A12 CHELMSFORD TO A120 WIDENING SCHEME DEVELOPMENT CONSENT ORDER PARKER STRATEGIC LAND AND HENRY SIGGERS - WRITTEN REPRESENTATIONS LAND NORTHEAST OF RIVENHALL END

1 INTRODUCTION

1.1 This representation is made on behalf of Henry Siggers ("Mr Siggers") and 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 Mr Siggers is the owner of Plots 11/8d and 12/4a as shown on the Land Plans accompanying the draft DCO (the "Site"). Parker has a promotion agreement with Mr Siggers and is currently promoting the Site for employment led development.

1.3 Parker is also 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.

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 Mr Siggers and Parker object to the permanent acquisition of the Site as part of the Scheme. For the reasons set out below, Mr Siggers and Parker do not consider there to be a compelling case in the public interest for the acquisition.

2 OBJECTIONS

2.1 In summary, Mr Siggers and Parker object to the proposed Order on the following grounds:

2.1.1 The absence of a compelling case in the public interest and failure to comply with the European Convention on Human Rights ("ECHR");

2.1.2 The Site being acquired is not needed because there is an alternative means of bringing about the objective of the Order;

2.1.3 Lack of consideration of alternatives; and

2.1.4 Inadequate attempts to acquire the Site by agreement.

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

3.1 Section 122 of the Planning Act 2008 (the "Act") makes it clear that an 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 development consent order is made must also justify interference with the human rights of those with an interest in the land affected.

3.2 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.

3.3 The Statement of Reasons simply states that "borrow pits will be used to extract materials from the order land for the construction of the proposed scheme". No explanation is given for why the relevant materials must be taken from the Site and cannot be sourced from other locations.

3.4 The only explanation is set out in the Borrow Pits Report ("BPR"). However, the case for the inclusion of the borrow pit on the Site is inadequately justified within it. In particular:

3.4.1 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. The BPR simply asserts, with no evidence, that it 'would be unlikely to be available from local sources'. There is no evidence of the availability of local sources or what is even defined as 'local sources'. Indeed, there is no catchment area that has been considered for this or any analysis that supports this conclusion.

3.4.2 The justification for materials to be sourced from the Site is not evidenced in any event. It is simply stated that this would result in reduced HGV movements, reduced fuel use and potential road traffic incidents. Thus, the sole justification for not going further afield to source materials is that it would involve further travel. That provides no proper justification for seizing land locally and having such a significant interference with Mr Sigger's interest in the Site. Such an approach would be irrational, in the legal sense of the word.

3.4.3 The assessment as to which borrow pits were preferred within Table 5.1 of the BPR is lacking in detail.

3.4.4 NH have already budgeted for a large amount of inert off-site fill material to be imported during construction. Paragraph 1.1.1 of the BPR 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, paragraph 2.4.9 of the BPR 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 if Colemans Quarry does not need backfilling. This completely undermines NH's argument that importing large volumes of off-site fill material is neither possible nor economically viable.

3.4.5 NH has provided a statement which asserts that the Scheme will be adequately funded through the Road Investment Strategy ("RIS"). This allows for a significant range in capital expenditure and for increases in cost as the project progresses. There is no suggestion that the Scheme's funding is in any way dependent on the use of the Site as a borrow pit. This further undermines the argument that sourcing fill-material from off-site, or from other borrow pits within the Order Land, is not economically viable.

3.4.6 Even if Mr Siggers and Parker were to accept that some type of borrow pit was required (which they do 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.

3.4.7 The restored borrow pits are not required for ecological mitigation. ES Chapter 9, Biodiversity, paragraph 9.13.1 excludes any habitat creation from the restored borrow pits when calculating the overall biodiversity net gain from ecological mitigation within the Scheme. ES Chapter 9 then goes on to conclude that the Scheme complies with the National Policy Statement for National Networks policies for biodiversity on the basis of, inter alia, those calculations.

3.4.8 Finally, there is no planning policy support for using 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.

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

3.6 The justification for depriving Mr Siggers of his property is also inadequate in the context of NH's obligations under the ECHR. For the above reasons, the acquisition of the Site is neither proportionate nor in the public interest.

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

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

4.1.1 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 more appropriate 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 sources if it is needed to backfill Colemans Quarry.

4.1.2 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 could also be used in greater quantities as inert fill material, rather than taking it from borrow pits.

4.2 There are also several other borrow pits identified within the Order Land that could be utilised more effectively to remove the need to acquire the Site. For example, in the BPR, borrow pits 'E' and 'F' are only stated to provide 100,000m3 of fill material with a worst case borrow pit depth of approximately 4m. However, borrow pit 'I' on the Site is anticipated to provide 400,000m3 of fill material with a worst case borrow pit depth of 17m. There is no apparent

reason why borrow pits ‘E’ and ‘F’ could not be excavated to a greater depth and provide much more fill material. This would remove the need to acquire the Site for borrow pit ‘I’.

4.3 Furthermore, the BPR notes that, in the event that Colemans Farm Quarry needs to be backfilled, an additional 300,000m3 of fill material could be taken from borrow pit ‘J’. This would cover most of the fill material which would be expected to come from borrow pit ‘I’ and would also remove the need to acquire the Site.

5 LACK OF CONSIDERATION OF ALTERNATIVES

5.1 It is a requirement of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("IP EIA Regulations") that the NH'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".

5.2 The assessment should consider the impact and effect of the Scheme on a number of factors, including:

5.2.1 Community and private assets, including private property;

5.2.2 Development land including potential strategic development sites;

5.2.3 The local and wider economy.

5.3 In order to undertake a robust and legally compliant Environmental Impact Assessment, NH must consider reasonable detailed alternatives in terms of the manner of delivery of the Scheme 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.

5.4 Whilst Chapter 3 of the ES refers to alternatives, the inclusion of the borrow pit on the Site is always an 'assumption'. There is no consideration or analysis of the Scheme both with and without the borrow pit on the Site. The ES provided as part of the application is therefore flawed.

5.5 More broadly, the alternative to using the Site as a borrow pit is also an obviously material consideration in the DCO examination (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.

6 INADEQUATE ATTEMPTS TO ACQUIRE THE SITE BY AGREEMENT

6.1 The Department for Levelling Up, Housing & Communities' Guidance on Compulsory Purchase Process and The Crichel Down Rules (July 2019) (the "Guidance") states that acquiring authorities must demonstrate that they have taken reasonable steps to acquire all required land and rights in the Order by agreement. Compulsory purchase is intended as a last resort.

6.2 NH has provided little information about the compulsory purchase process and made minimal effort to acquire the Site by agreement. Mr Siggers has received just one letter dated 23.03.22 inviting them to complete and return a form expressing their desire to enter into negotiations.

6.3 We have also recently been approached by NH and invited to a meeting to discuss our clients' concerns regarding the Scheme. We are hoping to arrange a meeting soon. However, overall, NH's approach has been inadequate.

7 CONCLUSION

7.1 In summary:

7.1.1 There is ***no compelling case*** for the acquisition and sterilisation of the Site.

7.1.2 There are ***reasonable alternatives*** to the use of borrow pits and NH has failed to adequately explore those alternatives.

7.1.3 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 ***inadequate***.

7.2 Mr Siggers and Parker therefore object to the Scheme as currently proposed and reserve the right to expand on these grounds in oral representations during the examination of the draft Order.

APPENDIX 1