

A57 Link Roads

TR010034

**9.50 Written summary of Applicant's case
at CAH1**

Rule 8(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

February 2022

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

A57 Link Roads Development Consent Order 202(x)

9.50 Written summary of Applicant's case at CAH1

| | |
|---|---|
| Rule Number: | Rule 8(k) |
| Planning Inspectorate Scheme Reference | TR010034 |
| Application Document Reference | TR010034/EXAM/9.50 |
| Author: | A57 Link Roads Project Team, National Highways and Atkins |

| Version | Date | Status of Version |
|----------------|---------------|--------------------------|
| 1 | February 2022 | Deadline 4 |

Table of contents

| | |
|--|-----------|
| 1. Introduction | 4 |
| 1.2. Agenda item 1 – Welcome, Introduction and arrangements | 4 |
| 2. Agenda Item 2 – The Applicant’s case for Compulsory Acquisition and Temporary Possession | 5 |
| 3. Agenda Item 3 – Individual objections, issues and voluntary agreements | 8 |
| 4. Agenda Item 4 – The Book of Reference, Statement of Reasons, Land Plans, Diligent Enquiry and Updates | 11 |
| 5. Agenda Item 5 – How is it intended to use the land, whether reasonable alternatives have been explored and whether the rights sought are legitimate, proportionate and necessary | 12 |
| 6. Agenda Item 6 – Crown Interests, Statutory Undertakers, Special Category Land, Compensation, Funding and Other Matters | 15 |
| 7. Agenda Item 7 – Any Other Compulsory Acquisition or Temporary Possession Matters | 17 |
| 1. Introduction | 4 |
| 2. Agenda Item 2 – The Applicant’s case for Compulsory Acquisition and Temporary Possession | 5 |
| 3. Agenda Item 3 – Individual objections, issues and voluntary agreements | 8 |
| 4. Agenda Item 4 – The Book of Reference, Statement of Reasons, Land Plans, Diligent Enquiry and Updates | 11 |
| 5. Agenda Item 5 – How is it intended to use the land, whether reasonable alternatives have been explored and whether the rights sought are legitimate, proportionate and necessary | 12 |
| 6. Agenda Item 6 – Crown Interests, Statutory Undertakers, Special Category Land, Compensation, Funding and Other Matters | 15 |
| 7. Agenda Item 7 – Any Other Compulsory Acquisition or Temporary Possession Matters | 17 |
| Appendix | 18 |
| Appendix A. Letter from Burges Salmon | 19 |

1. Introduction

- 1.1.1 This document summarises the case made orally by National Highways, as the promoter of the A57 Link Roads scheme (the Scheme), at the first Compulsory Acquisition Hearing (CAH1) which took place virtually on 8 February 2022, at 14:30.
- 1.1.2 Vicky Fowler and Richard Thurling of Gowling WLG represented National Highways.
- 1.1.3 This document sets out National Highways' submissions on the points raised following the agenda for the CAH1 as set out in the Examining Authority's (ExA) agenda published on the Planning Inspectorate website on 31 January 2022.

1.2. Agenda item 1 – Welcome, Introduction and arrangements

- 1.2.1 No questions of an introductory or preliminary nature were raised by the Applicant or by other attendees at the CAH1.

2. Agenda Item 2 – The Applicant’s case for Compulsory Acquisition and Temporary Possession

| Agenda item | Agenda item | National Highways Response |
|-------------|--|--|
| Item 2 | <p>The Applicant’s Case for Compulsory Acquisition and Temporary Possession</p> <p>The ExA will invite the Applicant to take up to 10 minutes to provide an overview of:</p> <ul style="list-style-type: none"> its overall approach to CA and TP in the context of the relevant tests under the Planning Act 2008 and DCLG Guidance the purpose, structure and content of the Book of Reference, the Statement of Reasons and the Funding Statement the powers sought and the overall case for them being granted <p>The ExA may ask questions.</p> | <p>There are principally two tests under Section 122 of the Planning Act 2008:</p> <p>First, Is the land to be compulsorily acquired required for the development to which the development consent relates; or required to facilitate or is incidental to that development; and</p> <p>Second is there is a compelling case in the public interest.</p> <p>The DCLG Compulsory acquisition guidance notes that an applicant should also be able to demonstrate the following:</p> <ol style="list-style-type: none"> all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored; the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate; The Applicant has a clear idea of how the land is intended to be used There are the requisite funds for the acquisition; and The purposes of the order are legitimate and sufficient to justify interfering with the human rights of those with an interest in the land affected - regard must be had to the provisions of Article 1 of the First Protocol and, in the case of a dwelling, Article 8. <p>The Applicant’s approach to Compulsory Acquisition and Temporary Possession and the case for that Acquisition can be found in the Statement of Reasons (REP2-003), Section 3 describes the powers sought, section 4 describes the land interests that are subject to compulsory acquisition and section 5 sets out the case for Compulsory acquisition.</p> <p>National Highways’ overall approach is that it is necessary to acquire the land required for the construction and operation (including maintenance) of the Scheme where that land is not already in National Highways’ possession. Compulsory acquisition or temporary possession of the relevant land will be necessary, unless the relevant interests can be acquired by agreement.</p> <p>National Highways owns a number of plots required for the scheme but this land has also been included to enable any third party rights over that land to be extinguished.</p> <p>The powers to use land temporarily ensures that appropriate work sites, working space and means of access are available during the construction and maintenance period. Temporary possession powers with future rights are also sought to provide space for mitigation and other permanent works, such as utility diversions without the need for full acquisition.</p> <p>The Applicant considers that the land included in the draft DCO is the minimum land-take required to construct, operate, maintain and mitigate the Scheme, noting that the detailed design of the Scheme has yet to be developed. In that context, the limits of deviation have been drawn as tightly as possible so as to avoid unnecessary land-take. In the event that less land proves to be required following the detailed design stage, the Applicant would only seek to acquire that part of the land that is required and will seek to minimise effects on land interests.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|-------------|---|
| | | <p>In terms of whether there is a compelling case in the public interest. The case for the Scheme is set out in Chapter 2 of the Statement of Reasons (REP2-003) and in other application documents, including Chapter 2 and 5 of the Case for the Scheme (REP2-016). Together they demonstrate that there is a compelling case in the public interest for the Scheme to be delivered.</p> <p>In particular, as set out in Chapter 2 of the Case for the Scheme, paragraph 2.2 of the National Networks NPS identifies a “critical need” to improve the national networks to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity.</p> <p>In terms of consideration of alternatives, as explained in Chapter 2 of the Consultation Report (APP-026); Chapter 3 of the ES (APP-060) and Chapter 2 of the Case for the Scheme the Applicant has explored alternatives options for the Scheme.</p> <p>In designing the Scheme, the Applicant has also considered alternatives and modifications to the Scheme have been made to minimise the potential land-take. This process is described in detail in Chapter 3 of the ES (APP-060).</p> <p>The Applicant is satisfied that the powers of compulsory acquisition and temporary possession sought in the DCO are necessary, proportionate and justified. Section 6 of the Statement of Reasons deals with the consideration of human rights.</p> <p>Annex A to the Statement of Reasons explains how each parcel of land subject to compulsory acquisition and temporary possession will be used, demonstrating The Applicant has a clear idea of how the land is intended to be used.</p> <p>How the acquisition costs will be funded is dealt with in the funding statement (APP-024).</p> <p>In summary the Applicant has demonstrated in the documents referenced that the powers sought are in accordance with all relevant statutory and policy guidance.</p> <p><u>In term of the purpose, structure and content of the Book of Reference, the Statement of Reasons and the Funding Statement</u></p> <p>In preparing the DCO application, the Applicant has carried out diligent inquiry in order to identify all persons with an interest in the Land. Those persons who were identified by the Applicant are listed in the Book of Reference.</p> <p>The Book of Reference (REP1-011) lists the plots of land over which the Applicant is seeking powers of compulsory acquisition and powers of temporary possession in the DCO. For each plot it identifies whether the Applicant is seeking the power to acquire that plot outright, the power to create and/or acquire permanent rights, or the power to create and/or acquire temporary rights of possession and use. It also lists the persons with land outside the DCO boundary who may be entitled to make a relevant claim for compensation due to the effects of construction or when the new or altered road is in use.</p> <p>This Book of Reference is divided into five parts. Part 1 of this Book of Reference contains the names and addresses of each person who is an owner, lessee, tenant, or occupier of the land or has the power to sell and convey or release the land.</p> <p>Part 2 of this Book of Reference contains the names and addresses who might be entitled to make a relevant claim under section 10 of the Compulsory Acquisition Act 1965, a claim under part 1 of the Land Compensation Act 1973, or a claim under section 152(3) of the 2008 Act.</p> <p>Part 3 contains the names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished, suspended or interfered with.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|-------------|--|
| | | <p>Part 4 specifies the owner of any Crown interest in the land which is proposed to be used for the purposes of the order for which application is being made .There is no Crown Land affected by the Scheme.</p> <p>Part 5 of this Book of Reference specifies land that as part of the DCO is acquired subject to special parliamentary procedure, is special category land or is replacement land).</p> <p>The Statement of Reasons (REP2-003) sets out the reasons for the inclusion of compulsory purchase powers within the DCO. It also explains why compulsory powers are necessary to enable the Applicant to use land temporarily and acquire, suspend, interfere with or extinguish rights over land in order to be able to construct and maintain the Scheme.</p> <p>In respect of The Funding Statement (APP-024) the purpose of this document is to demonstrate that the Scheme will be adequately funded through the Road Investment Strategy 2 (RIS2): 2020 to 2025, and therefore that funding is no impediment to the delivery of the scheme or the payment of compensation to persons affected by compulsory acquisition, temporary possession, or a blight claim.</p> <p><u>In terms of the powers sought,</u></p> <p>The main powers authorising the compulsory acquisition of land, or interests in, or rights over land, are contained in Articles 22 (compulsory acquisition of land) and 25 (compulsory acquisition of rights and restrictive covenants) of the draft DCO.</p> <p>Article 26 allows rights over land to be acquired instead of outright acquisition. Article 26 also provides for the extinguishment of private rights over land from the earlier of the date of acquisition of the land or the date on which the Applicant enters the land.</p> <p>In addition, powers are sought in the draft DCO to enable the temporary possession and use of land.</p> <p>Article 32: Temporary use of land for carrying out the authorised development authorises National Highways to take temporary possession of the land specified in column 1 of Schedule 7 to the DCO; or any other land within the limits of the DCO, identified for permanent acquisition.</p> <p>Article 33 empowers the Applicant to take temporary possession of any land within the limits of the DCO, if reasonably required for the purpose of maintaining the Scheme, at any time during the maintenance period (i.e. five years from the date on which that part of the Scheme is first open for use).</p> <p>Without the grant of compulsory acquisition and temporary possession powers the Applicant considers that it will not be possible to construct the Scheme, or realise the public benefits arising from it.</p> |

3. Agenda Item 3 – Individual objections, issues and voluntary agreements

| Agenda item | Agenda item | National Highways Response |
|-------------|---|---|
| Item 3 | <p>Individual objections, issues and voluntary agreements</p> <p>John Joseph Bower / Carr House Farm / plots 4/13a, 4/13b, 4/13c, 4/13d, 4/13e, 4/13f, 4/13g, 4/13h, 4/13i, 4/13j, 4/13k, 4/16, 4/17, 4/19, 4/20,</p> <p>4/21, 5/1a, 5/1b, 5/1c, 5/1d, 5/1e, 5/1f, 5/1g, 5/1h, 5/1i, 5/1j, 5/1k, 5/2,</p> <p>5/3, 5/4, 5/5, 5/7a, 5/7b, 5/7c, 5/7d, 5/7e, 5/7f, 5/7g, 5/7h, 5/8, 5/9a,</p> <p>5/9b, 5/9c, 5/9d, 5/9e, 5/9f, 5/9g, 6/1a, 6/1b, 6/1c, 6/1d, 6/1e, 6/1f,</p> <p>8/8a, 8/8b, 8/8c, 8/8d, 9/3, 9/7a, 9/7b, 9/7c, 9/7d, 9/7e, 9/16</p> <p>a) The ExA will invite John Joseph Bower or their representatives, if present, to make an oral submission. The ExA may ask questions.</p> <p>b) The Applicant will be invited to respond. The ExA may ask questions.</p> <p>Warner Eric Bower / Carr House Farm / plots 4/13a, 4/13b, 4/13c, 4/13d, 4/13e, 4/13f, 4/13g, 4/13h, 4/13i, 4/13j, 4/13k, 4/16, 4/17, 4/19, 4/20,</p> <p>4/21, 5/1a, 5/1b, 5/1c, 5/1d, 5/1e, 5/1f, 5/1g, 5/1h, 5/1i, 5/1j, 5/1k, 5/2,</p> <p>5/3, 5/4, 5/5, 5/7a, 5/7b, 5/7c, 5/7d, 5/7e, 5/7f, 5/7g, 5/7h, 5/8, 5/9a,</p> <p>5/9b, 5/9c, 5/9d, 5/9e, 5/9f, 5/9g, 6/1a, 6/1b, 6/1c, 6/1d, 6/1e, 6/1f,</p> | <p>At the Hearing Mr Bower agreed to make a written representation at Deadline 4 which the Applicant will respond to at Deadline 5.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|---|---|
| | <p>8/8a, 8/8b, 8/8c, 8/8d, 9/3, 9/7a, 9/7b, 9/7c, 9/7d, 9/7e, 9/16</p> <p>c) The ExA will invite Warner Eric Bower or their representatives, if present, to make an oral submission. The ExA may ask questions.</p> <p>d) The Applicant will be invited to respond. The ExA may ask questions.</p> | |
| | <p><u>Compulsory Acquisition Schedule</u></p> <p>The Applicant has provided a Compulsory Acquisition Schedule [REP3-012] to set out progress on discussions regarding Compulsory Acquisition and Temporary Possession, voluntary agreements, objections and blight.</p> <p>e) Please could the Applicant summarise the progress made during the Examination and the progress anticipated during the remainder of the Examination? What progress has been made where there is an objection to rights being acquired?</p> <p>f) Please could the Applicant set out where it has not been able to progress discussions with known parties? What steps will be taken during the Examination?</p> <p>g) Please could the Applicant summarise the steps to be taken to identify any unknown parties or interests during the Examination?</p> <p>The ExA may ask more questions or invite more oral submissions.</p> | <p>e) Following DCO acceptance all land owners were notified and National Highways desire to acquire land by agreement was reaffirmed. The majority of land owners have responded indicating whether they are representing themselves or have appointed an agent to act on their behalf.</p> <p>All parties that have confirmed an interest in opening discussions have been contacted by the District Valuer and initial meetings have been held, some parties have held more detailed sessions including Tameside Metropolitan Borough Council and John Joseph Bower and Warner Eric Bower. Those meetings are summarised in the Schedule of progress regarding Compulsory Acquisition and Temporary Possession (REP3-012).</p> <p>Letters have also recently been issued to parties who operate businesses from four garage style units that are let from Roe Cross Industrial Park, the owner of the business park not having engaged.</p> <p>As of to date, in terms of the properties that are still to be acquired, no one party has fully committed to entering into agreement or intent to sell since the DCO submission. In some cases, such as the land owned by John Joseph Bower and Warner Eric Bower it has been agreed that early acquisition would be challenging given the extent of land requirements and the difficulty at this early stage of assessing all losses together with the impact on retained land. Notwithstanding that, discussions are ongoing and consideration is being given to the various heads of claim.</p> <p>There are currently 26 residential properties and 1 private garage that affected by the scheme, either to be demolished or rights are required to complete the works. National Highways acquired 23 of these properties ahead of DCO submission and lets these out for rental. In relation to the remaining residential properties there are currently 2 active blight cases for numbers 13 and 15 Old Hall Lane, where offers have been made and advanced discussions are underway for their procurement.</p> <p>There is 1 remaining private residence, Craig Dean, 21A Old Road, that is currently blighted by the scheme, however the residents have made representations to ask National Highways as whether the property can be retained as it is not on the line of the works, but would be required to construct the scheme. We consider that in more detail further later in the agenda.</p> <p>Contact has been made with the owner of the private garage but no further discussion is expected until the scheme gains development consent.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|-------------|--|
| | | <p>In relation to the utility companies these are being dealt with by National Highways as part of the Statutory Undertakers consultation and diversions process.</p> <p>Conversations will continue throughout the examination process and beyond to engage with all land owners in an attempt to enter into an agreement, no one party has to date refused to continue with discussions.</p> <p>f) There are a small number of parties that as to date have not formally responded. The National Highways team is aware of these parties and is in the process of contacting them directly as National Highways has previously engaged with them to secure access for surveys. These include the owners of Grange Farm and the owners of Roe Cross Industrial Estate although as noted National Highways is now in contact with the unit tenants.</p> <p>g) A number of reputed owner(s) of unregistered land have been identified throughout the diligent enquiry process. Unregistered parcels of land within the Order limits have been identified based on the HMLR data obtained from Land Registry. Where the unregistered land has an addressable point, i.e. a residential property, a Land Interest Questionnaire was sent to 'The Owner'. Where responses were received confirming their interest they have been included as a reputed owner.</p> <p>For the unregistered land that has not got an addressable point, unknown site notices were erected on the unregistered land or in proximity if inaccessible. These notices included a plan which shows the unknown land parcel in question and contact details so if any person(s) come across the notice who can identify the Freeholder they can make contact that information.</p> <p>The Applicant's land referencers have visited unregistered parcels where accessible to try and establish if the neighbouring title had ownership or if there were any indication of who the Freeholder could be.</p> <p>The HMLR data has been subject to multiple refreshes to date and the above is an active process. Further refreshes of the HMLR data will be carried out within the Examination to ensure any newly registered interests are captured and included in the Book of Reference at the relevant deadline (5, 7 or 9).</p> |

4. Agenda Item 4 – The Book of Reference, Statement of Reasons, Land Plans, Diligent Enquiry and Updates

| Agenda item | Agenda item | National Highways Response |
|-------------|--|---|
| Item 4 | <p>The Book of Reference, Statement of Reasons, Land Plans, Diligent Enquiry and Updates</p> <p><u>Book of Reference update</u></p> <p>The Applicant did not provide an updated Book of Reference [REP1-011] at Deadline 3.</p> <p>a) Please could the Applicant provide an updated Book of Reference at Deadlines 5, 7 and 9?</p> | <p>No update was provided at Deadline 3 as there have been no changes. This was made clear in the covering letter. The Applicant has agreed with the ExA that updates to the Book of Reference will be provided only if updates are required. The deadline submission covering letter will make it clear if there are no updates.</p> |
| | <p><u>Diligent enquiry</u></p> <p>The Applicant [REP2-021 Q15.4] set out the approach to identifying “Unknown Ownerships”. The Book of Reference [REP1-011] refers to “reputed owner(s)” for a number of residential properties for which powers are sought to acquire all interests and rights in land. These include plots 3/6, 3/13, 3/19.</p> <p>b) Please could the Applicant set out the steps have been and will be taken to firmly establish the ownership of those properties for which “reputed owner(s)” have been identified?</p> <p>The ExA may ask more questions or invite more oral submissions.</p> | <p>As previously outlined, a number of reputed owner(s) of unregistered land have been identified throughout the diligent enquiry process. Unregistered parcels of land within the Order limits have been identified based on the HMLR data obtained from Land Registry.</p> <p>Where the unregistered land has an addressable point i.e. a residential property, a Land Interest Questionnaire was sent to ‘The Owner’. Where responses were received confirming their interest they have been included as a reputed owner.</p> <p>For the unregistered land that hasn’t got an addressable point, unknown site notices were erected on the unregistered land or in proximity if inaccessible. These notices included a plan which shows the unknown land parcel in question and contact details so if any person(s) come across the notice who can identify the Freeholder they can make contact that information.</p> <p>Gateley Hamer have visited unregistered parcels where accessible to try and establish if the neighbouring title had ownership or if there were any indication of who the Freeholder could be.</p> <p>The HMLR data has been subject to multiple refreshes to date, further refreshes of the HMLR data will be carried out within the Examination to ensure any newly registered interests are captured and included in the Book of Reference at the relevant deadline (5, 7 or 9).</p> <p>In relation to plot 3/6 this is the residential premises known as Craig Dean, at 21A Old Road, Mottram, Hyde SK14 6LG. The owner column includes an unknown entry as the property is unregistered but the Land Interest Questionnaire has identified the reputed owner and the Applicant has no reason to dispute that. It was agreed that the unknown reference does cause confusion and could be removed in an update to the Book of Reference for Deadline 5.</p> <p>In relation to plot 3/13 is all interests and rights in land comprising approximately 2 square metres of land to the rear of residential premises known as 4 Tollemache Close, Mottram, Hyde SK14 6LN. The steps outlined above have been undertaken. Land Interest Questionnaires and chasers were sent to the occupiers of the adjoining properties at Tollemache Close. There was no response. Since number 4 Tollemache Close is owned by National Highways and based on the boundaries National Highways has been included as reputed owner.</p> <p>In relation to plot 3/19 All interests and rights in land comprising approximately 18 square metres of land to the rear of residential premises known as 15 Old Hall Lane, Mottram, Hyde, SK14 6LU. The land does not have a registered freehold so the unknown is there to reflect this, however, the reputed owner has been included based on adjoining landownership. The other party listed is in relation to a registered leasehold. The Applicant has agreed to remove the “unknown” from this entry in an update to the Book of Reference for Deadline 5.</p> |

5. Agenda Item 5 – How is it intended to use the land, whether reasonable alternatives have been explored and whether the rights sought are legitimate, proportionate and necessary

| Agenda item | Agenda item | National Highways Response |
|-------------|--|--|
| Item 5 | <p>How it is Intended to use the Land, Whether Reasonable Alternatives have been Explored and Whether the Rights Sought are Legitimate, Proportionate, and Necessary</p> <p><u>Flexibility</u></p> <p>The Applicant [REP2-021 Q15.8] said that it would constantly review, as the detailed design is developed, whether land and rights proposed to be acquired can be reduced and where appropriate liaise with affected parties.</p> <p>The ExA needs to be clear that the rights granted by the DCO are legitimate, proportionate, and necessary. There appears to be a realistic potential for the rights required to deliver the Proposed Development to be reduced during detailed design.</p> <p>a) Please could the Applicant comment on the need for a process to consider human rights to be secured during detailed design? If an appropriate process is not secured, how can the ExA be satisfied that the rights granted by the DCO would be legitimate, proportionate, and necessary?</p> | <p>The rights included in the DCO have been carefully assessed and are required to ensure the Scheme can be delivered. The Applicant's previous response acknowledges that in accordance with best practice, it will seek to acquire land by agreement and minimise land take through the detailed design process wherever possible.</p> <p>In terms of the ExA's assessment of whether the rights granted by the DCO are legitimate, proportionate, and necessary. The ExA needs to base this on the provisions of the DCO as applied for. As noted, the Applicant will, as the detailed design is developed, review whether land and rights proposed to be acquired can be reduced but that is not part of the ExA's assessment at this stage. The Applicant's assessment that the rights granted by the DCO are legitimate, proportionate, and necessary is based on the Land Plans and the dDCO as submitted.</p> <p>It would be extremely difficult to have a process to consider human rights when considering the land and rights acquired going forward given competing priorities. Requirement 3 requires that the scheme which comes forward must be in accordance with that preliminary design and there is a competing requirement to ensure that any changes would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement. It is hard to give human rights prominence, because the 'not materially worse' etc. is just as important and if anything should take precedence.</p> <p>However, to reflect the commitment from the Applicant to minimise land take, the REAC (REP1-037), which is to be resubmitted at Deadline 5, will be updated to include a new General Environmental Management commitment to minimise land take and habitat loss. This is already embedded mitigation, as detailed in Table 2-5 of Chapter 2 'The Scheme' of the ES (REP2-005).</p> |
| | <p><u>The potential for residents to retain ownership of their properties</u></p> <p>The Applicant [REP2-021 Q15.8] referred to the acquisition of residential properties and said that certain residents are known to have expressed a preference to continue to reside in their property. It said that the detailed design would be carefully</p> | <p>The plan requested has been provided (AS-005). The key to the plan describes the properties and why they need to be acquired. This is also set out below. There are only 3 residential properties that are shown for compulsory acquisition that are not owned by National Highways. These 3 properties are highlighted in bold below.</p> <p>Four residential properties and sheds on Four Lanes</p> <p>No. 25, 36, 38 and 40 Four Lanes are required for the temporary diversion of Roe Cross Road to enable the construction of the Roe Cross Road Bridge (Work No 32) and associated retaining walls. National Highways owns these properties.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|---|---|
| | <p>considered to establish if it is possible to enable such residents to retain ownership of their property, provided it is safe and appropriate to do so.</p> <p>The ExA would like to have a greater understanding of the potential of residents being able to retain ownership, and the issues involved.</p> <p>b) Please could the Applicant provide drawing(s) that overlay the Works and Order limits on the land plans for the plots in the vicinity of the residential plots where the Applicant is seeking rights? Please could those plans be annotated to identify where there is a potential for the rights to be reduced, identifying relevant safety and other issues?</p> | <p>No. 32 and 34 can be retained with temporary access to the rear of the properties for access to construct the retaining wall on the approach to Roe Cross Road Overbridge (Work No 32) and Noise Attenuation Fencing (Work No 66ii).</p> <p>There are also sheds on land at 40 Four Lanes which are required for the construction of the earthworks associated with the construction of the link road (Work No 5).</p> <p><u>Seven residential properties on Old Road</u></p> <p>No. 8b, 19 and 21 are located on the line of the proposed link road (Work No 5 and 6) and are owned by National Highways.</p> <p>No. 8a, 8c, 17 and 21a are required for the construction of Mottram Underpass and associated retaining walls along with diversions to Statutory Undertakers equipment. These properties with the exception of Craig Dean, 21A are owned by National Highways. Property Craig Dean, 21A Old Road is owned by Mrs Bromley. These properties may be impacted by ground movement resulting from the temporary and permanent works.</p> <p><u>Six residential properties and associated garages on Tollemache Close</u></p> <p>No. 5 and 6 are located on the line of the proposed link road (Work No 5 and 6). These properties are already owned by National Highways.</p> <p>No. 4, 7, 8 and 9 are required for the construction of the Mottram Underpass (Work No 33). These properties are already owned by National Highways. Whilst not on the line of the proposed link road they are very close to the works and may be impacted by ground movement resulting from the temporary and permanent works.</p> <p><u>Eight residential properties on Old Hall Lane</u></p> <p>No. 2a and 6 are required for the construction of the Mottram Underpass (Work No 33). The properties may be impacted by ground movement resulting from the temporary and permanent works and are owned by National Highways.</p> <p>No. 2b, 4 and 4a are located on the line of the proposed link road (Work No 5 and 6) and are owned by National Highways.</p> <p>No. 11, 13 and 15 are required for the construction of Mottram Underpass (Work No 33) and are located on the line of the proposed access track and footway/cycleway with equestrian use 11 is owned by National Highways, 13 and 15 Old Hall Lane are subject to two active blight cases, offers have been made and advanced discussion are underway for their acquisition.</p> |
| | <p>c) Please could the Applicant set out how, during the Examination, it intends to progress discussions with residents that might wish to retain ownership of their properties?</p> <p>The ExA may ask more questions or invite more oral submissions.</p> | <p>The only resident who has asked to remain in their residential property is the owner of Craig Dean, 21A Old Road, Mrs Bromley.</p> <p>An assessment has been undertaken of the potential ground movement at 21A Old Road resulting from the construction of the Mottram Underpass (Work No 33). The results from the assessment indicate a likely total building settlement in the order of 5-20mm.</p> <p>This does not include any movements due to de-watering, and the values should be taken as an indicative guide only as actual ground movements can vary significantly from those predicted due to the variability of the ground conditions and the theoretical basis of the calculations adopted.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|-------------|---|
| | | <p>An initial building damage assessment has been undertaken based on ground movement of this magnitude is the likely building damage has been assessed to be very slight to slight in accordance with damage categories 1 and 2 within Ciria C760:</p> <ol style="list-style-type: none"> 1. Very Slight – Fine cracks that can easily be treated during normal decoration. Perhaps isolated slight fracture in building. Cracks in external brickwork visible on inspection. Typical crack width less than 1mm. 2. Slight – Cracks easily filled. Redecoration probably required. Several slight fractures and some repointing may be required <p>A structural engineer needs to undertake a more detailed assessment to determine the likely impact of the predicted range of movements upon the structure, and this assessment should be supported by a condition survey of the structure itself.</p> <p>Importantly the potential ground movement does not include any movements due to de-watering, and the values can only be taken as an indicative guide only as actual ground movements can vary significantly from those predicted due to the variability of the ground conditions and the theoretical basis of the calculations adopted.</p> <p>A report will be compiled for submission at Deadline 5 which sets out the likely impacts of the construction of the proposed Mottram Underpass and the associated long term ground water drawdown effects on Craig Dean, 21A Old Road. However, it should be noted that any building damage assessment cannot be completed until the proposed structural survey of the building has been completed which will involve intrusive surveys.</p> <p>The concern is that the potential ground movement could be much greater and damage to the property more severe. For the purposes of the DCO and the ExA's assessment it should be assumed that the property will need to be acquired.</p> |

6. Agenda Item 6 – Crown Interests, Statutory Undertakers, Special Category Land, Compensation, Funding and Other Matters

| Agenda item | Agenda item | National Highways Response |
|-------------|--|--|
| | <p>Crown Interests, Statutory Undertakers, Special Category Land, Compensation, Funding and Other Matters</p> <p><u>Crown interests</u></p> <p>The Applicant [REP2-021 Q15.11] said that written confirmation has been requested from the Crown Estate via its sole legal representatives with regards to escheat. It also said that in the unlikely event that these plots were considered Crown land, it would seek the agreement of the Crown Estate that these plots could be subject to acquisition.</p> <p>a) Please could the Applicant provide an update?</p> <p>The ExA is minded that the powers sought in respect to Crown Land should not be provided unless either there is certainty that the plots should not be considered Crown Land for the purposes of the PA2008, and the Applicant suggests that this is currently not certain; or the consent of the relevant Crown authority is provided.</p> <p>b) Please could the Applicant comment?</p> | <p>There are properties within the Book of References that are subject to Escheat as set out in paragraph 7.1.2 of the Statement of Reasons (REP02-003) namely Plots 3/2k, 3/2o, 3/2p, 3/2q, 3/2s, 3/8, 3/12, 6/2f, 6/2g, 6/2i, 6/2j, 6/2k, 6/2l, 6/2m, 6/2n, 6/2o, 6/2p, 6/2q, 6/2r, 6/7. This is a unique status for property where, in this instance, property has been vested in a company and that company is brought to an end, the land automatically passes to the Crown and the Treasury Solicitor so they are able to deal with those assets.</p> <p>A letter has been received from Burges Salmon dated 17 January 2022 (see Appendix A to this document) in relation to the Project which confirms that the land which is subject to escheat does not, however, form part of The Crown Estate, on this basis it is not Crown land under the 2008 Act.</p> <p>Where property is subject to escheat to the Crown at common law, it falls by longstanding convention to be dealt with by The Crown Estate. In those circumstances, and in accordance with legal advice given on previous occasions, The Crown Estate would not propose to take any action which might be construed as an act of management, possession or ownership in relation to such property, since to do so might incur upon it liabilities with which the property is, or may become, encumbered.</p> <p>The reasoning behind this approach is that The Crown Estate does not accept that it should be, in effect, a guarantor of last resort for companies and individuals who have failed financially, leaving onerous property in their wake. To do so would not be an appropriate application of The Crown Estate's revenues, nor is it a function envisaged for The Crown Estate by Parliament.</p> <p>Properties that may be subject to escheat are not infrequently onerous in nature, and many have little or no monetary value.</p> <p>It follows that the Properties cannot be Crown land (as part of The Crown Estate) for the purposes of the 2008 Act, nor do the Crown Estate Commissioners have remit under the 2008 Act to consent to the acquisition of any interest in such land within the DCO.</p> <p>Neither Burges Salmon nor the Applicant is aware of any reason why the DCO cannot be granted over land that is subject to escheat.</p> <p>The same position was taken in relation to the A19 Testos Junction Improvement Scheme DCO where the Examining Authority, in its report and recommendation to the Secretary of State, dated 21 June 2018, concluded that the compulsory acquisition proposals did not affect any Crown land, that land shown in the book of reference as being subject to escheat cannot be the subject of any consent provided by the Crown and that the Crown does not need to provide consent under s135 of the 2008 Act (see paragraphs 7.6.54 and 7.6.55) accepted this position.</p> <p>We now have certainty and consent of the Crown Estate is not required.</p> |
| | <p><u>Open space and replacement land</u></p> <p>The Applicant [REP2-021 Q15.14] said that s132(5) of the Planning Act 2008 applies for each plot identified in paragraph 7.2.4 of the Statement of Reasons [REP2-003].</p> | <p>Section 132 (2) states that an order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, unless</p> <p>(a) the Secretary of State is satisfied that one of subsections (3) to (5) applies, and</p> <p>(b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.</p> |

| Agenda item | Agenda item | National Highways Response |
|-------------|--|---|
| | <p>d) Please could the Applicant advise if it has been recorded in accordance with s132(2)(b) of the Planning Act 2008?</p> <p>e) Please could the Applicant update the Statement of Reasons and, if necessary, the dDCO?</p> | <p>The preamble to the Order needs to be updated to provide that the Secretary of State is satisfied that one of subsections (3) to (5) to section 132 applies.</p> <p>The next draft of the Statement of Reasons and the dDCO will incorporate the required update.</p> |
| | <p>The Applicant [REP2-021 Q15.15] set out its justification for Special Parliamentary Procedure for the acquisition of six open space plots mentioned in paragraph 7.2.3 of the Statement of Reasons [REP2-003].</p> <p>f) Please could the Applicant set out the consideration given to the rights of the current owners?</p> <p>g) Please could the Applicant set out how it is secured that the land would be returned to open space? Is this certain given the requested limits of deviation?</p> | <p>Regarding the rights of the current owners in the plots are highway verge or open space adjoining the highway and are owned by National Highways and/or Tameside, as shown in Part 5 of the Book of Reference (REP1-011) and the Special Category Land Plans (APP-019).</p> <p>In terms of securing that the land returns to open space plots 2/6 (highway verge on the east side of Roe Cross Road in the ownership of Tameside MBC) will in part become the top of the Roe Cross Road Bridge verge. The remainder of plot 2/6 along with plots 3/3a (open space and woodland on north east of Roe Cross Road, in the ownership of Tameside MBC) and 3/30 (4 sq metres of open space and paved area in the junction of Old Road and Roe Cross Road again owned by Tameside MBC as highway authority and National Highways) will be retained as open space and woodland as part of the Roe Cross Road footway and verge which, notwithstanding the limits of deviation, will remain as existing as shown on the environmental masterplan Annex to the Environmental Statement (Figure 2.4, APP-074). These parcels are located above the level of the top of the Mottram underpass and to the south of the underpass.</p> <p>Plots 8/2, 8/3 and 8/4 (highway verge owned by National Highways and Tameside MBC at the Hyde Road/Market Street junction) are included to remove any third party rights that may have accrued. This land has been included in connection with detrunking works and junction improvements. The extent of the works is limited and constrained to the junction and so these plots will remain available as open space. In any event these plots would fall into the exception that they are required for the widening of existing highway.</p> |
| | <p><u>Common land</u></p> <p>Tameside Metropolitan Borough Council [REP2-056 Q15.16] said that a check of common ground needed to be carried out.</p> <p>h) Please could Tameside Metropolitan Borough Council update?</p> <p>The ExA may ask more questions or invite more oral submissions.</p> | <p>TMBC confirmed that this will be responded to in writing.</p> |

7. Agenda Item 7 – Any Other Compulsory Acquisition or Temporary Possession Matters

| Agenda item | Agenda item | National Highways Response |
|-------------|--|---|
| Item 7 | Any Other Compulsory Acquisition or Temporary Possession Matters Please could the Applicant provide a written summary of its responses for Deadline 4, on Wednesday 16 February 2022? | This document is a written summary of National Highways' responses to Compulsory Acquisition Hearing 1. |

Appendices

Appendix A. Letter from Burges Salmon

APPLICATION OF THE 2008 ACT TO LAND SUBJECT TO ESCHEAT

You have written to us in relation to a number of parcels of land (the "Properties") which are proposed to be covered by the DCO that may be subject to escheat.

If it transpires that the Properties are subject to escheat then we can confirm that no act of management has been undertaken by The Crown Estate in relation to the Properties. Accordingly, the Properties do not form part of The Crown Estate.

It follows that the Properties cannot be Crown land (as part of The Crown Estate) for the purposes of the 2008 Act, nor do the Crown Estate Commissioners have remit under the 2008 Act to consent to the acquisition of any interest in such land within the DCO.

However, although this is a matter for the Examining Authority, we are not aware of any reason why the DCO cannot be granted over land that is subject to escheat.

The same position was taken in relation to the A19 Testos Junction Improvement Scheme DCO where the Examining Authority in its report and recommendation to the Secretary of State dated 21 June 2018 concluded that the compulsory acquisition proposals did not affect any Crown land, that land shown in the book of reference as being subject to escheat cannot be the subject of any consent provided by the Crown and that the Crown does not need to provide consent under s135 of the 2008 Act. The Secretary of State's decision letter dated 12 September 2018 accepted this.

CONCLUSION

We trust you will appreciate that the events which have led to the current situation are not of The Crown Estate's making. The law relating to escheat is archaic and complex, and imposes constraints on The Crown Estate's freedom of action.

Against that background though, we hope that this letter has been helpful to explain The Crown Estate's position in relation to the Project and the DCO.

Yours faithfully



BURGES SALMON LLP

© Crown copyright (2022).

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/
write to the Information Policy Team, **The National Archives, Kew, London TW9 4DU**,
or email psi@nationalarchives.gsi.gov.uk.

Printed on paper from well-managed forests and other controlled sources.

Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ
National Highways Limited registered in England and Wales number 09346363