

A46 Newark Bypass DCO Examination

Newark and Sherwood District Council – Written Submissions

1. Introduction

- 1.1 Newark and Sherwood District Council (the “**Council**”) support National Highways’ (the “**Applicant**”) proposed A46 Newark Bypass Scheme (the “**Scheme**”) in principle but in their capacity as landowner the Council classifies as “**Affected Persons**” to the Examination given that the proposed Development Consent Order (the “**Proposed Order**”) seeks both temporary and permanent compulsory acquisition of their land and easements affecting their land.
- 1.2 This document summarises the submissions made on behalf of the Council at the Compulsory Acquisition Hearing on 9 October 2024. In accordance with the request of the Examining Authority, those submissions did not provide a detailed explanation of the impact on the Council’s Land of the compulsory acquisition powers in the Proposed Order save as to provide context in relation to the justification of the grant of those powers. Section 3 of this note sets out that context.

2. Affected Land

- 2.1 The Council’s concerns as landowner are in relation to the plots referred to in its relevant representations and which are summarised as follows:
 - Plots 3/14a, 3/14e, 3/14g and 3/14j, which are subject to proposed powers of permanent acquisition (“**the Permanent Acquisition Land**”) for the purposes of Works 40, 51, U9, U10 and environmental mitigation of the Scheme comprising, in summary the construction of the A46 and Cattle Market Junction Circulatory, the diversion of low voltage cables, 11KV electricity distribution cables and electronic communications equipment, and for environmental mitigation, maintenance and monitoring commitments.
 - Plots 3/14b, 3/14b1, 3/14c, 3/14d, 3/14f, 3/14h, 3/14i, 3/14k, (“**the Temporary Possession Land**”) which are subject to powers of temporary use for the purposes of the Works (“**Temporary Possession of Land**”) (such powers also apply in relation to the Permanent Acquisition of Land); and
 - Plots 3/14b, 3/14c, 3/14d, 3/14f, 3/14i and 3/14k (“**the Easement Land**”) which are subject to proposed powers for the creation and acquisition of easements and the creation of restrictive covenants. As noted above, some of these plots are also part of the Temporary Possession of Land. The extent of the easements and restrictive covenants are set out at schedule 5 to the Proposed Order and vary by plot, but which include in each case a right to pass and repass and to remain on the land with or without vehicles which would prevent the use of the plots affected by the Council for most purposes.

3. Impact of Proposed Order

- 3.1 The Proposed Order would have a significant effect on Newark Lorry Park owned by the Council. Newark Lorry Park is located south of the A46 at the junction of the A46 with the B6326 Great North Road and access/ egress for the lorry park is taken to/from the B6326 Great North Road.
- 3.2 If exclusive possession of plot 3/14h were taken, this would prevent access to the Council’s main offices at Castle House, accessed from the B6326 Great North Road south of the lorry park junction.

- 3.3 Newark Lorry Park provides shower facilities and a café for drivers, and lorry wash and refuelling facilities together with 203 parking spaces.
- 3.4 Newark Lorry Park is of strategic importance to freight operators. The site is conveniently situated with easy road access to the A1, A46 and M1 and at a key rest stop on the Humber to Tewkesbury road freight route. Lorry drivers are required, by law, to take regular rest breaks and Newark Lorry Park is perfectly positioned on the strategic road network to facilitate this.
- 3.5 The Applicant's proposals include provision of a new vehicular access to Newark Lorry Park which, alongside loss of the Permanent Acquisition Land, the use of the Temporary Possession Land as a worksite and the sterilisation of the Easement Land will require a complete reconfiguration of the site to ensure sufficient space to meet demand and to allow for HGVs to safely turn and navigate the internal routes within the lorry park and access/ egress to/from the strategic road network. Site security, lighting, fencing, the café, lorry wash, fuel bunker and welfare facilities will need to be reassessed in any reconfiguration.

4. Extent of Land Subject to Compulsory Acquisition and Temporary Possession Powers

- 4.1 As the Examining Authority has indicated, it is for the Applicant to demonstrate that it has sought to minimise the extent of the land required to the least amount necessary (see Q5.0.13 of the Examining Authority's written questions issued on 15 October 2024 for example).
- 4.2 The Council has particular concerns with respect to the extent of plot 3/14b which forms part of both the Temporary Possession Land and the Easement Land for works 51 (construction of the A46 southbound off-slip road to the Cattle Market junction), U9 (diversion of electronic communications equipment at Cattle Market Junction) and U10 (diversion of low voltage cables and 11kV electricity distribution cables at Cattle Market Junction).
- 4.3 Plot 3/14b comprises approximately 5,119 square metres of land. The Applicant should demonstrate that it requires the temporary possession of the whole of this land and requires powers over the whole of the land to acquire easements for the diversion of cables. It should also specify what restrictive covenants (if any) it intends to impose over this land. These are all matters which could be dealt with in the proposed agreement discussed below.

5. Agreement between Parties

- 5.1 It is well established that an authority seeking compulsory acquisition powers should seek to acquire the land required for its scheme by agreement where possible. By analogy, it is preferable for an authority to agree a license or lease of land it needs to occupy temporarily rather than exercise powers of temporary possession. MHCLG's recently published Guidance (October 2024) requires examining (or confirming) authorities to be satisfied that the interests of those affected by the exercise of compulsory purchase powers have been considered and to have regard to any mitigation offered by the acquiring authority when considering the impact of the exercise of powers (paragraph 13.4).
- 5.2 It would be to the benefit of both parties if an agreement were reached between the Applicant and the Council which would allow for the voluntary transfer/leasing of land to the Applicant and for the Council to be consulted on detailed design of the proposed facility and allow for the reconfiguration of the lorry park in advance of the exercise of powers. As part of this agreement the Council also needs to ensure continued unimpeded access to their main Council offices at Castle House.
- 5.3 The Applicant's statement of reasons says it will enter into negotiations so that land and rights can be acquired by agreement.

- 5.4 However, engagement in relation to mitigating the effect of compulsory acquisition and temporary possession powers on the Council's land has been extremely limited to date. A meeting was held on 23 August, but no proposals have been forthcoming from the Applicant in response to the Council's relevant representations.
- 5.5 The Council took the initiative to send an outline agreement to the Applicant on 27 September, in advance of the first Open Floor Hearing and first Compulsory Acquisition Hearing taking place. This was forwarded to the Applicant's solicitors Womble Bond Dickinson on the date of the hearing. No response from the Applicant has been received to date save to confirm that it is the Applicant's intention to respond by 25 October.
- 5.6 The Council hopes that the Applicant will enter into discussions which would enable an agreement to be reached. If it does not progress discussions with reasonable diligence, the Council will invite the Examining Authority to recommend that powers not be granted to the Applicant unless the Secretary of State is satisfied that the Applicant has entered into an agreement with the Council or can demonstrate that they have engaged meaningfully with the Council.

Town Legal LLP
22 October 2024