

From: [REDACTED]
To: [Lake Lothing Third Crossing \(LakeLothing@pins.gsi.gov.uk\)](mailto:LakeLothing@pins.gsi.gov.uk)
Subject: Lings Deadline 10 Submission [BIRKETTS-Legal.FID8942921]
Date: 23 May 2019 14:59:21
Attachments: [REDACTED]

Dear Richard

I attach my client's written summary of the oral submissions made at the recent CAH hearing.

Please could you confirm safe receipt.

Kind regards

Chloe

Chloe Glason | Associate | Planning and Environmental Team | Birketts LLP | www.birketts.co.uk
Direct: 01473 299122

[REDACTED]

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**APPLICATION BY SUFFOLK COUNTY COUNCIL FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE LAKE LOTHING THIRD CROSSING**



PFK LING LIMITED

**WRITTEN SUMMARY OF ORAL EVIDENCE GIVEN AT THE COMPULSORY
ACQUISITION HEARING 2**

PINS REFERENCE: TR010023

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Birketts LLP: Offices in Cambridge | Chelmsford | Ipswich | Norwich
www.birketts.co.uk

PFK Ling Limited (CG/322701.0002)

1. INTRODUCTION

- 1.1 This is a written summary of the oral representations of PFK Ling Limited (“Lings”) made at the second compulsory acquisition hearing held on 14 May 2019.
- 1.2 On-going negotiations to reach an agreement with Suffolk County Council which secure the future of this site for Lings continue but have not been concluded. Without a suitable agreement in place, Lings consider that the Scheme will have a serious detrimental impact on its operations and remains concerned that adequate compensation cannot be provided due to a lack of funding for the Scheme.
- 1.3 Lings therefore continue to object to the Scheme.

2. JUSTIFICATION FOR PLOTS

- 2.1 Every part of the site acquired, even temporarily, will have a significant impact on Lings’ operations and therefore clear and compelling justification for acquisition is required and whilst many issues have been resolved concerns still remain. Lings remain dissatisfied with the justification for the need to acquire certain plots and rights over plots. These are dealt with below:

Plot – 5-14

- 2.2 We have two concerns regarding plot 5-14, namely:
 - 2.2.1 No details have been provided with respect to plot 5-14 as to the requirement for rights over the quay head.
 - 2.2.2 We are also not satisfied that the ‘eastern spur’ of plot 5-14 is required for services as it does not appear to link into anywhere.
- 2.3 This plot provides critical access and display spaces to Lings and the plot should be removed as there appears to be no requirement or justification for acquiring rights over this plot.

Plot - 5-31

- 2.4 With approval of non-material change 7, access to the site will run to the east of the showroom and around the rear of the Lings’ site. Rights over plot 5-31 were originally required to provide an access route along the frontage of the site (using part of the original access route) for maintenance of the bridge on the west of the site. Plot 5-31 covers an area that has the most visible display space on the site

and any interference with these spaces will have both significant marketing and operational impacts. With the reconfigured access arrangements (NMC7), there is now no justification for the acquisition of permanent rights over 5-31 around the frontage of the site as less disruptive access to the bridge could be gained using the new access to the rear of the site.

- 2.5 We also note that plot 5-31 does not include the PMA desired to create a link between PMA 14 to PMA 11 calling into question the requirement for the PMA.
- 2.6 On this basis rights over plot 5-31 should be removed from the order.

3. **OMISSIONS RELATING TO ACQUISITION OF LAND AND RIGHTS OVER LAND**

Adjoining land owners

- 3.1 As per previous representations Lings object to any proposed use of the new eastern access to their site by adjoining land owners as this will have a further detrimental impact on the business. Such rights are not currently included in the DCO and Lings contend that they should not be included.
- 3.2 The Scheme will frustrate Nexen's right of way over Plots 3-49 and 3-57, however, the Council has omitted to provide within the Order the ability to extinguish this easement creating uncertainty for both Nexen and Lings. It is possible that Nexen's rights over plots 3-49 and 3-57 will be extinguished by the construction of the road but the position is not yet clear.

The Quay Wall

- 3.3 The Council has advised that the quay wall within the Site requires improvement works at a significant cost. These works are not currently necessary and, if required, we believe would only be needed due to traffic being re-routed along the eastern edge of the showroom as a result of the Scheme or works within plot 5-14. The quay wall is outside of the Order limits and as such the Council has not sought the necessary rights to undertake the works.
- 3.4 Since the access approved by the NMC7 forms part of the Scheme it is understood that works to create the access into and within the site will be undertaken by the Council. Without the necessary rights in the Order to allow the Council to undertake strengthening works to the quay wall, which are needed to facilitate the new access, it seems questionable whether the new access can be delivered by the Council. Without the new access, Lings will not be able to operate from the site and such a harmful impact on a local business directly contradicts one of the key objectives of the Scheme which is to deliver economic regeneration

4. SCHEME FUNDING

4.1 The Scheme's funding arrangements have been unclear from the outset and the Council's ongoing representations have not clarified the position or provided comfort that there is certainty over the funding for the Scheme.

4.2 The Council in the Written Summaries of Oral Submissions of Compulsory Acquisition Hearing 1 (Document ref SCC/LLTC/EX/76 – PINS Ref REP-010) at Appendix 1 attempts to clarify the position and rely on such clarifications in its response.

4.3 However, the calculation contained in Appendix 1 table at para 3 is either incorrect or misleading. The total Scheme value is not £91.7m as stated but £99.73m when the additional £8m land acquisition is included.

4.4 The total Scheme value of £99.73m has not been accounted for in the Council's capital programme. To date the Council's Cabinet has only approved the local contribution required to fund the development of the project with an acknowledgement that funding for the local contribution for construction would need to be secured in the future to the tune of £8.34m.

4.5 On this basis we believe there remains clear evidence of a funding gap of between £8m and £16.34m.

4.6 The Council in their response to the funding questions have sought reliance on paragraph 17 of the Compulsory Acquisition of Land Act 2008.

4.7 The Act states:

The applicant must provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (both private and public) have agreed to make financial contributions or underwrite the scheme.

4.8 It is worth reiterating that the June 2018 Cabinet Minutes that the Council relies upon as having agreed to make a further financial contribution of £8m merely confirm that the land acquisition funding gap of £8m had arisen due to the need to compensate Lings with a decision made that costs should be contained and a new Cabinet decision on a definitive project budget had to be reported back in Autumn 2019.

4.9 The Council also seek to rely upon a letter from the Section 151 officer confirming funds are available for land acquisition. However, we are concerned that the

Section 151 officer may be writing without authority because he is pre-empting the decision of the Cabinet in Autumn 2019 and assuming they will commit to additional funding.

- 4.10 The Council has also placed reliance on the Council's own financial budget. It is a matter of fact that a budget is a forward projection of expenditure and not a commitment to spend such expenditure. Once again Cabinet approval will be needed to incur the costs and this approval has not been given.
- 4.11 The examiners will need to be satisfied that there this is a firm commitment from the Cabinet to fund the £8m shortfall identified and the additional costs have been underwritten.
- 4.12 Of further concern is the fact the Council have had adequate time, since the finance issue was first raised, to go back to the Cabinet and clarify that £8m of additional funding will be made available if required. The Council has not sought to do this and we can only speculate that there is serious concern that the additional funding will not be confirmed by Cabinet as was the case with the now cancelled Upper Orwell Crossing in Ipswich.
- 4.13 Alternatively one can only speculate that that the reason the Council have not sought a firm undertaking for the £8m additional cost is that they are aware that the decision making process, in which the location of the Scheme was selected, would be called into question if the budget was higher. This is an issue raised by ABP in their submission.
- 4.14 If the examiners are satisfied that the £8m is available then they have to be certain that £8m additional funding is adequate as no additional funding beyond this figure has been sought. The Cabinet minutes acknowledge the risk of material detriment to Lings (i.e Lings have to relocate) and the possibility of such remains a reality whilst an agreement is not in place. Therefore, considering the other claims, we believe that the £8m of additional funding is neither secured nor not adequate calling again into question the Council's ability to fund the Scheme.

5. **CONCLUSION**

- 5.1 The Council has not sought adequate powers to deliver parts of the Scheme (the access into Lings' site) and compelling justification has not been provided for the compulsory acquisition of all plots.
- 5.2 However, fundamentally we believe that the Compulsory Acquisition should not be approved because of there is a lack of sufficient evidence that funding is or will be made available to compensate Lings and the other occupiers.