



Pinsent Masons

**A12 CHELMSFORD TO A120 WIDENING SCHEME – TR010060
POST-HEARINGS SUBMISSION – ROYAL LONDON UK REAL ESTATE FUND AND
EDMUNDSON ELECTRICAL LIMITED
9 MARCH 2023**

1. INTRODUCTION

- 1.1. This post-hearing submission is made by Pinsent Masons LLP on behalf of its clients Royal London UK Real Estate Fund (**Royal London**) and Edmundson Electrical Limited (**EEL**). This submission is made in order to summarise the oral submissions provided at the following recent hearings in relation to the A12 to A120 Widening Scheme (**the Scheme**), promoted by National Highways (**the Applicant**):
- a. Issue Specific Hearing 1 on Tuesday 28 February 2023 in respect of agenda item 2 (traffic and transport);
 - b. Issue Specific Hearing 2 on Wednesday 1 March 2023 in respect of agenda item 3 (Schedule 2 of the dDCO – Requirements); and
 - c. Compulsory Acquisition Hearing 1 on Wednesday 1 March 2023 in respect of agenda item 11 (Affected Persons' Site-Specific Representations).
- 1.2. Where necessary, the summaries have been supplemented where there was insufficient time during a hearing to complete all intended oral submissions.
- 1.3. Our clients have made representations to the examination which were referred to during our oral submissions. We refer the Examining Authority to Royal London's relevant representation [**RR-032**] and written representation [**REP2-100**], and EEL's relevant representation [**RR-030**] and written representation [**REP2-099**].

2. ISSUE SPECIFIC HEARING 1

- 2.1. Although discussions are ongoing with the Applicant, there is a significant amount of information that our clients have requested but have not yet been provided with. This information is required to ensure that:
- a. in pursuing land interests from our clients, it is clear the intended access arrangements actually work in practice for the works proposed;
 - b. there are no reasonable alternatives which have been properly considered and sufficient reasons provided for these alternatives not being pursued; and
 - c. if the access and rights requested are to be granted, the impacts to our clients and their businesses are properly mitigated.
- 2.2. Two principal points are highlighted in relation to traffic and transport, which have not been properly addressed, being: i) access arrangements through the EEL site; and ii) traffic impact and management on the local highway network.

Key Issue 1 – Access Arrangements through the EEL Site

- 2.3. Access through the EEL site is sought by the Applicant for the purpose of carrying out gas diversion works (Work No.U2 of the dDCO [**AS-020**]). Reference is made to the plan at plate 2 on page 6 of the document appended to the Royal London and EEL written representations [**REP2-100** and **REP2-099**] to provide a visual illustration of what is proposed.



- 2.4. The Applicant has indicated that the gas diversion works are planned for an 8-month period, with works carried out during working hours. Vehicle movements for the gas diversion works (or restrictions on those movements) are not included in either the Outline or updated outline CTMP [REP2-003]. The Applicant has indicated in its Response to Relevant Representations (Rev 2) [REP1-002] that there will be approximately 20 vehicles per day during the works plus an unknown number of deliveries.
- 2.5. The proposed access is the principal access for EEL's trade and distribution centre located on the site. The car park and entrance is heavily used throughout the day by members of the public, wholesale purchases and deliveries. This is shown in the photo on plate 3 of page 3 in the Appendix to the Royal London and EEL written representations [REP2-100 and REP2-099].
- 2.6. Royal London and EEL consider that there is no evidence or information covering whether:
 - a. additional vehicles are required for the overhead powerline works included in the Scheme proposals required as a result of the gas diversion works. There is no indication as to the number of vehicles required for these works or whether they are included in the proposed 20 vehicle movements required for the gas diversion works;
 - b. the largest vehicles can pass safely along the proposed access;
 - c. the width of the access (plot number 1/16a) is sufficient for the vehicles required;
 - d. vehicles will have sufficient space to turn around safely and pass back along the access;
 - e. the largest vehicles could pass each other on the access or that the works can be undertaken with 20 vehicles on the site and any deliveries required for those works.
- 2.7. Three alternative access routes have been identified and suggested by our clients, as detailed in Royal London's and EEL's written representations [REP2-100 and REP2-009] at Appendix 1 in the technical note produced by Caneparo Associates, to include the illustration at plate 5 on page 11. In summary:
 - a. 'Ref 1': Cadent compound – the position set out by the Applicant that this route is not available due to health and safety / operation reasons is queried. It is already tarmacked and indeed it is Cadent themselves that are expected to undertake the gas diversion works.
 - b. 'Ref 2': Trilux – this access is closer and more direct to the works site and less heavily used by vehicles.
 - c. 'Ref 3': Directly from the A12 – a number of, at times, conflicting reasons have been provided in discussions as to why this has been discounted including: 1) because the gradient of the land from the A12 direct to the site is too steep; 2) it requires significant vegetation removal; 3) disruption to the A12 requiring closure of the slip road. These are disputed and Royal London and EEL maintain this is a feasible option which should be considered. Vegetation required to be removed from the proposed access has not been detailed and may not require additional vegetation removal for the alternatives proposed. Additionally, third parties have directly accessed the EEL site from the A12 without difficulty (in a number of recent burglaries at the site). There is no assessment provided as to the need to close the sliproad as a result of the direct access alternative.



- 2.8. Insufficient information has been provided to indicate why these alternatives have not or could not be progressed. Royal London and EEL would like to see clear evidence that the EEL site is the only suitable option available.
- 2.9. The Applicant confirmed at the Compulsory Purchase Hearing in response to our submissions that the proposed temporary possession powers included in the dDCO would not be used exclusively. However, no restrictions on temporary rights are proposed by the Applicant in the dDCO and as a result, either an agreement with Royal London and EEL is required prior to the proposed gas diversion works commencing or an additional requirement included to restrict gas diversion works until that agreement has been concluded. Further detail is included in the Issue Specific Hearing 2 submissions below.

Key Issue 2 - Traffic Impact and Management on the Local Highway Network.

- 2.10. The second key issue relates to traffic impact and management on the local highway network generally. There is a lack of information on the impact from the project and the gas diversion works on the wider highway network, including the impact on Sheepcotes and Winsford Way.
- 2.11. Paragraph 6.4.4 of the Transport Assessment [**APP-253**] states that A12 J19 is “*heavily congested even before construction traffic is added*”, with Boreham Interchange (South), which connects to Winsford Way, being over-capacity or approaching capacity in the weekday peak hours. Winsford Way and Sheepcotes are critical for serving the EEL site and other major distribution sites including Aldi, Parcelforce and Springfield Business Park.
- 2.12. The updated Outline CTMP [**REP2-003**] now includes a restriction on parking on local road networks or obstructing businesses in the vicinity of the works (see section 2.2.8), which is welcomed by Royal London and EEL. However additional provisions need to be inserted to ensure appropriate mitigation measures and restrictions are in place to accommodate the additional traffic onto the highway network.
- 2.13. More generally, the current Outline CTMP is not sufficient. It relates to the entirety of the project. Separate management plans should be required for areas of the network where there are issues to be resolved, such as at J19 and Winsford Way/Sheepcotes. It is also recommended that a separate CTMP is required for the gas diversion and overhead power line works which are not currently included within the Outline CTMP and do not appear to have been assessed. Further detail is provided below within the Issue Specific Hearing 2.

Conclusion

- 2.14. To conclude, Royal London and EEL are not satisfied that sufficient information has been provided to justify the use of the EEL site access, or that there are sufficient restrictions currently proposed in respect of mitigating impacts to the local highway network or proposed access through the EEL-occupied site.

3. ISSUE SPECIFIC HEARING 2

- 3.1. The Applicant has failed to evidence that reasonable or appropriate alternatives have been considered to justify the grant of rights of access over our clients' land interests.
- 3.2. Without prejudice to this position, if the temporary possession and compulsory acquisition of rights powers sought by the Applicant are granted over our clients' land, three new Requirements are required to protect properly Royal London's and EEL's positions.



New Requirement 1

- 3.3. The first relates to provision for a works-specific Construction Traffic Management Plan in respect of Work No.U2 (as listed in Schedule 1 to the draft DCO), being the proposed gas diversion, as well as Work No.U2A, being the proposed overhead line diversion. The current Outline CTMP [REP2-003] as provided for under Requirement 9 fails to consider diversion works of this nature.
- 3.4. The new Requirement should provide that these specific works cannot commence until a CTMP in respect of the diversion works has been submitted to and approved by the relevant local planning authority, in consultation with the local highway authority, Royal London and EEL. This new CTMP should be substantially in accordance with a new works-specific Outline CTMP which should be introduced into the examination by the Applicant.

New Requirement 2

- 3.5. The second proposed new Requirement is necessary to regulate the exercise by the Applicant, if the DCO is made, of the temporary possession powers (article 40 of the dDCO) sought over Royal London's and EEL's land, as well as compulsory acquisition of rights (article 30). Currently there is no binding legal mechanism which would prevent the Applicant from taking exclusive possession of the relevant land. There is no reasonable justification for this. Indeed, the Applicant has stated previously to Royal London and EEL that only access is required. We consider that a Requirement is an appropriate means of formally restricting this power.
- 3.6. This new Requirement would prevent the Applicant from commencing any works relating to Work No.U2 or Work No.U2A, or exercising any land powers under the DCO which relate to those works, unless and until an agreement(s) has been entered into with Royal London and EEL which regulates the exercise of the compulsory acquisition of rights and temporary possession powers on their land.

New Requirement 3

- 3.7. The third and final proposed new Requirement relates to the detailed design of the proposals of the diversion works provided for under Work No.U2 and Work No.U2A. The diversion works have the potential to have a significant impact on our clients' land, both directly on land where construction works are proposed to take place and also indirectly on adjoining land.
- 3.8. Royal London and EEL consider that the detailed design of Work No.U2 and Work No.U2A must be approved by the Secretary of State, in consultation with the local planning authority, prior to the exercise of any rights granted over either Royal London's land or EEL's operational site. Royal London and EEL should also be notified of the final version of the detailed design, as approved by the Secretary of State. The Requirement should also provide that the Applicant is not permitted to exercise its land powers under the dDCO over the Royal London's and EEL's land interests until the detailed design has been approved.

4. COMPULSORY ACQUISITION HEARING 1

- 4.1. Royal London is the freehold owner of plots: 1/16 and 1/10c, 1/10f, 1/10g, as well as 1/10a and 1/10b. These plots are shown on sheet 1 of the land plans [AS-009].
- 4.2. EEL operates its distribution business off Sheepcotes and Royal London is its landlord. EEL has leasehold interests in plots: 1/10f and 1/10g, and the Applicant is seeking temporary possession powers over that land.



- 4.3. It is worth reiterating that there are various plots affected by permanent acquisition of rights and interests as well as temporary possession, this is not simply about access through a site as was suggested by the Applicant's representative in response to our submission at the Issue Specific Hearing 2.
- 4.4. Although discussions are ongoing with the Applicant, there remains a significant amount of information to be provided to justify the need for the acquisition of land interests, that all reasonable alternatives have been properly considered and that the proposed access is sufficient for the intended works to be carried out.

Key Issue 1 - Route of the Gas Diversion

- 4.5. The current route and proposed route of Work No.U2 is shown on sheet 1 of the Utility Diversions plans [AS-003]. Royal London and EEL have not seen any report or optioneering carried out to determine that the proposed new route for the pipe is the optimum route. In addition, Royal London and EEL have been told this is not the final detailed design for the new route and Cadent's written rep [REP2-042], suggests the work to date is preliminary: "*The Diversions have not yet reached detailed design stage and so the final positioning, land rights and consents required for these gas diversions are not confirmed by Cadent.*"
- 4.6. Royal London and EEL have queried why the new pipe could not go straight across and link up to the existing pipework to the north of the current proposals. That would negate any need for access through the EEL site. In addition, Royal London and EEL have raised a query as to why, even if the new pipe route remains as currently proposed, access could not be obtained from the north through Cadent's own site, the Trilux site or direct off the A12 – see more details in the text for Issue Specific Hearing 1 above.
- 4.7. The Applicant has indicated that the access route cannot cross either the stream or the overhead cables. The proposed new pipe route crosses both the stream and the overhead cables. A route straight across would not. It appears that the proposed new pipe route requires the overhead lines to be diverted as part of the Scheme (Work No.U2A) – more information on the timing and location of this is needed from the Applicant. If the gas diversion route should in fact be re-directed e.g. further north under the carriageway, it may be that the access off Sheepcotes is unsuitable and rights over Royal London's land at plot number 1/10c (and therefore the access) or through the EEL site (plots 1/10f and 1/10g) are not required.
- 4.8. See the summary in Issue Specific Hearing 2 above for a summary of the Requirement sought in respect of detailed design of the relevant diversion works.

Key Issue 2 - Alternatives

- 4.9. In the event that the Applicant demonstrates that the proposed gas diversion route is justified, Royal London and EEL consider that there are various other access options which must be considered. Please see the relevant text above in Issue Specific Hearing 1 for more details on this.

Key Issue 3 – Arrangements on Site

- 4.10. Royal London and EEL have raised numerous concerns on this point both in writing, at meetings and Issue Specific Hearing 1 – see the relevant summary above. If exclusive access is not required, the statutory powers should be limited appropriately – see the summary above for Issue Specific Hearing 2.

Compulsory acquisition test (plot numbers 1/10a, 1/10b and 1/10c) – Royal London only



(Rights sought, as per Schedule 5 to the dDCO: 1/10a and 1/10b – access for inspection, maintenance, repair and clearing of culvert and retaining structures)

- 4.11. Plot numbers 1/10a and 1/10b – There is no evidence to justify that there is a compelling case in the public interest for the rights to be acquired on these plots. The reasoning refers to maintenance of the culvert but the culverts exist already and there has been no prior issue in relation to the Royal London land interest. Further information is required to justify the proposed grant of rights on our clients land.

(Rights sought, as per Schedule 5 to the dDCO: 1/10c – to lay, install etc. a pipeline; to include restrictive covenants for protecting installed pipelines etc.; and to install etc. overhead electricity cables and supports etc.)

- 4.12. Plot number 1/10c – in view of the previous submissions made which includes the route of the gas diversion works, potential alternatives, whether the rights to be acquired are justified or sufficient for the purposes for which they are required, Royal London does not consider that section 122(2) Planning Act 2008 is satisfied. In addition, the Applicant has provided no evidence that there is a compelling case in the public interest to acquire rights over this land – this is a high bar which we do not believe has been met. The restrictive covenant means this land will not be able to be used by Royal London going forward.

Temporary possession test (1/10f, 10g and 1/16a and plot numbers 1/10a, 1/10b and 1/10c) - Royal London and EEL

(Temporary possession powers sought, as per Schedule 7 to the dDCO: 1/10f, 1/10g – access for utility diversion works; 1/16a – access and working area for utility diversion works. Also, temporary possession available in respect of plot numbers 1/10a, 1/10b and 1/10c - article 40(1)(a)(ii) of the dDCO)

- 4.13. It is acknowledged that the statutory tests in section 122 of the Planning Act 2008 are not directly applicable to temporary possession. Nonetheless, it is considered appropriate to apply these tests in these circumstances as the effects of the use of the unfettered powers would be analogous to compulsory acquisition, particularly where there is exclusive possession granted.
- 4.14. Again, our clients consider that the key deficiencies and lack of evidence provided in the application means that there is currently no justification for rights to be granted over this land or if rights are to be granted, these rights need to be restricted until further detailed information is provided and agreed with Royal London and EEL.

Conclusion

- 4.15. Royal London and EEL have significant concerns over the proposals affecting their land. In particular, it is not clear that the gas diversion should necessarily be in this location. Even if that is the case, there are serious concerns over the level of consideration of alternatives and the proposed arrangements in terms of access to and feasibility for use of the access and the site for the gas diversion works.
- 4.16. The application has not satisfied the relevant legal tests for securing the powers sought to be granted over our clients' land interests.