



# Preliminary Meeting Note

## Summary of key points discussed and advice given

**Application: A585 Windy Harbour to Skippool Improvement Scheme**

**Reference: TR010035**

**Time and date: 10:00 on Tuesday 9 April 2019**

**Venue: Wyre Civic Centre, Breck Road, Poulton-Le-Fylde, Lancashire FY6 7PU**

*This meeting note is not a full transcript of the Preliminary Meeting. It is a summary of the key points discussed and responses given. An audio recording of the event is available on the National Infrastructure Planning website.*

### Item 1: Introduction

**Gareth Symons (GS)** welcomed everyone to the Preliminary Meeting (PM) and introduced himself, stating that he has been appointed as the Examining Authority (ExA) to examine the application by Highways England for an order granting development consent for the construction of the A585 Windy Harbour to Skippool Improvement Scheme. The application comprises a new offline 3 miles dual carriageway bypass between the Windy Harbour and Skippool junctions on the A585 in Lancashire.

**GS** also introduced **Michele Gregory (MG)**, the case manager and **Ewa Sherman (ES)**, the case officer, for this application, and advised to speak to them regarding any issues outside the scope of the meeting. He also advised of housekeeping matters at the venue and asked whether there were any members of the press. No members of the press were present.

**GS** explained that all meetings and hearings associated with National Infrastructure examinations are digitally recorded. The recordings are uploaded onto the national infrastructure website documents page for this project so that any member of the public who is interested in the application and the examination can find out what has happened, whether they are able to attend a meeting or not.

**GS** made it clear that because the digital recordings are retained and published, they form a public record that can contain personal information and to which the General Data Protection Regulation (GDPR) applies. The Planning Inspectorate's practice is to retain and publish the recordings for a period of 5 years from the Secretary of State's decision on the Development Consent Order (DCO). **GS** advised that if anyone participates in the hearing process, it is important that they understand that they will be recorded and that they consent to the retention and publication of the digital recording.

**GS** stated that he will only ever ask for information to be placed on the public record that is important and relevant to a planning decision: it will only be in the rarest of circumstances that he might ask to provide personal information of the types that most people would prefer to keep private or confidential. But to avoid the need to edit the digital recordings, **GS** would ask that attendees try their best not to add information to the public record that they wish to be kept private and confidential. However, if anyone genuinely considers that there is no alternative to the disclosure of such information, then a process will be agreed to enable it to be made available without it forming part of the public record. The normal way to do this will be to ask to make general oral submissions but to include the private and confidential information needs to support it in a written document. Whilst the written document will also need to be published, it can be redacted – a process in which the personal content is removed – before publication takes place.

**GS** advised that if anyone begins to make oral submissions either today or in a subsequent hearing that appear likely to include information that would normally be kept private and confidential, he would check with that person to ensure that consent is given to the retention and publication of that material. If there is no consent then he will offer a written process.

**GS** continued to explain the purpose of the meeting, stating that the scheme has been accepted as a Nationally Significant Infrastructure Project (NSIP), and so is to be treated as development for which Development Consent is required under the Planning Act 2008. If approved there would be one development consent order covering various elements including the compulsory and temporary acquisition of land to enable the road to be built.

**GS** advised that his role was to examine the application and make a report to the Secretary of State for Transport (SoS) with recommendations. As the Examining Authority **GS** has six months to examine the proposal, three months to consider and produce his report, with the SoS having another three months to decide the application.

**GS** stated that the purpose of the Preliminary Meeting (PM) is to consider the process that will be followed in conducting the examination. He will not be looking at the substance of the proposal and discussion of the merits or disadvantages of the scheme are for the examination itself and will not be heard at this point.

**GS** stated that he had set out his initial proposals in his letter of 12 March 2019, and the PM was an opportunity for the Interested Parties to influence the process that he intends to follow. An agenda for PM was set out in Annex A of that letter.

## **Item 2: The Examination process**

**GS** briefly outlined the approach that the ExA will follow.

1. The Act: It is for the ExA to decide how to examine the application (s.87(1)). However, the Act, regulations and government guidance all provide a framework within which an ExA must operate.

2. The Government has set out policy in several national policy statements. The one specific to this case being the National Policy Statement for National Networks.

**GS** advised that it was not his role as the ExA to consider the merits of these policies as he only considers the merits of the project within the parameters of the policy

statements and make a recommendation to the SoS. The Act makes it clear that the SoS 'must decide the application in accordance with any relevant NPS' (S104(3)) subject to certain provisos. This means that the application must not breach legal Obligations which includes international obligations. The adverse impact of the proposed development must also not outweigh its benefits.

3. The process is to be inquisitorial and not adversarial therefore cross examination shall not be allowed unless this is expressly permitted. **GS'** role as the ExA is to focus on evidence and justification rather than assertion. Whilst it is appropriate at the relevant representation stage for issues of concern to be listed, all such concerns must be substantiated by clear evidence once the examination begins.

4. The process is primarily a written one. The main body of evidence informing judgements and recommendations will come from the written representations. These are made by the Interested Parties and their responses to written representations made by others, Local Impact Reports submitted by local authorities, Statements of Common Ground and answers to questions that **GS** may ask as the ExA. It is his responsibility to probe, test and assess the evidence. Representations or responses should clearly set out why the Interested Parties support or oppose the application. They should indicate those parts of the application with which there is agreement or disagreement. In case of disagreement, reasons should be given.

**GS** advised that there is scope for hearings as well:

a) Open Floor Hearings (OFHs). Any Interested Party may request an Open Floor Hearing; if a request is made this will be accommodated. All Interested Parties will have the opportunity to make oral representations about the application. **GS** confirmed that he is proposing to hold an OFH the same day in the afternoon starting at 2pm.

b) Issue Specific Hearings (ISHs). The decision on whether to hold Issue Specific Hearings is for **GS** to decide as the ExA. They will be held if **GS** decides it is necessary to ensure adequate examination of an issue or to provide an Interested Party with a fair chance to put its case. If any such meetings are held the expectation is that **GS** will ask the questions and that an agenda will be set in advance, and the questions may be broad or specific. If **GS** considers that cross examination may be necessary, the relevant parties will be notified in advance.

**GS** stated that the draft timetable includes a date reserved for an ISH into the draft development consent order, scheduled for 3 July. It is important to note that any hearing relating to the dDCO will be held on a without prejudice basis. The holding of such a hearing does not imply that **GS** has reached any judgements or conclusions about whether the dDCO should be made. Irrespective of his recommendations, it would be necessary for **GS** to provide the SoS with a DCO that is fit for purpose if the SoS determines that consent should be granted. So, even if parties are opposed to the proposal, they would not be compromising their position by engaging in the process by suggesting modifications and amendments to the dDCO.

c) A third form of hearing relates to the Compulsory Acquisition (CA) of land and rights. The Windy Harbour to Skippool dDCO provides for compulsory acquisition and the affected persons have a right to be heard at a CA hearing. **GS** stated that he has reserved a date for a CA hearing in the examination timetable, scheduled for 4 July, and a deadline for requests to be heard. If an affected person asks to be heard, then **GS** will hold a CA hearing.

5. Site inspections. As part of the examination process **GS** shall be conducting site inspections which may be both unaccompanied and accompanied. The purpose of these is to see features of the proposal within the context of the evidence put forward.

**GS** advised he has carried out unaccompanied site inspection (USI) on Monday 8 April in the afternoon, accompanied by **MG** and **ES**. A note of the USI will be published on the project website.

**GS** stated that dates have been set aside for accompanied site inspections (ASI) in his draft examination timetable. **GS** emphasised that he cannot hear evidence or listen to submissions during a site inspection; however, there would be the opportunity to point out features referred to in the evidence but not to provide further comment. **GS** asked that if anyone is proposing site inspections it would be helpful if they could identify relevant features that he should see and briefly explain why they are relevant.

**GS** also said that there is a deadline in the timetable to notify him of wish to attend an inspection otherwise there will be no opportunity to attend. **GS** advised that he has already in mind various places he considers he needs or wish to visit and asked whether it would be helpful to the parties if he was to issue that list with the Rule 8 letter. The list is only a guide and not necessarily exhaustive, so if anyone does not see on there a location that they wish **GS** to visit, they are not precluded from requesting him to visit.

**Toni Weston (TW)** representing the Applicant agreed that such a list would be very helpful.

**GS** advised of some final comments on process which is formally a statutory inquiry (Schedule 7 to the Tribunals, Courts and Enforcement Act 2007). He emphasised that it is important that it is treated with due regard to its statutory status. There is potential to award costs if a party's unreasonable behaviour causes another party to incur wasted expenditure. This is not said as a threat but as a reminder. There is guidance on the Planning Inspectorate website and this includes examples of potentially unreasonable behaviour, including issues such as not submitting evidence on time, withholding evidence or delaying submission for tactical reasons. **GS** requested that the examination is treated seriously and expeditiously as he has a duty to ensure that it is fair and open.

### **Item 3: Principal Issues**

**GS** stated he has set out at Annex B to the letter dated 12 March his initial assessment of the principal issues around which the examination is likely to focus. He advised that it was not necessarily a comprehensive or exclusive list of all relevant matters but a broad list within which specific matters are likely to be covered.

There were no comments about that list of the principal issues at this stage.

### **Items 4 and 5: Timetable**

**GS** explained that the purpose of this section of the meeting was to explain the draft timetable for the examination and to consider any representations. The draft timetable was set out in Annex C of the letter of 12 March.

**GS** stated that following the Preliminary Meeting and his consideration of any requests for modifications to the timetable, he will be issuing a final timetable as part of a letter, called the Rule 8 letter, shortly after the meeting.

**GS** reminded attendees that the 2010 Infrastructure Planning (Examination Procedure) Rules set out some statutory periods that must be allowed in giving notice of specific parts of the examination process – notably the notification of hearings. The draft timetable has adhered to these.

In response to the question regarding any comments about the proposed examination timetable **TW** stated that the Applicant is broadly content with the timetable but would request that Deadline 3 is moved from 31 May to 7 June to allow more time for responses due to the Bank Holiday.

As there were no other comments **GS** stated that there were no further procedural matters that needed to be covered.

### **Item 7: Any other matters**

**GS** stated that the Applicant asked for advice about handling potential future changes to the submitted Environmental Statement (ES) that may arise as the examination progresses. The Applicant suggested operating an 'errata and amendments' document. **GS** confirmed that he considers that to be a sensible approach; however, he requested it to be called an 'Changes and Corrections' document which he considered would better reflect amendments arising in response to consultation and objection, rather than what could be seen as simply correcting errors. **GS** also added that, while hopefully this would not be the case, but if chapters of the ES require significant change it may be best to substitute a whole new revised chapter, or else the 'Changes and Corrections' document may become unwieldy and difficult to use. Whether it ends up being just a changes and corrections document or a combination of that and replacement chapters, it will be important to be clear about which version of the ES is being referred to in the report and which documents are being submitted to the SoS for certification.

**TW** confirmed that the Applicant was content with this approach.

**GS** advised that he was aware that several persons have come forward who have requested S102A status because they have an interest in the land affected by the scheme. These were brought to the attention of the Applicant who has confirmed that those interests will be included in the Book of Reference. **GS** asked **MG** to write to those persons confirming that the ExA consider they have become an Interested Party.

### **Close**

**GS** advised that he would reflect on what has been said during the PM and plans to issue the Rule 8 letter during the following week. **GS** stated that he hopes to run a thorough, constructive, good-natured examination and looks forward to co-operation and involvement from the Interested Parties.

**GS** thanked attendees for their attendance, comments and suggestions and closed the Preliminary Meeting at 10:30.