

Our ref: HE551519-ATK-GEN-J28-RP-ZM-000087

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M25 junction 28 Project Team
Regional Investment Programme
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Highways England
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By email to:
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17 March 2021

Dear Sirs,

M25 junction 28 improvement scheme

Planning Inspectorate reference: TR010029

VOA response to additional rep from Savills on behalf of Gardens of Peace

This is Highways England's response to the Additional Submission from Savills on behalf of the Trustees of the Gardens of Peace Muslim Cemetery (the "Trustees") accepted by the Examining Authority on 22 February 2021 (AS-033).

Highways England is represented by the Valuation Office Agency (the VOA) in relation to the junction 28 improvement scheme's (the Scheme) compulsory purchase matters. Savills has made a number of statements regarding discussions with the VOA concerning their fees that Highways England wishes to respond to.

On the Scheme, as for other schemes it is promoting, Highways England, as the acquiring authority, will undertake to pay the reasonable costs of the services of a land agent to advise and represent land owners for some early engagement matters and for discussion on the potential acquisition of land interests and rights before compulsory acquisition powers are obtained.

Industry guidance requires that such land agents must demonstrate that the basis for fees and disbursements is reasonable in relation to the complexity of the claim (RICS Professional Statement 'Surveyors advising in respect of compulsory purchase and statutory compensation' (April 2017)).

Savills' fee rates

On 23 November 2020, following correspondence over the course of two months, the VOA agreed an hourly rate with Savills for Gwyn Church (an Associate at Savills) to represent the Trustees. The VOA could not accept Savills' proposed rate at Director level which it regarded as excessive. Timesheets for the time spent by Savills in advising the Trustees were thereafter submitted to the VOA on 24 November 2020. Following further email correspondence seeking clarification as to the time spent, the VOA explained in an email to Savills on 3 February 2021 that the amount of time spent by Savills was considered reasonable by the VOA, including at Director level, but that the hourly rate at Director level was not. The VOA suggested an hourly rate that would be acceptable and proposed an overall figure for Savills fees to the end of November 2020 based on it.

Thereafter the VOA received additional timesheets for Savills in respect of time incurred since December 2020. In addition timesheets were provided by Savills for time spent by other professional advisors to the Trustees. Savills requested all fee matters to be agreed by 12 March 2021. This has not been possible for want of further information about the time spent being required by the VOA and although the VOA had understood that Savills would provide it, Savills then declined to do so and requested that all fee matters be resolved and fees paid by 17 March 2021.

As matters stand the VOA is not able to recommend payment until it has received the further detail it requires to assess the appropriateness of the claim and it is satisfied that the claim is reasonable.

Proposed fee cap

Savills refer in their email of 15 February 2021 to a fee cap for work directly related to early acquisition of the permanent right over the Gardens of Peace land, in advance of Highways England obtaining compulsory purchase powers were a development consent order for the Scheme to be made. However, no fee cap was, or ever has been, agreed for other work related to the Trustees engagement with Highways England in discussions regarding the Scheme, construction works and potential steps that could be taken by Highways England to minimise the effects of the Scheme on the Gardens of Peace.

The fee cap that was proposed to Savills was in relation to work in negotiating for the early acquisition of the rights, not the broader discussions mentioned above. This was clarified by the VOA during telephone conversations with Gwyn Church and it had been the VOA's understanding that this position was understood by Savills. In any event, the work carried out by Savills to date is almost entirely related to engagement activities and not to early acquisition discussions. Therefore, the proposed fee cap is irrelevant in considering the reasonableness of fees for work carried out to date and for which Savills seek reimbursement.

Highways England readily agrees fee rates for this kind of work in promoting schemes under the Planning Act 2008. As regards the approval of fee rates in respect of the Scheme, a range of fee rates has been agreed with the land agents representing other land owners affected by the proposed compulsory acquisition powers but all are

significantly lower than the fee rate proposed by Savills at Director level. Furthermore, in some other cases the position is more complex than that applying to the Gardens of Peace.

Engagement with the Trustees

The additional submission from Savills states to the effect that the Trustees have had restricted “access to justice” because Highways England have refused to agree to, or to pay, any professional fees incurred by the Trustees and that this has constituted a strategy on Highways England’s part. This is simply not the case and Highways England strongly refutes this accusation.

Contrary to the impression given by Savills in its email, considerable and constructive engagement has taken place about the Gardens of Peace, with various meetings held between the Trustees and Highways England before and after Savills being instructed in July 2020. Since their instruction, this engagement has continued and if Savills had been in attendance at such meetings, Highways England would have been willing to have paid their reasonable fees for this work.

Notwithstanding this correspondence, Highways England hopes that the VOA and Savills can come to agreement as regards fees and discussions are continuing but Highways England does not consider that this is a matter for the Examining Authority.

Highways England will nonetheless continue to engage with the Trustees throughout the examination. As explained at the hearings at the beginning of the month, Highways England wishes to accommodate the wishes of the Trustees as far as practicable and for the agreed arrangements to be set out in an agreement as soon as possible.

Yours faithfully,



Thomas Selby
Project Manager