

## Compulsory Acquisition Hearing 1

Friday 2 December 2022

### Supplementary Agenda

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#### 1.0 Welcome and Introduction

This Supplementary Agenda follows the agenda published in Annex F within the Rule 6 Letter [PD-006]. It provides further details of the matters the ExA wishes to explore. Within each item, the ExA sets out those documents that may be required to be displayed electronically to aid the discussion

#### 2.0 Statutory Conditions and General Principles

- 2.1 The Applicant to confirm that the application includes a request for Compulsory Acquisition (CA) in accordance with s123(2) of the PA2008.
- 2.2 The Applicant to set out briefly whether and how the purposes for which the CA powers are sought comply with s122(2) of the PA2008.
- 2.3 The Applicant to explain briefly whether and how consideration has been given to all reasonable alternatives to CA and Temporary Possession (TP).
- 2.4 The Applicant to explain briefly whether and how the land and rights proposed to be acquired, including those for TP, are necessary and proportionate. Why are areas proposed for site compounds subject to CA and not TP where they are not proposed for subsequent environmental mitigation, such as at Plot 0102-01-35 [AS-013 and APP-041]? Why is CA sought over the seemingly unused parts of Plots: 0102-02-05; 08-03-06; and 09-02-21 [AS-013, APP-309 and APP-304] and all of Plot 03-03-36 [APP-305]?
- 2.5 The Applicant to set out briefly whether, having regard to s122(3) of the PA2008, there is a compelling case in the public interest for the land to be acquired compulsorily and the public benefit would outweigh the private loss.
- 2.6 The Applicant to explain briefly whether, in the context of *'the need for infrastructure established in the NNNPS'*, the Proposed Development would include any *'upgraded technology to address congestion and improve performance and resilience at junctions'* and where [Statement of Reasons (SoR), APP-299, para 1.1.9i. and 1.1.10]. Section 2 of the SoR is numbered incorrectly and the correct paragraph numbers should be 2.2.9i and 2.2.10.

2.7 Other matters relating to statutory conditions and general principles.

### **3.0 Summary of DCO Provisions**

3.1 The Applicant to set out briefly which draft DCO Articles engage CA and TP powers [APP-285].

3.2 The Applicant to summarise briefly any other provisions in the draft DCO relating to CA and TP.

3.3 The Book of Reference (BoR) [APP-290 to APP-298] includes many Category 1 and 2 persons, particularly in respect of mines and minerals, identified as being unknown [AS-015 to AS-022]. Parts 3 of the BoR also list persons identified as being unknown. The Applicant to explain generally, in the context of the SoR [APP-299, section 4.7] and s44 of the PA2008, how the types of unknown interests have been identified in the first place and what subsequent attempts have been made to identify these persons. Following the explanation, the Applicant may be requested to provide a schedule to cover this matter.

3.4 The Applicant to explain what factors were used in the desk-based assessment of potential Compulsory Purchase Act 1965 section 10 Category 3 persons [SoR, APP-299, para 4.5.3] together with any spatial or distance parameters that were used in the assessment.

3.5 The Applicant to explain whether longer term maintenance, beyond the five-year period in draft DCO Article 30, is solely enabled by the CA of land and rights [SoR, APP-299, para 3.4.6].

3.6 The Applicant to explain why each of the additional limits of deviation, beyond those of 3m horizontally and 1m vertically, in draft DCO Article 7 are necessary as shown in the Works plans [APP-318 to APP-325 and AS-012]. Following the explanation, the Applicant may be requested to provide a schedule to cover this matter. The Applicant to explain whether the drafting of draft DCO Article 54 could have any bearing on the stated limits of deviation specified in Article 7.

3.7 The Applicant to explain why para 8(3) of Parts II and III of Schedule 2 (minerals) to the Acquisition of Land Act 1981 is not being incorporated into draft DCO Article 20, as this is not explained in the Explanatory Memorandum [APP-286, para 8.3]. Does this minerals incorporation negate the need for many of the 'unknown' Category 1 persons in the BoR [AS-015 to AS-022]?

3.8 The Applicant to explain why draft DCO Article 22(3) is subject to various sections/schedules of the Compulsory Purchase Act 1965. The Applicant should also add this explanation to the Explanatory Memorandum [APP-286, para 8.9].

- 3.9 The Applicant to provide a legal explanation why the power sought in draft DCO Article 24 is still required. The Applicant should also add this explanation to the Explanatory Memorandum [APP-286, para 8.14].
- 3.10 The Applicant to explain why the notice periods introduced by the Housing and Planning Act 2016 appear to have not been applied to draft DCO Article 25(4) and (5) [Explanatory Memorandum, APP-286, para 8.16]. The Applicant to further explain the '*broad precedent*' resulting from the examples given. The Applicant should also add this explanation to the Explanatory Memorandum.
- 3.11 The Applicant to explain why the drafting of draft DCO Article 26 '*has been adapted*' and how it takes '*account of the Housing and Planning Act 2016*' [Explanatory Memorandum, APP-286, para 8.18]. The Applicant should also add this explanation to the Explanatory Memorandum.
- 3.12 The Applicant to explain why the intended notice periods in the Neighbourhood Planning Act 2017 are not reflected in draft DCO Article 29(2).
- 3.13 The Applicant to explain how vesting after the certification of receipt of a scheme for replacement land in draft DCO Article 34(1) accords with s131 and s132 of the PA2008. Should the scheme be approved before certification?
- 3.14 The Applicant to comment on whether the plot information in draft DCO Article 34(5) may be better set out in a table, as has been done in Article 7, or in a draft DCO schedule.
- 3.15 Draft DCO Article 35(1) should be updated to reflect the change of monarch.
- 3.16 Other matters relating to DCO provisions.

#### **4.0 Funding**

- 4.1 The Applicant to advise of any updates to the Funding Statement [APP-289].
- 4.2 Other matters relating to funding.

#### **5.0 Special Category Land**

- 5.1 The Applicant to explain the application of s131 and s132 of the PA2008 to the draft DCO, particularly in relation to s131(4) and s132(3).
- 5.2 The Applicant to explain, including in the context of s135(3) of the PA2008, why the '*playing field which is owned and used by the MoD*' and said to be open space special category land does not attract the PA2008 requirement for replacement land [SoR, APP-299, para 7.2.26]. In addition:

- Why are the words '*made available to the public for recreational purposes*' used [SoR, APP-299, para 7.2.26] instead of '*used for the purposes of public recreation*' as in s19(4) of the Acquisition of Land Act 1981?
- Is this area gated and locked?
- Is this area used for recreation on an unrestricted basis or by prior arrangement?

5.3 The Applicant to explain if there are any material differences, in terms of the mechanisms, between draft DCO Article 34 (special category land) and Article 38 of the M25 Junction 10/A3 Wisley Interchange DCO, as they appear to be similar. In addition:

- If there are no material differences, why has the wording of Article 38 in the M25 Junction 10/A3 Wisley Interchange DCO not been referred to as a precedent [Explanatory Memorandum, APP-286, para 8.40]?
- What has prevented a special category replacement land scheme being incorporated within the draft DCO?

5.4 Other matters relating to special category land.

## **6.0 Crown Land and Interests**

6.1 The Applicant to provide an update (including the positions of the parties, latest contact, envisaged actions and Examination timescales) on discussions with the Ministry of Defence (MoD) and the Public Trustee. In relation to agreement with the MoD and the duration of the Examination, what is meant by '*in the near future*' [SoR, APP-299, para 7.1.6]?

6.2 The Applicant to provide an update on any discussions or contact with the Crown Estate Commissioners.

6.3 Other matters relating to Crown land and interests.

## **7.0 Statutory Undertakers**

7.1 The Applicant to explain the current position in relation to negotiations with Statutory Undertakers, particularly in relation to Protective Provisions.

7.2 The Applicant to set out any representations which it considers have triggered s127 of the PA2008.

7.3 The Applicant to set out, in the event that agreement is not reached with all Statutory Undertakers, how the relevant tests for the exercise of powers pursuant to s127 and s138 of the PA2008 could be met.

7.4 The Applicant to advise whether it considers the North Cumbria Integrated Care NHS Foundation Trust to be a Statutory Undertaker [SoR, APP-299, table 7.1]. If so, how is this the case?

7.5 Other matters relating to statutory undertakers.

## **8.0 Any Other Business**

Action points and post-hearing notes arising from the hearing.