



Pinsent Masons

**APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT
CONSENT FOR THE LOWER THAMES CROSSING
DEADLINE 9A SUBMISSION – WRITTEN REPRESENTATION BY ST. MODWEN
DEVELOPMENTS LIMITED (REFERENCE 20035817)
15 DECEMBER 2023**

1. INTRODUCTION

- 1.1 This submission is made by Pinsent Masons LLP on behalf of its client St. Modwen Developments Limited (“**SMDL**”) in respect of National Highways’ (“**the Applicant**”) application for a development consent order for the Lower Thames Crossing (“**LTC**”) project.
- 1.2 SMDL has submitted several written submissions to the examination: a relevant representation [**RR-1000**], a detailed written representation ([**REP1-396** and **REP1-397**]), a response submitted at Deadline 4 to the Examining Authority’s written questions and requests for information [**REP4-393**] and a representation at Deadline 6 [**REP6-202**]. In addition, the Examining Authority will be aware that SMDL has been represented at the Preliminary Meeting and various hearings including Issue Specific Hearing 1, Compulsory Acquisition Hearing 1 and Compulsory Acquisition Hearing 5.
- 1.3 SMDL is making this written submission to provide the Examining Authority with an update on the status of its objection to LTC and the position relating to Brentwood Enterprise Park as the examination of the proposals for LTC draws to a close. This submission represents a final submission statement from SMDL, and is based on the points made orally at Compulsory Acquisition Hearing 5 and draws heavily on the detailed representation at [**REP1-396**].
- 1.4 Importantly, the submission also provides an update on two key points, namely the latest position on both the planning application for BEP and the draft legal agreement with the Applicant and the landowner.

2. BACKGROUND

- 2.1 A full background is set out in the representation at [**REP1-396**], particularly section 1, and this is summarised in overview terms below.
- 2.2 SMDL is the promoter of the Brentwood Enterprise Park (“**BEP**”), a proposed employment development immediately to the southeast of Junction 29 of the M25. The BEP site is owned by the Padfield family who have submitted separate representations to the examination.
- 2.3 SMDL entered into a regeneration agreement with the Padfields in 2015 which provides that SMDL will promote the BEP development by seeking an allocation in the Brentwood Local Plan and thereafter submitting a planning application. SMDL has an option to acquire the freehold interests in the BEP site to enable it to deliver the BEP.
- 2.4 SMDL is broadly supportive of the LTC project as a whole. However, the LTC proposals in relation to the BEP site would have a very significant impact on SMDL’s ability to deliver BEP. SMDL’s concerns principally relate to the compulsory acquisition powers being sought by the Applicant and the impact of three main interfaces between BEP and LTC, as follows:
 - 2.4.1 First, the impact of the LTC works and proposed permanent land take on the vehicular access to BEP from the B186;



- 2.4.2 Second, the impact of the LTC works and proposed permanent land take on the northern vehicular access to BEP over the A127;
 - 2.4.3 Third, the proposed temporary possession of Codham Hall Lane and the impact on vehicular access to BEP.
- 2.5 Without a legal agreement with the Applicant the DCO will likely delay the BEP development significantly and potentially render it effectively undeliverable. Although progress continues to be made on the legal agreement, with the expectation being that it will be concluded in January 2024, the position remains that it has not been completed. Therefore, SMDL retains its objection to the LTC proposals. Once the legal agreement is completed, SMDL will write to the Secretary of State to confirm this has happened (see also the Applicant's commentary on this in section 7.3 of its Deadline 9 Hearing Actions document [*no examination library reference yet available*]).

3. THE LOCAL PLAN

- 3.1 A detailed summary of the planning history relating to the BEP site is set out in [REP1-396] – see section 5 especially. The particularly relevant points are re-stated below:
- 3.1.1 The BEP site was allocated for development in Brentwood Borough Council's Local Plan that was adopted in March 2022.
 - 3.1.2 The BEP site is the only strategic employment site allocated in the Local Plan.
 - 3.1.3 The BEP allocation makes up more than 50% of the new employment land allocated by the Local Plan.
 - 3.1.4 Exceptional circumstances were found to justify the release of the BEP site from the Green Belt.
 - 3.1.5 Brentwood Borough Council, Essex County Council and the Applicant were heavily involved in the Local Plan process.
 - 3.1.6 As summarised at paragraph 5 of our written representation there are various passages in the Local Plan which emphasise the importance of BEP but if we would draw your attention to paragraph 7.20 of the Local Plan in particular which reads:

The Lower Thames Crossing will open up opportunities for goods and services to flow more easily between Brentwood and the area of Kent and beyond across the Thames, strengthening links to a market area that is currently less accessible from the borough.

It goes on to say:

For the borough to take advantage of the distribution movements, it is likely that Brentwood Enterprise Park will need to be delivered to provide premises that are of the scale required by distributors.

- 3.2 The above demonstrates that the BEP is no ordinary development site. Instead, it is of significant strategic importance to Brentwood Borough. The Borough is reliant on BEP to achieve the proper planning of the area and its sustainable economic growth. Fundamentally it is the principal means by which the Borough will seek to take advantage of the opportunities provided by LTC. The importance of BEP was accepted by two experienced Planning Inspectors who found the Local Plan to be sound.



3.3 It follows that the Examining Authority, and ultimately the Secretary of State, should be very way recommending the grant of consent, or indeed granting consent, for a proposal that will jeopardise the delivery of BEP.

4. THE BEP PLANNING APPLICATION

4.1 At Compulsory Acquisition Hearing 5 in oral submissions made on behalf of SMDL, the latest planning status of the application for BEP was set out. The application, which was submitted in March 2022, was expected to be taken to Brentwood Council's planning committee in December 2023. This has taken place and on 12 December 2023 committee approval was granted for BEP. This is a very important milestone working towards the delivery of BEP and is the product of many years of work on the part of SMDL. Importantly, the Applicant has no outstanding objections to the planning application with all issues having been resolved to its satisfaction.

4.2 The full benefits of BEP are presented in in [REP1-396], including in section 6. Two key points to reiterate in this submission are that the assessments supporting the planning application demonstrate that:

4.2.1 BEP will create additional economic output of up to £230m per year, which is equivalent to over 10% of the total Gross Value Added in the transport and storage sector in Essex; and

4.2.2 BEP will also create 2,370 gross Full Time Equivalent jobs, which equates to a 76% uplift in total manufacturing and transport and storage jobs in Brentwood Borough, which is equivalent to over 10 years' worth of targeted employment growth.

5. KEY CONCERNS WITH THE LTC PROPOSALS

5.1 SMDL considers that there are three key areas where the DCO causes a significant issue for BEP.

5.2 The BEP site currently enjoys a direct vehicular access off the southeast quadrant of the Junction 29 roundabout. The proposed LTC jet lane will sever that access. It has therefore been necessary for SMDL to design an alternative access arrangement for BEP.

5.3 The proposed access arrangements are explained in more detail in the written representations, especially [REP1-396] but there will essentially be two means of vehicles accessing the site:

5.3.1 First, a new junction will be formed with the B186 in the location shown on the Land Plans as Plot 45-138.

5.3.2 Second, Codham Hall Lane (which is the road that forms most of Plot 45-100 on the Land Plans) will be upgraded and a new vehicular access bridge over the A127 will be constructed in the location where SMDL has a cluster of land shown as pink, centred around 45-124, in the Land Plans.

5.4 These access arrangements have been carefully worked up over a number of years in close consultation with the Applicant, Brentwood Borough Council and Essex County Council.

5.5 However, as will be apparent from the Applicant's land plans, the Applicant seeks the power to compulsorily acquire the land that is required to deliver these two accesses.



The Applicant also seeks the power to take temporary possession of Codham Hall Lane. In terms of the justification for the Applicant taking this land:

- 5.5.1 In the case of the B186 access, LTC proposes a new bellmouth junction immediately to the south of the BEP access. This LTC bellmouth will connect into a maintenance track that is then used as an access for an LTC site compound. This bellmouth will conflict with the BEP access.
- 5.5.2 In the case of the A127 bridge, LTC proposes a new footbridge for walkers, cyclists and horseriders. This footbridge would conflict with the location of the BEP vehicular bridge.
- 5.6 It is difficult to see how a developer could bring forward a scheme like BEP with the risk that its two key accesses could be compulsorily acquired. Even if a developer took a view on the risks and ultimately accepted them, the type of logistics occupiers who are expected in BEP are unlikely to be willing themselves to accept the risk. The effect is that they would likely look elsewhere.
- 5.7 Without a legal agreement to govern and restrict how these compulsory acquisition powers are exercised there is a real risk that the DCO will significantly delay the delivery of BEP for a number of years until the compulsory acquisition powers have expired, or otherwise render BEP undeliverable in its current form in the event that those powers are exercised in such a way as to acquire the land that is required for access to BEP. .
- 6. **NEGOTIATIONS**
- 6.1 SMDL considers that the Applicant does recognise the difficulties its proposals will cause BEP and there have been extensive negotiations over the past few years to ensure both LTC and BEP can be brought forward effectively and in a timely manner.
- 6.2 For its part, SMDL has deliberately designed the BEP access arrangements in such a way that they can accommodate the needs of LTC. This includes the following:
 - 6.2.1 In the case of the B186 access, SMDL has proposed a spur off the BEP access which the Applicant can then use to connect into its maintenance track, thereby avoiding the need for the LTC bellmouth; and
 - 6.2.2 In the case of the A127 bridge, SMDL has proposed to deliver as part of BEP a link for walkers, cyclists and horseriders from the A127 up to the existing accommodation bridge over the A127. This will avoid the need for LTC to deliver a bridge performing the same function.
- 6.3 From the Applicant's perspective, it has acknowledged that both arrangements would meet its needs given that the revised Design Principles submitted at Deadline 6 [**REP6-046**]¹ state that:
 - 6.3.1 if the BEP B186 access is delivered then the Applicant will design its access so as to avoid the bellmouth and shall instead connect into the BEP B186 access (Principle S14.19); and
 - 6.3.2 if the BEP A127 crossing is delivered then the Applicant will not deliver its bridge (Principle S14.22).

¹ The Applicant has submitted updated Design Principles at Deadline 7 [**REP7-140**] and Deadline 8 [**REP8-082**], but the relevant principles to SMDL (i.e. S14.19 and S14.22) appear to be unamended in the relevant documents submitted.



- 6.4 There are clearly therefore alternative means of achieving LTC's needs without bringing forward works that materially and adversely impact BEP.
- 6.5 The Applicant has, during the Examination, also adjusted the limits of deviation for the DCO to try and push its footbridge as far east as it considers possible. This is with the intention of reducing the impact on the BEP vehicular bridge. That is acknowledged by SMDL, but the initial design work has indicated that this will still present significant challenges in the event that the BEP vehicular bridge is delivered after the LTC bridge.
- 6.6 Furthermore, the revised Design Principles are an improvement on those originally submitted by the Applicant [APP-516] (which SMDL considered in its written representation [REP1-396], particularly sections 10 and 11), but they are by themselves insufficient to protect SMDL's position for four principal reasons:
- 6.6.1 First, there are no timescales in which SMDL will be given the opportunity to deliver its infrastructure. The Applicant could in theory immediately start their works (once clearing relevant design requirements, etc.) thereby undermining any comfort that SMDL could have drawn from the Design Principles.
- 6.6.2 Second, there needs to be a more detailed collaborative process between SMDL and the Applicant to ensure the infrastructure is designed to meet both parties' requirements and is delivered in an orderly manner that reflects both parties' objective to see both LTC and BEP delivered.
- 6.6.3 Third, whilst the Design Principles also contain some acknowledgment of what happens in the event that the LTC works are delivered first, this is very 'light touch' and does not provide SMDL with comfort that it will be able to bring forward the BEP scheme at a later date.
- 6.6.4 Fourth, the Design Principles would not result in the compulsory acquisition powers being 'switched off', even if the BEP infrastructure is delivered.
- 6.7 These are all matters which must be addressed through a legal agreement in order to provide SMDL with as much certainty as possible that it will still be able to deliver BEP. The latest position on the legal agreement is set out at paragraph 2.5 above.
7. **PLOT NUMBER 45-138**
- 7.1 The final point to make is in relation to the land powers being sought over plot number 45-138. This plot was included within the Order Limits at a late stage, specifically to cater for the fact that LTC might connect into the BEP B186 access. From SMDL's perspective, it is unclear why the Applicant is seeking compulsory acquisition powers, regardless of the position on legal agreement.
- 7.2 Indeed, this land only seems to be relevant to LTC in the event that the BEP B186 access is delivered. We are not aware of any other reason why this land is required for LTC – if the BEP B186 access is not delivered then the Applicant will simply deliver its bellmouth junction, which does not impact on plot number 45-138. But if the BEP B186 access has been delivered, it is unclear why the Applicant would need to permanently acquire the land. Even on the Applicant's own case, it seems that at most they would need to take temporary possession of part of the plot in order to deliver their spur and then permanently acquire a right of access over the plot.
- 7.3 That being the case, there is clearly no compelling case in the public interest for the Applicant to have compulsory acquisition powers over plot number 45-138. At the very most, any powers should be limited to acquisition of rights.



8. CONCLUSION

- 8.1 In summary, SMDL is working as diligently as possible to ensure that the legal agreement is completed in the coming weeks. At that stage SMDL will write to the Secretary of State to confirm the withdrawal of its outstanding objection.
- 8.2 However, if it is not possible to conclude this agreement, SMDL's position is that the DCO will have a fundamentally unacceptable impact upon the BEP development, with the proposed compulsory acquisition powers likely leading to significant delays in the delivery of BEP and potentially rendering BEP undeliverable in the event those powers are exercised in such a way as to acquire the land that is required for the BEP accesses. In the event that an agreement cannot be concluded, SMDL considers that the Secretary of State would be required to make a decision on the application on the basis that the LTC will result in all the public benefits associated with BEP (and recognised by the Local Plan process and Brentwood Borough Council's Planning Committee) not being realised.

15 December 2023