PROPOSED M5 JUNCTION 10 IMPROVEMENTS SCHEME
PLANNING INSPECTORATE REFERENCE: TR010063

HOUSE IN THE TREE, WITHYBRIDGE LANE, CHELTENHAM GL51 0TQ
WRITTEN REPRESENTATIONS

INTERESTED PARTY REFERENCE NUMBER: M510-AFP071

S122 Planning Act 2008 provides that a development consent order may only authorise compulsory acquisition of land if the Secretary of State is satisfied that that the land is both required for the Proposal and that there is a compelling case in the public interest for that compulsory acquisition, namely that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land states at para 8 that –

The Applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The Applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

Regarding being able demonstrate that "*all reasonable alternatives to compulsory acquisition have been explored"* we provide a summary of negotiations so the Examining Authority (ExA) can consider and satisfy itself whether private treaty negotiations have been exhausted and that there is no other alternative but to authorise compulsory acquisition powers to allow the scheme to proceed. Meanwhile, in terms demonstrating a compelling case for "*interference with the rights"* of private individuals to peacefully hold and enjoy property free from state interference and that it is *"necessary and proportionate"* we refer back to representations submitted on 22nd March 2024 and also highlight a new matter for the ExA to take into consideration.

To assist the ExA weigh up these matters we set out below an overview of the private treaty negotiations and other thoughts on whether a compelling case has been advanced:

Negotiations and Last Resort Threshold

As set out in representations submitted on 22nd March 2024, Ei Group were first made aware of the M5 Junction 10 Improvements Scheme (the Scheme) in August 2020 or thereabouts and have repeatedly invited the Applicant and its representatives to identify what land and rights are required so that the parties might engage in meaningful negotiations, with a view to reaching agreement over land required permanently and temporarily and also any rights needed to deliver the Scheme. It was not until 10th November 2023 that the Applicant provided a detailed plan and breakdown of their requirements, but no voluntary agreement was advanced at this time and instead it was

said that Heads of Terms (HOTs) would be issued in "the next few weeks". However, it was not until 8th May 2024 (~6 months after the dDCO was submitted) that the Applicant eventually issued draft HOTs for consideration.

Unfortunately the draft HOTs appear to have been rushed out as part of a box ticking exercise so the Applicant can inform to the ExA that steps have been taken to acquire the required land and rights by agreement. The reality is that the HOTs are not fit for purpose and do not in our opinion constitute "reasonable steps". We would highlight to the ExA that no monetary offer has been proposed to acquire the permanent land or licence fee offered in connection to the temporary land and so the HOTs are incapable of forming the basis of a contract as there is no consideration. We would also draw attention to the fact that the HOTs are not prepared in accordance with the Government Guidance, which recommends that acquiring authorities should pay compensation as if land has been compulsorily purchased, as the terms do not provide a route to compensation in respect of the diminution in value of retained land and as such Ei Group would be better served waiting to be compulsorily acquired (subject to confirmation of powers) and negotiating compensation after formal notices have been received.

Ei Group have repeatedly tried to engage the Applicant in negotiations with a view to attempting to agree voluntary terms which might then be legal documented all to allow the Scheme to progress without the requirement to exercise compulsory purchase powers. Unfortunately, voluntary arrangements have not been agreed because terms (which are flawed) were only offered on 8th May 2024. A consequence of the Applicant's indifferent behaviour towards private treaty negotiations is that it is forcing Ei Group to take part in the Examination (and as a consequence incur professional fees on representation) when they would rather agree a deal (subject to terms). This should not be allowed to continue, and we request that consideration is given to awarding costs against the Applicant in connection to fees incurred taking part in the Examination process.

Compelling Case

Ei Group are yet to receive a response to the points raised in representations submitted on 22nd March 2024 and we look forward to receiving the Applicant's comments on these representations.

Since submitting those representations, further consideration has been had to the land and rights requirements set out in the Land Plans. Following this review, the Applicant should be asked to provide its justification for the requirement for permanent new rights (see Plot 16/5b) to govern a private electricity supply to Ei Group's property only when there is not understood to be an onward supply to any other third party property. The Applicant has been asked to provide a schedule of works concerning this plot and the electricity supply to the building with a view to the parties reaching agreement over temporary voluntary arrangements in the form of a licence which should be possible. Unfortunately, it appears that either the Applicant is unwilling or does not have the request detailed design to allow the parties to negotiate a licence and so is seeking to rely on compulsory acquisition powers which to Ei Group seems akin to using a sledgehammer to crack a nut. Further, if the Applicant is going to persist with its request for new permanent rights it should be prepared

to justify this to the ExA as Ei Group consider that temporary powers will suffice, but as has been said, the landowner would be perfectly willing (subject to terms) to reach a voluntary agreement with the Applicant to negate the need for powers entirely.

Overall, the ExA will need to satisfy itself as to whether compulsory acquisition powers and the proposed permanent rights are "*necessary and proportionate*" given the context that these are believed to be for a private supply and that the landowner is willing to agree a temporary licence (subject to terms) so that whatever works need to be undertaken can be undertaken.

Request to be Heard at Compulsory Acquisition Hearing (CAH)

In accordance the Inspectorate's Rule 8 letter dated 14th June 2024, Ei Group request to be heard at the CAH if the parties are unable to agreed voluntary arrangements ahead of the hearing.