freehold ownership of Overseas Interests Inc which means that the Development Land will not be "severed from the public highway".
- 18 The provision of "replacement access" to the "wider land interest" is an access from under the proposed bridge to the Land. This "replacement vehicular access" is not a bespoke and separate access to the Development Land.
- 19 This proposed "replacement" access does not link up with the private access road to the south of the Development Land and therefore any access routes into the Development Land shall be required to be incorporated into any development of the Development Land itself, rather than utilising the existing private access road to the south of the Development Land.
- 20 In addition, the proposed "replacement" access would need to be shared with vehicular traffic related to the Nexen Group's existing business operations. The Nexen Group have not received any assurances supported by technical evidence that suitable access arrangements to the existing businesses on the Land and the proposed development on the Development Land can be achieved if the Proposed Scheme proceeds.
- 21 The ExA should be aware that the current form of the draft DCO (see Article 10 and Schedule 4 Part 3) and the (as submitted) Rights of Way & Access Plan (1069948-WSP-HAC-LL-RD-CH-0003) do not require the provision of a replacement vehicular (or temporary) access to the Land before the private means of access is stopped up. This is at odds with the Applicant's response to this Question 1.18 and the Nexen Group urge the Applicant to update Schedule 4 of the draft DCO to require the provision of a replacement, separate, vehicular access (with services and utilities being available of sufficient capacity therein) to the Development Land before the

current private means of access is stopped up. As we have stated at length previously, it is the Nexen Group's position that the only way in which a suitable separate vehicular access to the Land may be provided without risk of interruption during the construction period or future maintenance of the Proposed Scheme is by way of an access to the eastern edge of the current Lings site.

- 22 This solution would merely require the access to the eastern edge of the Lings site, which now forms part of the Applicant's "non-material" changes to the Proposed Scheme, to be physically linked and necessary rights granted allowing access/egress to the Development Land, over the private access road to the south of the Development Land. Since the new southern access road constructed on the east of the Lings site by the Applicant is understood to extend and join with the existing private access road adjoining the south of the Development Land it makes sense for it to serve the Development Land too. Mayer Brown's proposal as set out in previous representations is a wider road (at 7.5 metres) and it is submitted that any additional cost involved in the construction of this is substantially less than the compensation liability if this is not provided. This alternative access could, of course, provide an alternative access to the Land as a whole during construction works of the bridge itself and provide a guarantee that those construction works would not interrupt continuous access/egress to the Land which we have already explained is important to the Nexen Group's business operations.
- 23 For the reasons stated in full elsewhere in representations previously made on the Proposed Scheme on behalf of Nexen Group it is not accepted by Nexen Group that either the current or revised form (pursuant to the recent proposed scheme changes) of the Proposed Scheme provide an acceptable access solution to the Land. In relation to the Development Land the Nexen Group have concerns about the acceptability of the access to the Development Land for proposed development, the need to physically separate HGV movements from those accessing a development on the Development Land and the requirement to ensure the current business operations remain securely gated. This is quite apart from the proposed temporary possession of the Development Land practically preventing any development during this period of possession.
- 24 In addition, the removal of direct access to the private road to the south of the Development Land will mean that this road shall need to be re-provided within the Development Land and therefore constrain and reduce the developable area of a development scheme on the Development Land.

Howes Percival LLP

26 April 2019