

STRICTLY PRIVATE AND CONFIDENTIAL

National Infrastructure
Planning
Temple Quay House
2 The Square
BRISTOL
BS1 6PN

Waterfront House
Waterfront Plaza
35 Station Street
Nottingham
NG2 3DQ
DX 10104, Nottingham 1

T 03700 865000
F 03700 865001

██████████@shoosmiths.co.uk
T 03700 865039

Delivered: By E-mail

Your Ref 20033140
Our Ref M-01029486
Date 3 January 2023

Dear Sir/Madam

**PARKER STRATEGIC LAND – LAND NORTHEAST OF RIVENHALL END
A12 CHELMSFORD TO A120 WIDENING SCHEME DCO**

1. This submission is made on behalf of Parker Strategic Land Limited (“Parker”) in response to the Rule 6 letter dated 12 December 2022 received from the Planning Inspectorate.
2. We submitted a robust objection to the proposed A12 Chelmsford to A120 widening scheme (the “Scheme”) being promoted by way of an application for a Development Consent Order (the “Order”) on 4 November 2022. A copy of that objection is appended to this letter.
3. We have considered the draft Examination Timetable and Other Procedural Decisions annexed to the Rule 6 letter and have the following comments:
 - a. We have serious concerns about the permanent acquisition of land for use as borrow pits for the reasons set out in the appended objection. Those concerns are numerous and cut across many of the other key issues in the DCO examination (e.g. compulsory acquisition, land use, human health, material assets and waste). We therefore request that the Examination Timetable be amended to allow for an Issue Specific Hearing on the matter of the borrow pits so that our client’s concerns can be properly discussed and considered.
 - b. The differences between our client and the Applicants’ positions are significant. Our client has also had no response from the Applicant to our objection. Therefore, we request that the Applicant be required to prepare a Statement of Common Ground with Parker and engage with us on our objections. This may help address some of our

concerns and will no doubt be of assistance to the Planning Inspectorate in terms of focusing the issues in dispute.

4. We copy in National Highways ("NH") to this letter and invite them to engage with us on the proposals for Parker's site, which comprises Plots 11/8d and 12/4a as shown on the Land Plans accompanying the draft Order.
5. In particular, we note in the application documents that NH is open to discussing ways in which to accommodate the wishes of affected landowners in the context of the proposed borrow pits. Therefore, NH's early engagement on this issue would be appreciated.
6. Otherwise, our client will continue to maintain a robust objection to the Order.
7. Please provide all responses to Will Thomas of this firm (contact details above).

Yours faithfully



Will Thomas
Principal Associate
SHOOSMITHS LLP

Enc

cc. National Highways

PARKER STRATEGIC LAND – LAND NORTHEAST OF RIVENHALL END OBJECTION TO A12 CHELMSFORD TO A120 WIDENING SCHEME DCO

1 INTRODUCTION

- 1.1 This objection is made on behalf of Parker Strategic Land Limited (“Parker”). It relates to the proposed A12 Chelmsford to A120 widening scheme (the “Scheme”) being promoted by National Highways (“NH”) by way of an application for a Development Consent Order (the “Order”).
- 1.2 Parker is the promoter of land to the northwest of the Scheme for 600 houses. That development is currently at application stage under reference 21/03579/OUT and is expected to be granted permission in the near future.
- 1.3 Parker is also the promoter of a site which is located to the northeast of Rivenhall End. The land is currently bound by the A12 to the southeast and the Great Eastern Rail Line to the northwest and is shown edged red on the plan at Appendix 1 (the “Site”). The Site comprises Plots 11/8d and 12/4a as shown on the Land Plans accompanying the draft Order. Parker has an interest in the Site and the site mentioned at paragraph 1.2 pursuant to a promotion agreement with the landowners.
- 1.4 Table A.1 to the Statement of Reasons notes that the Site is to be permanently acquired for use as a borrow pit, with some other works (namely balancing ponds, an access road and ecology mitigation) on the fringes.
- 1.5 Whilst Parker does not object to the overall principle of the Scheme, it strongly objects to the permanent acquisition of the Site as part of the Scheme. For the reasons set out below, Parker does not consider there to be a compelling case in the public interest for the acquisition.

2 THE SITE

- 2.1 The Site is currently productive arable farmland and can be accessed from the A12 via Rivenhall End. Due to the Site’s beneficial location, it is considered highly suitable for substantial high-quality employment development serving both local and strategic markets.
- 2.2 The Site also forms part of a potential comprehensive scheme at Kelvedon delivering 5,000 dwellings and other uses. Parker promoted that scheme in the recent Braintree Section 1 Local Plan (“S1LP”) examination where it was considered comparable with other potential urban extensions in the area.
- 2.3 Whilst the Site is not currently allocated for employment use in the development plan, there is a recognised need for employment sites and Policy SP3 (Spatial Strategy for North Essex) of the adopted S1LP provides in principle support for edge of settlement development.

Furthermore, the Site is free from environmental constraints and is within the A12 corridor, where future development is to be focused according to the Braintree Section 2 Local Plan.

- 2.4 The Site has strong development potential.
- 2.5 The promotion agreement entered into with the landowner is evidence of that potential. It is therefore critical that allowance is made for the redevelopment of the Site alongside the Scheme. This accords with the guidance provided in the National Policy Statement for National Networks 2014, para 4.3:

“In considering any proposed developments, and in particular, when weighing adverse impacts against its benefits, the examining authority and Secretary of State should take into account:

- *its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvements, and any long term or wider benefits”*

3 OBJECTIONS

- 3.1 In summary, Parker OBJECTS to the Order on the following grounds:
- 3.1.1 The absence of a compelling case in the public interest and failure to comply with the ECHR;
- 3.1.2 The Site being acquired is not needed because there is an alternative means of bringing about the objective of the Order;
- 3.1.3 Lack of consideration of alternatives;
- 3.1.4 The impact of the Scheme proposals on landscape and human health is unacceptable;
- 3.1.5 There have been inadequate attempts to acquire the Site by agreement.
- 3.2 These grounds are discussed in more detail below, but Parker reserves the right to expand on these grounds in its detailed representations during the examination of the Order.

4 ABSENCE OF A COMPELLING CASE IN THE PUBLIC INTEREST AND FAILURE TO COMPLY WITH THE ECHR

- 4.1 Section 122 of the Planning Act 2008 (the “Act”) makes it clear that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied there is a

compelling case in the public interest. The purposes for which the order is made must also justify interference with the human rights of those with an interest in the land affected.

4.2 NH's Statement of Reasons does not disclose a compelling case in the public interest for the exercise of compulsory purchase powers in respect of the Site. In fact, no detailed justification for the inclusion of the borrow pits is set out in either the Statement of Reasons or 'Case for the Scheme' document.

4.3 The only relevant detail is set out in the Borrow Pits Report ("BPR"). However, the case for the inclusion of borrow pits is weak. In particular:

4.3.1 The BPR states that land must be acquired for the borrow pits because "the availability of sufficient quantities of economically viable [in-fill] materials of suitable specification cannot be guaranteed from alternative sources" (BPR, paragraph 2.4.11). It is also suggested that using on-site borrow pits would reduce the environmental impacts of having to import fill material from off-site. However, there is no analysis of the availability of material from off-site sources or the economic/environmental viability of using that material verses material from borrow pits.

4.3.2 NH have, in any event, already budgeted for a large amount of inert off-site fill material to be imported during construction. BPR paragraph 1.1.1 states that there is a deficit of overall earthworks material in the order of 600,000m³, planned to be met by using the borrow pits. However, at paragraph 2.4.9 it notes that an "additional 950,000m³ of fill material may be required to backfill Colemans Quarry in the event that the quarry operators cannot perform this task in advance of construction works. In this event, the intention would be to import 650,000m³ of inert material from offsite". Therefore, there is already a contingency for a huge amount of inert material being imported from off-site that would more than cover the supposed 600,000m³ deficit to be met by the borrow pits should Colemans Quarry not need backfilling. This completely undermines NH's argument that importing large volumes of off-site fill material is neither possible nor economically viable.

4.3.3 Even if Parker were to accept that some type of borrow pit was required (which it does not), NH recognise that "there is limited information available at this stage regarding the precise material requirements and waste quantities" associated with constructing the Scheme (ES Chapter 11 Material Assets and Waste, paragraph 11.5.9). Therefore, NH cannot properly assess the likely fill deficit that needs to be met and, consequently, cannot properly calculate how much land is needed for borrow pits.

4.3.4 Finally, there is no planning policy support for use of the Site as a borrow pit. It is not allocated for mineral extraction within the Essex Minerals Local Plan (2014) and there is no overriding justification and/or overriding benefit for the proposed extraction in accordance with Policy S6.

4.4 NH's application documents indicate that the inclusion of the borrow pit is simply a speculative, cost saving exercise, dressed up as environmental mitigation. This does not amount to a compelling case for the permanent acquisition and sterilisation of the Site, which is good quality farmland with significant development potential.

4.5 The justification for depriving the landowner of their property is also inadequate in the context of NH's obligations under the European Convention on Human Rights. For the above reasons, the acquisition of the Site is neither proportionate nor in the public interest.

5 SITE NOT NEEDED DUE TO ALTERNATIVE MEANS OF BRINGING ABOUT OBJECTIVE OF THE ORDER

5.1 The Site is not needed as there are alternative sources of inert fill material to meet any deficit. In particular:

5.1.1 The Waste Local Plan for Essex (2017) notes that there is a significant amount of inert disposal in the region (1.95mtpa) and identifies a shortfall in landfill capacity. Rather than obtain fill material from a new borrow pit on the Site, it would be much more sustainable to divert existing inert material to the Scheme. Indeed, NH already recognises the availability of other sources of material and is prepared to find an additional 650,000m³ from off-site if it is needed to backfill Colemans Quarry.

5.1.2 NH's evidence also notes that "constructing the proposed scheme would result in large quantities of surplus materials and waste, leading to potential impacts on the available landfill void capacity" (paragraph 11.1.4 of ES Chapter 11 Material Assets and Waste.) This indicates that on-site surplus materials and waste can also be used in greater quantities as inert fill material, rather than taking it from borrow pits.

6 LACK OF CONSIDERATION OF ALTERNATIVES

6.1 It is a requirement of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("IP EIA Regulations") that the applicant's environmental statement must (amongst other matters):

- (i) describe “the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects”; and
 - (ii) provide "a description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment".
- 6.2 The assessment should take account of the impact and effect of the Scheme on a number of factors, including the following:
- 6.2.1 Community and private assets, including private property;
 - 6.2.2 Development land including potential strategic development sites;
 - 6.2.3 The local and wider economy.
- 6.3 In order to undertake a robust and legally compliant EIA NH must consider reasonable detailed alternatives in terms of the manner of delivery of the Scheme so as to avoid any unnecessary adverse effects on landowners, potential development sites and the wider economy. This has not been carried out properly as there has been no consideration of alternatives to the use of borrow pits as part of the Scheme. The ES provided as part of the application is therefore flawed.
- 6.4 More broadly, the alternative to using the Site as a borrow pit is also an obviously material consideration in the DCO application (as per the principles established in *Trusthouse Forte v Secretary of State for the Environment* (1987) 53 P & CR 293 at 299-300). Therefore, it would be irrational for NH to not explore the alternative in more detail and for that alternative to not be considered by the Secretary of State in this matter.

7 UNACCEPTABLE IMPACT ON HUMAN HEALTH

- 7.1 There would be significant and unacceptable impacts on human health during the construction and operational phases of the Scheme due to the inclusion of the borrow pit on the Site.
- 7.2 In particular, the excavation of the borrow pit will lead to significant adverse impacts on mental wellbeing and sleep disturbance to local residents due to the additional construction noise and vibration that will be created (ES, Chapter 12).

- 7.3 Considering the weak justification for the borrow pit (as set out in section 4 above), such impacts on human health are completely unacceptable.

8 INADEQUATE ATTEMPTS TO ACQUIRE SITE BY AGREEMENT

- 8.1 The Department for Levelling Up, Housing & Communities' Guidance on Compulsory Purchase Process and The Criche Down Rules (July 2019) (the "Guidance") states that acquiring authorities must demonstrate that they have taken reasonable steps to acquire all the land and rights in the Order by agreement. Compulsory purchase is intended as a last resort.
- 8.2 NH has provided little information about the compulsory purchase process and made minimal effort to acquire the Site by agreement. The landowner has received just one letter dated 23.03.22 inviting them to complete and return a form expressing their desire to enter into negotiations.
- 8.3 None of the steps set out in paragraph 19 of the Guidance have been complied with. NH's approach has been complete inadequate and has resulted in uncertainty and anxiety for landowner.

9 CONCLUSION

- 9.1 In summary:
- 9.1.1 There is ***no compelling case*** for the acquisition and sterilisation of the Site.
- 9.1.2 There are ***reasonable alternatives*** to the use of borrow pits and NH has failed to adequately explore those alternatives.
- 9.1.3 The application for the Order is ***flawed*** and the approach taken by NH to date (in terms of the scheme design and engagement with interested parties) is completely ***inadequate***.
- 9.2 Parker therefore robustly objects to the Scheme as currently proposed and reserves the right to expand on these grounds in its detailed representations during the examination of the Order.

APPENDIX 1

