

Application by Gloucestershire County Council for an Order Granting Development Consent for The M5 Junction 10 Improvement Project

Notification of the dates, times, and venue for the Compulsory Acquisition Hearing (CAH) during the week commencing the 12 August 2024 was provided in the Examining Authority's Rule 8 letter dated 14 June 2024 [PD-009].

Detailed Agenda for Compulsory Acquisition Hearing (CAH1)

Date: Thursday 15 August 2024

Arrangements Conference: 9:30am

Participants must join the Arrangements Conference in order to register and be permitted access to the virtual CAH.

Hearing start time: 10:00am

Venue: Blended hearing via Microsoft Teams and in person at the Leonardo Hotel Cheltenham, Gloucester Road, Cheltenham, GL51 0TS

Full instructions on how to join online or by phone will be sent to parties registered to attend, shortly before the Hearing.

The event will be livestreamed and a link for watching the livestream will be posted on the project page of the National Infrastructure Planning website closer to the event date. Interested Parties (IPs) and members of the public who wish to observe the event can therefore view and listen to the Hearing using the livestream, or the recording, after it has concluded.

Participation, conduct and management of the Hearing

The CAH Part 1 will consider the strategic case for compulsory acquisition and temporary possession for the application. It is not the place for individual objections to be heard. Affected Persons (APs) will be heard at Part 1 but only on the basis that the Applicant has not complied with the relevant legal tests, policy, and guidance in respect of the application in general. The remaining parts of the CAH will allow individual objections by APs relating to individual parcels of land and/or interests in land to be heard. The utilisation of CAH1 Part 2 will depend upon the numbers of APs with individual objections requesting to be heard. It may not be necessary to hold all parts depending on how progress is made.

The Examining Authority (ExA) has identified the matters to be considered at this CAH, and those on which it requires additional information, and these are set out in this agenda. It is intended that the scope of the CAH will be limited to those matters. However, the ExA may wish to raise matters arising from oral

submissions and pursue lines of inquiry in the course of the discussions which are not listed on the agenda. The actual agenda on the day including the order of items may be subject to change at the discretion of the ExA.

All APs whose land interests are affected under Compulsory Acquisition proposals are entitled to speak at a CAH. The ExA invites the Applicant and the following APs who have indicated a wish to speak to attend and participate in this CAH:

- The Applicant;
- The Joint Councils;
- National Highways;
- Mr Steven Wakefield;
- Bloor Homes;
- Gateley Hamer on behalf of Ei Group Limited;
- Cheltenham Borough Council Property and Asset Management
- Northern Grid Electricity Distribution (West Midlands)
- Wales and West Utilities

Participation in the CAH is subject to the ExA's power to control the CAH. It is for the ExA to determine how hearings are to be conducted, including the time allowed at the CAH for the making of a person's representations.

The ExA will probe, test, and assess the evidence through direct questioning of persons making oral representations. Questioning at the CAH will therefore be led by a member of the Panel, supported by other Panel members.

The CAH will continue until the ExA is content that all matters on the agenda have been addressed. Should the consideration of the issues take less time than anticipated, the ExA may conclude the CAH as soon as all relevant contributions have been made and all questions asked and responded to.

To avoid 'screen fatigue', session breaks will be provided after about 90 minutes of business, and other breaks may be taken, subject to the ExA's discretion.

All participants are advised that written summaries of their oral submissions at this Hearing should be submitted at **Deadline 4, Tuesday 3 September 2024**.

Arrangements Conference

An Arrangements Conference will be held on each day of the CAH before it opens or resumes. Invitees will receive a joining link or telephone number in a separate e-mail, shortly before the CAH. Please join the Arrangements Conference at the appointed time for each part of the CAH that you wish to attend. The Case Team will admit you from the Lobby and register your attendance. The Arrangements Conference allows procedures to be explained and will enable the CAH to start promptly.

About the Compulsory Acquisition Hearing

CAHs are for those whose land and/or rights are directly affected. This includes all APs and additional APs. It may include persons not listed in the Book of

Reference but who have applied for and been granted IP status under section 102 of the Planning Act 2008 (PA2008).

The CAH is being held to ensure adequate examination of the provisions within the draft Development Consent Order (draft DCO) seeking to authorise the Compulsory Acquisition of land and/ or rights over land and to assess whether the conditions relating to the land and/ or rights being required for the Proposed Development or required to facilitate or be incidental to that development are met and whether there is a compelling case in the public interest for the land to be acquired compulsorily.

The ExA recognises that other Hearings may contribute information and evidence which will be used in support of a recommendation in respect of Compulsory Acquisition.

The CAH will have regard to written submissions already provided to the Examination. Relevant application and supporting documents to be considered include:

- Draft DCO [REP1-004]
- Draft DCO Explanatory Memorandum [APP-032]
- Statement of Reasons [REP1-007]
- Funding Statement [APP-036]
- Book of Reference [REP1-009]
- Land Rights Tracker [REP1-044]
- Land Plans [REP1-002]
- Work Plans [APP-007 and APP-008]
- General Arrangement Plans [APP-014 and APP-015]
- Environmental Master Plans [APP-027 and APP-028]
- Crown Land Plans [REP1-003]

Detailed Agenda for Compulsory Acquisition Hearing (CAH)

1. Welcome, introductions and arrangements for the Hearing.

CAH Part 1

The Principles of Compulsory Acquisition and Temporary Possession

2. The statutory conditions and general principles applicable to the exercise of powers of compulsory acquisition:

- I. The Applicant will be asked to provide evidence on how the proposed development and the approach taken to Compulsory Acquisition and Temporary Possession meet the following legislative tests.

(a) Whether the purpose for which Compulsory Acquisition powers are sought would comply with section 122(2) of the PA2008 and whether there is a compelling case for the Proposed Development?

The ExA will identify a number of plots to test the approach taken by the Applicant and the justification for those plots.

(b) Whether all reasonable alternatives to Compulsory Acquisition have been explored?

(c) Whether the Secretary of State could be satisfied that the land proposed to be acquired is no more than is reasonably necessary for the purposes of the Proposed Development?

(d) Whether having regard to section 122(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?

- II. The Applicant will be invited to explain how the dDCO demonstrates a commitment to and delivery of the whole project and how this is secured.
The ExA note the Applicant's response to ExQ 1.0.12 at Deadline 3 however the ExA wish to explore how this may meet the tests for CA.
- III. The Applicant will be invited to explain how they have conducted the balance between public benefit and private loss and in particular regarding where the loss results in the loss of private homes.

3. Whether there is a reasonable prospect of the requisite funds becoming available:

- I. The Applicant will be asked to provide evidence on how the proposed development and the approach taken to Compulsory Acquisition and Temporary Possession meet the following legislative tests.
- (a) The resource implications of both acquiring the land and implementing the project for which the land is required.
- (b) Whether adequate funding is likely to be available to enable the Compulsory Acquisition to proceed within the statutory period following the draft DCO being made?

- II. The ExA will invite evidence from the Applicant and IPs on the degree of certainty that is in place in respect of the future funding of the whole project, the timing of this funding, and whether it would be sufficient to support a realistic forecast for the costs of the Proposed Development.
- III. This will include developing an understanding of the status of the current planning applications that have been submitted for consideration, whether there is a realistic prospect of the s106 negotiations leading to sufficient funding and which sites may come forward within the timeframe that would support the Proposed Development.
- IV. The Applicant and IPs will be questioned on the status of each of the sites referred to in Appendix A of the Funding Statement [APP-036] and the degree of confidence the ExA could have in including these as to their potential for providing funding towards the Proposed Development.
- V. The ExA will seek views from the Applicant and IPs on the likely timing of any funding, and whether this would allow the Applicant to comply with the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 in order to serve notice within 5 years beginning on the date of the granting of the Order.

4. Whether the purposes of the proposed compulsory acquisition are legitimate and would justify interfering with the human rights of those with interest in the land affected:

- I. The Applicant will be asked to set out their case in respect of the following tests.

(a) What regard has been had to Articles 8 and 6 of the European Convention on Human Rights (ECHR) and Article 1 of the First Protocol?

(b) How the Applicant has assessed the degree of importance attributed to the existing uses of the land proposed to be acquired.

(c) How the Applicant has established the weighing of any potential infringement of ECHR rights against the potential public benefits if the draft DCO is made.

5. Consideration of duties under the Equality Act 2010

- I. The Applicant will be asked to provide an update in relation to compliance with any duties under section 149 of the Equalities Act 2010 and where the approach it has taken is set out in the evidence submitted demonstrating how it has met its duties of the Equalities Act.
- II. The Applicant will be asked to explain its approach to the Public Sector Equality Duty and how the consideration of people with protected characteristics has been undertaken, assessed and considered in the approach to the development of the Proposed Development.
- III. The Applicant will be asked to explain the approach taken to assessing the effects on the occupiers/owners of the Travellers Site and how this demonstrates compliance with the legal duties of the Equalities Act and the PSED.
- IV. The Applicant will be asked to explain the approach taken to assessing the effects on the occupiers/owners of the individual private homes to be acquired and how this demonstrates compliance with the legal duties of the Equalities Act and the PSED.

6. Sections 127 and 138 of the PA2008 – the acquisition of statutory undertaker’s land and the extinguishment of rights and removal of apparatus of statutory undertakers

- I. The Applicant will be asked to set out their case in respect of the following tests:
 - (a) The current position in relation to negotiations with Statutory Undertakers (SUs).
 - (b) Whether Protective Provisions have been agreed with all SUs and if not where there are specific areas of disagreement.
 - (c) In the event that agreement is not reached with all SUs, whether the relevant tests for the exercise of powers pursuant to sections 127 and 138 PA2008 would be met.

The ExA will seek the views of each of the SUs on what their position is in respect of Protective Provisions, the legal tests referred to above, and the specific changes they would wish to see to the suggested PPs in the event that they are not agreed.

7. Section 135 of the PA2008 - Crown Land

The Applicant will be asked to provide an update in relation to the position on Crown Land.

CAH Part 2

8. Continuation of Agenda from CAH Part 1 (if required)

9. Representations from parties who may be affected by the compulsory acquisition provisions in the draft DCO

The ExA will hear oral representations from:

(a) Affected Persons (APs) including additional APs who have notified a wish to make oral representations at this CAH:

- National Highways;
- Mr Steven Wakefield;
- Mr Neil Hadley;
- Ei Group;
- Court Consulting on behalf of Mrs Mary Bruton and Ms Elizabeth Counsell;
- The Crown Estate;
- Cheltenham Borough Council Property and Asset Management;
- Bloor Homes.

(b) Any section 102 or Category 3¹ persons wishing to make oral representations.

10. Representations from Statutory Undertakers

The ExA will hear oral representations from:

- National Highways (if not addressed earlier);
- Northern Grid Electricity Distribution (West Midlands);
- Foot Anstey LLP on behalf of Wales and West Utilities.

11. Any other matters relevant to the Agenda

12. Close of Hearing

¹ Those persons whose land is not proposed to be subject to compulsory acquisition but whose land or property may be affected by the construction or use of the proposed development such that they may be able to make claims for compensation (section 57(4) PA2008 (as amended)).