

A46 NEWARK BYPASS DEVELOPMENT CONSENT ORDER 202[x]

RELEVANT REPRESENTATION OF JAMES AND BETH SUMSION, RE LAND AT LANGFORD HALL

This relevant representation is submitted by BDB Pitmans LLP on behalf of James and Beth Sumsion (together 'our client'), freehold owners of (redacted) and its land holdings.

(redacted) lies to the north-east of Winthorpe Roundabout, north of the A46 and east of the A1133. The full extent of our client's freehold interest comprises the (redacted) (situated at the current entrance off the A46) and various other residential, commercial, Airbnb and grassland lets. Access to (redacted) and associated buildings is currently provided by means of a private drive, accessed from the A46 eastbound carriageway, which runs north, past the Lodge, to the (redacted) itself.

1. SUMMARY OF IMPACT

National Highways (referred to as 'NH' or 'The Applicant' below) seeks to permanently acquire part of our client's land for the purposes of the project and to temporarily occupy certain other parts of our client's land for the purposes of carrying out works to construct the project. The Applicant proposes to close the existing access point to our client's private drive from the A46 eastbound carriageway and, in its place, provide a new access and drive from the realigned A1133.

With reference to the Sheet 6 of 7 of the Applicant's submitted *Regulation 5(2)(i) Land Plans* (APP-005), the plot numbers affecting our client's land are 6/6a, 6/6a1, 6/6b, 6/6c, 6/6c1, 6/6d, 6/6d1 and 6/6e. The plots underlined are identified as to be permanently acquired (i.e. coloured pink); the remaining plots are to be used temporarily for the purposes of the works (i.e. coloured green).

The relevant works are Work Nos. 109 to 113, as shown on Sheet 6 of 7 of the Applicant's submitted Works Plans (APP-006):

- Work No. 109: realigned A1133
- Work No. 110: new "access track" to our client's property from the realigned A1133, proposed to replace the existing driveway which provides access from the A46
- Work No. 111: temporary area for material lay-down and soil stockpiling
- Work No. 112A: construction of an embankment north-west of the new Winthorpe Roundabout (Work No. 108)
- Work No. 112B: construction of an embankment north of the realigned A1133 (Work No. 109)
- Work No. 113: construction of attenuation basins, access track and associated drainage infrastructure, north of the new Winthorpe Roundabout (Work No. 108)

The Applicant's proposals will have a detrimental impact on our client's interests. Land would be lost as a consequence of the proposed permanent acquisition. There would be disruption and inconvenience due to the temporary occupation of land for the purposes of the works. The closure of the access to the existing historic drive, and the creation of the new access and

drive, would modify the historic grounds at (redacted), which the Applicant recognises as a key non-designated historic landscape asset (MM829) impacted by the Scheme (APP-132, 6.3 Environmental Statement - Appendix 6.1 Cultural Heritage Desk Based Assessment).

2. ENGAGEMENT WITH APPLICANT

Since the publication of the initial options and subsequent revisions for the proposed bypass, our client has engaged with NH and their consultants, Skanska, in respect of the proposals for this project and the impacts on our client's property.

Without prejudice to these representations, we confirm that discussions with NH and Skanska on a proposed agreement to address our client's concerns and requirements for mitigation are continuing.

In that respect, draft Heads of Terms were prepared and submitted to NH in November 2022, the last revision of which was dated 30 November 2023. On our client's behalf, our discussions have now been referred to the Valuation Office Agency ('VOA') acting on behalf of NH and at the time of submitting these representations, we await a formal response from the VOA.

It is our client's view that agreement with the Applicant is possible but until such time as agreement has been reached, our client reserves their right to make further submissions in respect of the Applicant's DCO application and throughout the DCO Examination (including attendance at a relevant hearings).

To assist the Examination, we are content to enter into a Statement of Common Ground with the Applicant, to record the Applicant's response to the issues raised in our client's consultation submissions and this summary representation including but not limited to the necessary accommodation works to mitigate the impact of the scheme on the historic landscape and setting of (redacted).

Notwithstanding our client's intention to seek agreement with NH, we would request that, in so far as necessary and appropriate, any undertakings to deal with the matters raised in this representation and any other undertakings in respect of our client's property are secured within the DCO to ensure there is a legal 'backstop' in respect of NH's obligations to our client.

3. EXTENT OF COMPULSORY ACQUISITION

As shown on the Applicant's submitted Regulation 5(2)(o) General Arrangement Plan Sheet 6 of 7, a new access drive (Work No. 110) to our client's property has been proposed from a new access point on the realigned A1133 (Work No. 109) to mitigate the closure of the existing access to the (redacted) from the A46 eastbound carriageway. To the south of this new access drive, the Applicant seeks to permanently acquire part of our client's land for the purposes of the project and to temporarily occupy certain other parts of our client's land for the purposes of carrying out works to construct the project. Our client objects to the extent of compulsory acquisition of land for the purposes

It is well-established law and policy that the compulsory acquisition of land should not be made or confirmed unless there is a compelling case in the public interest to do so. There must be clear evidence that the public benefit of a compulsory acquisition will outweigh the private loss. The onus of proof is on the acquiring authority – in this case the Applicant – to demonstrate that a compelling public interest case exists. That is the case irrespective of which

power of compulsory acquisition is used, and extends to all land which is the subject of the Order, whether the land itself, or rights over the land, are to be acquired compulsorily. That compelling case cannot be made out if the acquiring authority cannot demonstrate that compulsory acquisition is necessary, such as if the land/rights which are sought to be acquired can be secured voluntarily, or exceed those required for the scheme.

In this case, while our client does not oppose the Scheme in principle, it does object to the extent of compulsory acquisition of land proposed on the basis that there is no compelling public interest case to justify the acquisition of all land included within the DCO as applied for.

Specifically, our client objects to the proposed compulsory acquisition of Plot 6/6a, Plot 6/6d1 and certain parts of Plot 6/6b to enable to the Applicant to (a) construct the new access track across our client's property (Work No. 110); and (b) construct two landscape bunds (Work Nos. 112A and 112B) on our client's property.

The compulsory acquisition of this land is not justified, first, because in respect of the new access (Work No. 110), it is being provided for our client's benefit in mitigation for the closure of the existing access, and is intended to be a private access for our client across its own land. Given that, the permanent acquisition of this land by the Applicant is not appropriate or justified. Second, our client is willing (in principle and without prejudice to the particular terms), by means of an agreement, to—

- provide the Applicant with the land and rights required temporarily for the purposes of conducting these works (in so far as they lie within our client's ownership);
- undertake, following construction, the landscaping establishment and maintenance of the landscape bunds, and the ongoing maintenance etc of the new access drive; and
- grant to the Applicant (or third parties) such permanent rights as may be reasonably required across its land in connection with the constructed works, e.g. access to the attenuation basin (Work No. 113) for maintenance or inspection purposes, rights for utility apparatus.

In any event, our client submits that so much of Plots 6/6a, 6/6b and Plot 6/6d1 as are required for the purposes of Work Nos. 110, 112A and 112B should be reclassified from permanent acquisition (i.e. shown coloured pink) to temporary land (i.e. shown coloured green). For the reasons set out above, the permanent acquisition of this land is not justified.

4. IMPLEMENTATION OF NEW ACCESS DRIVE TO LANGFORD HALL

Our client is in agreement to the general location of the new access drive (Work No. 110) but in principle points remain to be agreed in relation to the layout and design of the new access and implementation of those works, including but not limited to agreement on:

- (i) a standard and design which is consistent with historic and architectural significance of the Grade II* listing of (redacted), the Grade II listing of associated buildings and the historic landscape of the estate, including landscaping, gating, estate fencing to all new boundaries, and avenue tree planting which is consistent with the existing access drive and estate fencing;
- (ii) utilities and service media connections along the new drive to provide for an equivalent electric gate, intercom and security arrangements as existing;

(iii) full land remediation to include topsoil and re-seeding following construction of the new drive (Work No. 110) and all other proposed temporary use of our client's land (including Work No. 111 and, we submit, Work Nos. 112A and 112B);

(iv) as set out above, retention of the land proposed for the landscape bunds (Work Nos. 112A and 112B) within our client's freehold ownership (these are currently shown as permanent acquisition (pink)) and the basis of landscaping establishment and future maintenance obligations;

(v) a drainage scheme design – both during and post construction - given the modifications proposed to, and adjacent to, our client's land; and

(vi) remodelling of the Lodge area prior to closure of the Lodge's current entrance, to allow for continuous resident access and service vehicles notwithstanding the changes proposed.

Our client also seeks agreement with the Applicant on the future ownership of land between our client's current freehold boundary and the realigned A1133. Our client considers that, as a minimum, it should own all land comprised in the new access drive (Work No. 110), including any of that land which lies within Plots 6/3c, 6/4c and 6/2a.

5. LANDSCAPE AND HISTORIC ADVICE

In April 2023, our clients submitted to NH proposals to instruct their own landscape/architectural/heritage consultants to prepare and agree those relevant parts of the Schedule of Works with NH; the cost of which we consider should be met by NH.

To date NH have failed to undertake to meet these costs and despite many requests, this unwillingness to meet the costs was only shared on 10th May 2024, some 13 months after the original request.

It is our client's view that with NH undertaking to meet these costs, our client and NH together with the local authority/Historic England could seek an agreement on an appropriate Schedule of Works, appropriately taking into account the impact of the works and the proposed new access on the listed buildings and historic grounds, which would potentially avoid the need to raise issues in the Examination and the additional cost of doing so.

Our client maintains that this remains possible but this requires an undertaking from NH to meet these costs.

6. OTHER GENERAL ISSUES

Below is an outline of other issues, on which our client may wish to make further representations to the Inspectorate during examination:

(i) Provisions for dealing with any viable sand and gravel deposits arising from the project works on their land.

(ii) Appropriate light and noise attenuation and mitigation measures in respect of (redacted).

(iii) Continuity of access to (redacted) and its properties during the construction phase of the Scheme, including the implementation of the proposed new access drive from the A1133 in advance of the main A1133 and A46 works being carried out in order to minimise the impact of those main works on our client.

(iv) The proposed A1133 speed limit zones of 50mph and National Speed limit (Permanent Speed Limit Plans Regulation 5(2)(o) Sheet 6 of 7) should be revised so that a 40mph zone is introduced from the Winthorpe roundabout to the entrance to the current 40mph limit at the entrance to Langford village. This would ensure safe and convenient access to and egress from the new private means of access proposed.

(v) Footway F-6C to F6-E (as shown on APP-007 Streets, Rights of Way and Access Plans – Sheet 6) should be extended to meet with the proposed new access drive entrance point to enable access/egress on foot.