

Great Yarmouth Third River Crossing Order 202[*]

Document NCC/GY3RC/EX/058: Applicant's Response to Examination submission (Planning Inspectorate Reference AS-011) by Mark Steward

Planning Act 2008

Infrastructure Planning

The Infrastructure Planning (Examination Procedure) Rules 2010

Planning Inspectorate Reference Number: TR010043

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Document Reference: NCC/GY3RC/EX/058

Date: 14 January 2020

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Foreword

This document is part of the Examination submissions relating to an application ('the Application') submitted by Norfolk County Council ('the Council' / 'the Applicant') to the Secretary of State for a Development Consent Order ('DCO') under the Planning Act 2008.

If made by the Secretary of State, the DCO would grant development consent for the construction, operation and maintenance of a new bascule bridge highway crossing of the River Yare in Great Yarmouth, and which is referred to in the Application as the Great Yarmouth Third River Crossing (or 'the Scheme')

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Glossary of Abbreviations and Defined Terms

The Applicant	Norfolk County Council (in its capacity as Highway Authority and promoter of the Scheme)
DCO	Development Consent Order
The Planning Act	The Planning Act 2008
Scheme	The Great Yarmouth Third River Crossing project for which the Applicant seeks development consent

1 Introduction

1.1 Introduction to the Document

- 1.1.1 On 20 December 2019 the Examining Authority published an additional submission from Mark Steward (Planning Inspectorate Reference AS-011).
- 1.1.2 Mark Steward is one of the owners of 155 Southtown Road, Great Yarmouth, a property identified for acquisition for the Scheme as plot number 1-56 both within the latest Updated Book of Reference (Document reference NCC/GY3RC/EX/017, Planning Inspectorate Reference REP2-003) and on Sheet 1 of the Land Plans (Document reference NCC/GY3RC/EX/004, Planning Inspectorate Reference AS-007).
- 1.1.3 This document provides the Applicant's response to the issues raised in Mark Steward's submission.

1.2 Mark Steward Submission

- 1.2.1 Mark Steward attended and spoke at the first part of the Compulsory Acquisition Hearing held on Wednesday 20th November 2019 (Planning Inspectorate Reference EV-011).
- 1.2.2 Mark Steward confirmed that he did not object to the compulsory purchase of his property in principle but considered the negotiations over the terms of the acquisition had not been handled well by the Applicant's property advisors and that the compensation figure offered was "derisory".
- 1.2.3 The submission made by Mark Steward (Planning Inspectorate Reference AS-011) confirms these assertions and indicates that he does not consider that Government guidelines on Compulsory Purchase have been adhered to by the Applicant.

2 Record of Engagement

2.1.1 A summary of the key meetings and correspondence that have taken place between the Applicant and Mark Steward in relation to the Scheme is given in Table 2.1.

Table 2.1: Record of Engagement

Date	Method	Direction	Type	Detail
21/02/18	Letter	Outgoing	Opening Contact Letter	Letter from NPS to Mark Steward advising that NPS instructed, scheme identifies 155 Southtown Road for acquisition and willing to commence negotiations.
23/04/2018	Questionnaire	Outgoing	Land Interest Questionnaire (LIQ)	Issued by the Applicant in execution of its diligent inquiry.
31/05/18	Letter	Outgoing	Follow Up	Letter from NPS to Mark Steward formally confirming instructed to open negotiations for acquisition of property.
12/09/2018	Letter	Outgoing	Section 42 Notice	Served under the Planning Act 2008, in the context of which Mark Steward is a section 42(1)(d) consultee.
02/10/18	Letter	Outgoing	Follow Up	Letter from NPS to Mark Steward seeking to arrange property inspection.
07/10/18	Email	Incoming	Follow Up	Email from Mark Steward to NPS regarding possible inspection dates

08/10/18	Email	Outgoing	Follow Up	Email from NPS to Mark Steward regarding possible inspection dates
25/10/18	Letter	Outgoing	Section 42 Notice for additional consultation	Served under the Planning Act 2008, in the context of which Mark Steward is a section 42(1)(d) consultee.
18/12/2018	Phone	Outgoing	Follow Up	WSP spoke to Mark Steward to request information regarding the occupier of 155 Southtown Road. He did not have the information to hand at the time and advised to send the request via email.
18/12/2018	Email	Outgoing	Follow Up	Email from WSP to Mark Steward requesting information regarding the occupier of 155 Southtown Road.
08/02/2019	Email	Outgoing	Follow Up	Follow up email from WSP to Mark Steward as no response received to email request of 18/12/2018.
13/02/19	Letter	Outgoing	Section 42 Notice for additional consultation	Served under the Planning Act 2008, in the context of which Mark Steward is a section 42(1)(d) consultee.
25/02/2019	Email	Incoming	Acknowledgement	Email from Mark Steward to WSP to advise that the email

				had ended up in his spam folder.
28/02/2019	Email	Incoming	Query	Email from Mark Steward to NCC to query the 'Minor Changes' letter and plan he received, dated 11/02/2019.
02/03/2019	Email	Outgoing	Response	Email from NCC to Mark Steward in response to email dated 28/02/2019. Clarification of Order limits and offer of site meeting.
03/03/2019	Email	Incoming	Response	Email from Mark Steward to NCC confirming preference for site visit.
03/03/19	Email	Incoming	Follow Up	Email from Mark Steward to NPS regarding inspection date for 155 Southtown Road
04/03/19	Email	Outgoing	Follow Up	Email from NPS to Mark Steward confirming property inspection date.
08/03/2019	Site Visit	N/A	N/A	NCC site visit with Mark Steward
09/03/2019	Email	Outgoing	Clarification	Email from NCC to Mark Steward with plan showing extent of Order limits on Southgates Road, confirming no impact on garage.
09/03/2019	Questionnaire	Outgoing	Confirmation Questionnaire	Request for confirmation of land interests

11/03/19	Meeting	N/A	Property Inspection	Inspection of 155 Southtown Road by NPS for valuation purposes.
01/05/19	Email	Outgoing	Compensation Offer	Email from NPS to Mark Steward proposing purchase price offer for property.
13/05/19	Email	Incoming	Compensation Offer	Email from O A Chapman & Son to NPS advising instructed by Mark Steward and seeking justification evidence of offer made.
24/05/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son providing comparable evidence.
24/05/19	Email	Incoming	Compensation Offer	Email from O A Chapman & Son proposing purchase price.
28/05/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son confirming prepared to accept their figure together with potential reinvestment costs and fees.
16/06/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son seeking their clients agreement to the revised offer.
17/06/19	Email	Incoming	Compensation Offer	Email from O A Chapman & Son to NPS advising Mark Steward considers

				worth more and O A Chapman & Son will review further.
17/06/2019	Letter	Outgoing	Section 56 Notice	Served under the Planning Act 2008 to inform Mark Steward of the acceptance of the application for examination.
18/06/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son seeking information on what figure Mark Steward is now seeking.
26/06/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son to NPS chasing for proposed figure.
04/07/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son chasing for proposed figure.
09/07/19	Email	Incoming	Compensation Offer	Email from O A Chapman & Son to NPS identifying the figure Mark Steward seeking.
25/07/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son requesting evidence in support of suggested figure.
15/09/19	Email	Incoming	Compensation Offer	Email from O A Chapman & Son to NPS providing price guide obtained from advertised and historical sales data.
16/09/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son increasing Applicant purchase price offer

				following review of provided information.
26/09/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son seeking response to improved offer.
09/10/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son seeking response to improved offer.
09/10/19	Email	Incoming	Compensation Offer	Email from O A Chapman & Son to NPS advising Mark Steward to seek further valuations from other estate agents.
20/11/19	Meeting	N/A	N/A	Discussion between NPS and Mark Steward following Compulsory Acquisition Hearing agreeing to review purchase price proposals.
02/12/19	Email	Outgoing	Compensation Offer	Email from NPS to Mark Steward seeking date for meeting to discuss compensation issues.
17/12/19	Email	Outgoing	Compensation Offer	Email from NPS to O A Chapman & Son confirming that reviewing purchase price proposals.
13/01/20	Email	Outgoing	Compensation Offer	Email from NPS to Mark Steward confirming meeting date of 14 January 2020.

3 Applicant's Response

3.1 Summary of Negotiations

- 3.1.1 The Applicant's property advisor, NPS Property Consultants Ltd, first contacted Mark Steward
- 3.1.2 about the potential acquisition of his property for the purposes of the Scheme in February 2018. Some additional correspondence occurred between the parties and an inspection of the property was undertaken in March 2019.
- 3.1.3 In May 2019 NPS Property Consultants Ltd was contacted by Mr Dermot Chapman of OA Chapman & Son, chartered surveyors, advising that they had been instructed to represent Mark Steward in negotiations with the Applicant.
- 3.1.4 A figure for the property was provisionally agreed with Mr Chapman in May 2019, but was subsequently rejected by Mark Steward, who considered the property to be worth more.
- 3.1.5 In September 2019 an increased offer was made by NPS Property Consultants Ltd on behalf of the Applicant.
- 3.1.6 Despite requests for comparable evidence supporting Mark Steward's assertion that the property was worth more, to date, insufficient information has been provided by Mark Steward or his agent to justify a higher figure.
- 3.1.7 At the Compulsory Acquisition Hearing, following Mark Steward's comments, the Applicant agreed to review the case. A different Chartered Surveyor at NPS Property Consultants Ltd spoke to Mark Steward following the hearing and is in dialogue with both Mark Steward and his agent, Mr Chapman, to continue negotiations. A meeting is scheduled for 14 January 2020 between the parties.

3.2 Compliance with Government Guidance

- 3.2.1 Government guidance on compulsory purchase and compensation for affected landowners is contained within a series of five booklets published by the then Ministry of Housing, Communities & Local Government in October 2004.

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- 3.2.2 In this case, the relevant booklets are Booklet 1 – Compulsory Purchase Procedure ("Booklet 1")¹ and Booklet 4 – Compensation to Residential Owners and Occupiers ("Booklet 4")².
- 3.2.3 Although written before the introduction of the Planning Act 2008 and the Development Consent Order process, Booklet 1 sets out the importance of a landowner keeping "a comprehensive record of all communications with the acquiring authority" (para. 3.3 of Booklet 1), once they become aware that their land may be affected by compulsory acquisition.
- 3.2.4 As detailed in Table 2.1 the Applicant has served all required procedural notices on Mark Steward as a section 42(1)(d) party under the Planning Act 2008. The ongoing dialogue with Mark Steward and his attendance at the Compulsory Acquisition Hearing demonstrate that he has been kept informed and is aware of the progress of the Scheme.
- 3.2.5 Booklet 4 covers compensation matters relevant to residential property owners and occupiers.
- 3.2.6 The compensation payable is based on the principle of equivalence, meaning that the landowner should be no worse off, or indeed no better off, in financial terms after the acquisition as they were before (para. 2.1 of Booklet 4).
- 3.2.7 Given that the whole of the property is to be acquired the compensation would be what the owner would expect to realise if their property were sold in the open market, ignoring the fact that the acquisition is under the threat of compulsory acquisition (para. 2.2 and 2.7-2.18 of Booklet 4).
- 3.2.8 Based on its assessment of available comparable evidence NPS Property Consultants Ltd consider that the latest offer made by the Applicant represents the market value of the property.
- 3.2.9 In addition, as the property is held as a residential investment by Mark Steward and leased to tenants, Mark Steward would not be entitled to a disturbance payment but could seek to recover his costs of reinvestment in a replacement property, subject to meeting certain criteria. This entitlement (para. 2.51 of Booklet 4) was first mentioned in a letter to Mark Steward dated 31 May 2018 and has been reiterated to Mark Steward most recently in an email to his agent on 28 May 2019.

¹ <https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure>

² <https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-4-compensation-to-residential-owners-and-occupiers>

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- 3.2.10** In the same email to his agent dated 28 May 2019 Mark Steward was also reminded that his reasonably incurred surveyors' and legal fees will be met by the Applicant, in its capacity as the acquiring authority (para. 2.54 of Booklet 4). This matter had also been first raised in the letter to Mark Steward dated 31 May 2018.
- 3.2.11** As development consent for the Scheme has not yet been granted and no Notice to Treat or notice of a General Vesting Declaration has been served, the Applicant has, in accordance with Government guidance on compulsory acquisition³, been seeking to acquire Mark Steward's property by agreement and negotiations are ongoing. As a result, the valuation date for the assessment of compensation would be the date that values are agreed between the parties (para. 2.3 of Booklet 4).

³ **Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land**, published by the Department for Communities and Local Government, September 2013 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf); and **Guidance on Compulsory Purchase Process and the Crichel Down Rules**, first published by the Department for Communities and Local Government in October 2015 and last updated in July 2019 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817392/CPO_guidance_-_with_2019_update.pdf).

4 Conclusion

- 4.1.1 The Applicant and its property advisor consider that the Applicant has dealt with Mark Steward appropriately and has complied with Government guidance⁴ in seeking to acquire this property by agreement, on the basis of a valuation which accords with the principle of equivalence, and in keeping Mark Steward informed of the progress of the Scheme and of the basis on which compensation is payable to him as an investment owner.
- 4.1.2 In addition, the Applicant has conducted matters in accordance with Government guidance⁵ by seeking powers of compulsory acquisition in the draft Development Consent Order on a contingent basis, to ensure the deliverability of the Scheme in the event that, ultimately, acquisition by agreement is unachievable within a reasonable timescale.
- 4.1.3 As acknowledged by Mark Steward himself, the only outstanding issue between the parties is to agree the actual compensation figure. However, the assessment of compensation is not a matter for the Examination.

⁴ Ibid note 3 above

⁵ Ibid note 3 above