

Brough Hill Fair Community
Secretary: William Lloyd email: [REDACTED]

Planning Inspectorate Reference: TR010062 - Deadline 9 - 26 May 2023

WRITTEN SUBMISSION ON BEHALF OF BROUGH HILL FAIR COMMUNITY ASSOCIATION

Dear Sirs,

Please see below a note from solicitors acting on behalf of the Brough Hill Fair Community Association

Following a long correspondence, the Brough Hill Fair Community Association was unable to agree with National Highways as to the adequacy of the proposed Article 36 mechanism for the transfer of rights from the existing site to any replacement site.

National Highways kindly offered to give an undertaking to meet our legal costs to help resolve this disagreement. Our usual lawyer declined to act for us, as she considered this as a specialist area of law and would require specialist advice. Specialist lawyers (The Rural Law Practice) were found and instructed on April 25th 2023. For reasons of lost communications and apparent misunderstandings, no substantive meeting took place until today, 26th May 2023. This was clearly too late to make any serious progress on resolving the matter, but The Rural Law Practice have submitted the attached note which confirms that there is some doubt over the proposed method transfer.

The legal question in dispute is clear enough: We have been advised that a Statutory Instrument as proposed by Article 36 may not be sufficient to transfer the rights to Brough Hill Fair, and that a Deed is required. We have submitted evidence that these rights take the form of a Prescriptive Easement, and as such are over-riding rights attached to the land and can only be transferred by a Deed. National Highways can only offer assurances that the DCO has previously been used to transfer rights but have offered no evidence that a DCO has been used to transfer a Prescriptive Right to hold a Fair which has been established by the doctrine of Lost Modern Grant. Furthermore they have acknowledged that this is a special case. There remains significant doubt as to whether or not the proposed mechanism would stand up if challenged in a court, when the law is clear that a Deed is necessary for an effective transfer of Prescriptive Rights. We consider that the assurances from National Highways have no substance and are inadequate to the case.

We respectfully ask the Inspectors to require the Applicant as a condition of any grant of planning consent, and before transferring any rights:

- a. continue the discussion with our lawyers in attempting to reach an agreement.
- b. to engage with our Counsel's opinion as to a robust mechanism, and
- c. to exercise the special care recommended in the attached note.
- d. that they accept the proposed amendment to Article 36 of the DCO as set out below.

Yours sincerely,

Bill Lloyd
Secretary

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Note from solicitors acting on behalf of the Brough Hill Fair Community Association

A helpful discussion took place between legal representatives of National Highways and the Brough Hill Fair Community Association on 26 May 2023.

During the call, we received assurances from Robbie Owen (RO), a Partner at Pinsent Masons LLP acting on behalf of National Highways, including:

- The Development Consent Order (DCO) is an effective mechanism to ensure the transfer of the Brough Hill Fair Rights (Fair Rights) to an alternative site. DCOs are attributed a breadth of power under statute and are used to routinely transfer rights associated with schemes similar to this. RO gave examples of rights involving open spaces being transferred via DCOs but said that he had no direct experience in the transfer of rights granted to hold fairs; and
- RO also stated that the Ministry of Defence (MoD) who own the land where the proposed Fair site is situated have agreed to transfer the land to National Highways subject to the Fair Rights. (Note: We assume that the title to the alternative site would be transferred by the MoD by means of a formal Land Registry transfer deed to National Highways which could include specific provisions to replicate and confirm the Fair Rights.)

Following this meeting, we need a short further period to review the effectiveness of the DCO as an appropriate mechanism for transferring the Fair Rights, in consultation with our client and Counsel. RO freely acknowledged the unusual nature of the Fair Rights during our meeting, which means that special care will be required when advising the Association on this point.

We would want to suggest an amendment to Article 36 of the DCO to include provision that the existing Fair Rights on the current site are not to cease until they have been effectually and lawfully transferred to a replacement site, and to the entire satisfaction of the Association.

It is noted the existing site of the Brough Hill Fair was transferred to the MoD in 1947, and conferred, "an ancient right of holding Brough Hill Fair annually and to all liberties and customs as heretofore enjoyed in connection therewith" by way of an Agreement for Sale.

We understand that the location of the proposed new site has not yet been agreed between parties so any comments here are subject to that issue being resolved to our clients' satisfaction.

