



**LONDON  
GATWICK**



# Gatwick Airport Northern Runway Project

The Applicant's Written Summary of Oral Submissions  
CAH2: Compulsory Acquisition

**Book 10**

**VERSION: 1.0**

**DATE: AUGUST 2024**

**Application Document Ref: 10.62.1**

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## 1 Introduction

- 1.1.1 This document contains Gatwick Airport Limited's (the "**Applicant**") summary of its oral evidence and post hearing comments on its submissions made at Compulsory Acquisition Hearing 2 ("**CAH2**") held on 30 July 2024. Where the comment is a post-hearing comment, this is indicated. The Applicant has separately submitted at Deadline 8 (Doc Ref. 10.63.1) its response to the Examining Authority's ("**ExA**") action points arising from CAH2, which were published on 30 July 2024 [[EV19-007](#)].
- 1.1.2 This document uses the headings for each item in the agenda published for CAH2 by the ExA on 22 July 2024 [[EV19-001](#)].
- 1.1.3 The Applicant, which is promoting the Gatwick Airport Northern Runway Project (the "**Project**") was represented at CAH2 by Scott Lyness KC, who introduced the following persons to the ExA:
- Natasha Hyde, Senior Associate, Herbert Smith Freehills LLP
  - Darren Atkins, Principal Highways Engineer, Arup
  - Steve Mitchell, Director, Mitchell Environmental

## 2 Agenda Items 1 and 2: Welcome, introductions and arrangements for the Hearing; Purpose of the Hearing

- 2.1.1 The Applicant did not make any submissions under these agenda items.

## 3 Agenda Item 3: Section 122 and 123 of the Planning Act 2008 (PA2008) - Purpose for which compulsory acquisition may be authorised and land to which authorisation of compulsory acquisition can relate

### 3.1. **The ExA will ask the Applicant to provide a brief overview of any recent updates to the Land Rights Tracker**

- 3.1.1 The ExA noted that the latest version of the Land Rights Tracker was submitted into the Examination at Deadline 7 and asked the Applicant whether any significant updates had been made since submission of the tracker.
- 3.1.2 The Applicant explained that the main addition to the Land Rights Tracker since Deadline 7 is that in principle agreement has been reached with Marathon Asset Management.

- 3.1.3 Of the 28 Affected Parties (some of whom are grouped by joint ownership) the Applicant has now agreed Heads of Terms, Memorandums of Understanding or completed agreements with 8 as follows:
- 3.1.3.1. Mr Moulton;
  - 3.1.3.2. Mr Vernon and Ms Constant;
  - 3.1.3.3. Mr and Mrs Tunnicliff;
  - 3.1.3.4. PG Vallance Limited;
  - 3.1.3.5. Mr and Mrs Patrick and Mr and Mrs Elcock (Dovenby Hall);
  - 3.1.3.6. Mr Fagan and Ms Long; and
  - 3.1.3.7. Kirsty Allen.
- 3.1.4 The Applicant has made significant progress and is finalising Heads of Terms with 9 of the Affected Parties:
- 3.1.4.1. The Arora Group (Agut Ltd and Ah6 Ltd);
  - 3.1.4.2. AIPUT (Airport Industrial GP Ltd and Airport Industrial Nominees Ltd);
  - 3.1.4.3. Gatwick Green Limited;
  - 3.1.4.4. Travelodge;
  - 3.1.4.5. MAM (HICP Ltd & Holiday Inn (London Gatwick) Ltd); and
  - 3.1.4.6. Peak Securities Ltd.
- 3.1.5 The Applicant is continuing to negotiate terms with 6 of the 28 Affected Parties:
- 3.1.5.1. Cheshire West and Chester Borough Council;
  - 3.1.5.2. Surrey County Council;
  - 3.1.5.3. West Sussex County Council;
  - 3.1.5.4. National Highways;
  - 3.1.5.5. Malthurst South East Ltd; and
  - 3.1.5.6. Walnut Gardens freeholder.
- 3.1.6 The Applicant has still not received substantive responses from 5 of the Affected Parties:
- 3.1.6.1. Britannia Hotels Ltd;
  - 3.1.6.2. Dbm Contractors Ltd;
  - 3.1.6.3. Horley Estates Ltd;
  - 3.1.6.4. Reigate & Banstead Borough Council; and

3.1.6.5. Mr Smith.

- 3.1.7 The ExA asked whether any further contact has been made with Reigate and Banstead Borough Council in respect of Heads of Terms as communication had been limited to date.
- 3.1.8 The Applicant confirmed that although RBBC had acknowledged correspondence recently, no substantive response has been provided.

**3.2. The ExA will invite submissions from Affected Persons (AP) in respect of whether the proposed level of compulsory acquisition of land by the Applicant is considered proportionate.**

- 3.2.1 The ExA noted various responses to examination questions made by the Applicant, particularly at ExQ1 CA.1.9 and CA.1.10 [\[REP3-087\]](#) and is aware of submissions by various parties that the proposed land take is not proportionate and asked for updates from those parties. Those present at the hearing were the Joint Local Authorities, Gatwick Green and Marathon Asset Management.
- 3.2.2 In response to the comments made by the JLAs, the Applicant noted that, it had shown plots as "green" based on the information it has available. The plots categorised as "green" in the revised **Land Plans** [\[REP7-017\]](#) refer to plots which are subject to permanent acquisition of rights to enable highway works.
- 3.2.3 As for the more substantive point about the approach to be taken to turning plots green or providing further protective provisions to the local highway authorities, the Applicant explained that adequate protection is provided to the local highway authorities through Article 21 of the **Draft DCO** (Doc Ref. 2.1). This prevents the Applicant from commencing local highway works until it has entered into an agreement with the relevant highway authority. This article requires that the agreements reflect the substantive content within the template s278/38 agreements of the local highway authorities with updates to reflect the DCO context. Therefore, the Applicant must seek an approval from the relevant local highway authority prior to carrying out any works that would require the use of its compulsory acquisition powers over any of the adopted local highway. The intention is not to prejudice any of the highway authorities but to ensure that there is no impediment to the delivery of the scheme. The Applicant noted that it would consider the comments made by the local highway authorities at the hearing.
- 3.2.4 The ExA asked the Applicant whether there is any reason it can give today why any of those two solutions offered by the JLAs wouldn't be feasible.

- 3.2.5 The Applicant explained that it would need to ensure that any arrangements would not allow for an impediment to delivery of the scheme where adoption of a highway is dependent upon the local highway authorities and National Highways.
- 3.2.6 The ExA asked that for the next deadline the Applicant should make sure a decision has been made as to which way it is going with this. The ExA specified that it would like this received before end of examination.
- 3.2.7 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 1.]
- 3.2.8 In response to the comments made by Marathon Asset Management regarding the status of commercial agreement with the Applicant, the Applicant confirmed that their comments reflect the position of the parties. The Applicant noted that it does not anticipate that there will be a need for other protective provisions to be suggested at Deadline 8, but in the unlikely event that they are submitted, the Applicant would provide a response.
- 3.2.9 In response to the comments made by Gatwick Green, the Applicant's understanding of the latest position is that matters have progressed well towards an agreement. The outstanding points regard details of plans to be appended to the agreement. In CAH1, Gatwick Green requested that the ExA encourage National Highways to reach agreement with the Applicant. This point has been addressed and has allowed for agreement to be reached in-principle. As for the other points raised (the justification for the plot 4/463 taken), it is required for Work No. 35, which are the surface access works associated with the South Terminal Roundabout and M23 spur. The right of access sought is to ensure continuity of maintenance access around the perimeter of that existing pond for National Highways. The pond may need to be modified as part of the works, so the Applicant needs to ensure there are no impediments to enabling National Highways to get around the full perimeter of the pond for maintenance access requirements. The final nature of that physical maintenance access provision will be confirmed at the Detailed Design stage in consultation with National Highways.
- 3.2.10 Regarding the footpath, the Applicant further commented that the maintenance access requirements at this location would include a requirement for access by foot. The land acquisition proposals will ensure that one can get from the plot in question (which is not under National Highways control) onto the public right of way and then that way, one would have the continuity of maintenance access required.

- 3.2.11 The ExA asked whether there was a way to ensure that Gatwick Green could be involved in a discussion with National Highways.
- 3.2.12 The Applicant stated that it understands the point and can raise this within its ongoing discussions with Gatwick Green.
- 3.2.13 **[Post-Hearing Note:** the Applicant has provided a further response to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 2.]
- 3.2.14 The ExA noted that discussions have been had regarding proportionality in relation to land required to facilitate the proposed development. Having worked through both the Works and Land Plans in detail, the ExA raised questions regarding why some of the land is being sought. It explained that as is set out in the Statement of Reasons, the Applicant owns the majority of the land required to enable the development but looking at the Book of Reference and Land Plans, the Applicant is seeking to acquire land which it owns or has rights over. Seeing as compulsory acquisition should be the last resort, the ExA queried why the Applicant is seeking to acquire land which it owns or already has rights over.
- 3.2.15 The Applicant explained that the basic reason for doing so is that it is a complex land arrangement at the airport, so the Applicant is seeking to have a clean basis on which to implement the Order. It needs to ensure clean rights are provided to it and insofar as there are land plots with identified interests, that they won't cause any impediment to the scheme.
- 3.2.16 The ExA was aware that this is almost standard approach in large scale developments but further queried how this meets the required test of only taking land which is essential to enable the development to go ahead.
- 3.2.17 The Applicant responded that it is essential because insofar as those plots may be regarded as having the potential risk of there being unidentified interests, it is essential that the Applicant acquire them in order to achieve the objective and have clean land interests. It is the Applicant's view that it is essential to acquire the land in order to achieve that objective.
- 3.2.18 The ExA noted that at the last DCO hearing in June, it had asked why the redline boundary was drawn so tightly around the eastern edge of Work No 43 but there is a much bigger boundary to the west of the Works. The ExA was unclear as to whether a response was received to that question and noted that the same issue applies here in relation to Work No 41 in respect of Pentagon Field. The ExA asked the Applicant to please provide signposting to such response if already provided or if not then the Applicant should provide a response.

- 3.2.19 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 3.]
- 3.2.20 The ExA referred to **the Covering Letter to a Third Notification of a Proposed Project Change [AS-159]** submitted to the examination on 18 July in respect of proposed project change No. 5 and explained that there were additional land interests identified through further land referencing set out in the letter. Due to the additional interests identified, consent had not been granted from those interests. The ExA asked whether this was still the case.
- 3.2.21 The Applicant confirmed that this is still the case. The position set out in the letter was that consent hadn't been obtained from those additional land interests so that s123(3) of the 2008 Act couldn't be satisfied so the Applicant is not seeking compulsory acquisition powers with the additional land. But the Applicant noted that it did not think that not including those powers presented an impediment to the delivery of the proposed works. Consent for the inclusion had been obtained from the freeholder and the leaseholder to the land for whose benefit the change is being promoted.
- 3.2.22 The ExA asked if it was correct that the Applicant is no longer seeking CA powers over the additional land, but is still proposing to extend the Order Limits and include the additional land.
- 3.2.23 The Applicant confirmed that this was correct.
- 3.2.24 In terms of the additional land interests, the ExA asked why the Applicant is not seeking to reach agreement with the third parties to include CA powers.
- 3.2.25 The Applicant explained that the other landowner is Surrey County Council (in respect of the verge, adjoining the highway within which they are highway authority). The Applicant will incorporate this element of the scheme into its wider discussions with Surrey County Council (in their capacity as landowner), but noted too that the Applicant is required to seek their consent as highway authority under Article 21 in any event.
- 3.2.26 The ExA asked that the Third Change Application Report [REP7-097] be updated at Deadline 8.
- 3.2.27 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 4.]

- 3.2.28 The ExA referred to Article 27(b) of the **Draft DCO** (Doc Ref. 2.1) and stated that both National Highways and Gatwick Green Limited have commented a few times on this Article. The ExA asked whether, in respect of Work No 35, the wording of Article 27(b) would allow Gatwick to use the land acquired from Gatwick Green Limited for other purposes besides landscaping.
- 3.2.29 The Applicant stated that based purely on the drafting of that provision, the power is wider, but the implementation of the project would still be subject to general arrangement plans and other controls under the DCO that would apply effectively to secure the landscaping on that area of land. So, while technically Article 27(1)(b) grants wider powers, there are other controls which restrict its operation and what can be done on that plot.
- 3.2.30 The ExA further asked whether Article 27(1)(b) is necessary, in respect of complying with guidance that CA powers should be limited to what is necessary.
- 3.2.31 The Applicant stated that it remains necessary. That provision should be read with the rest of article 27(1), which provides that the undertaker may (a) acquire compulsorily so much of the Order land as is required for the construction, operation or maintenance of the authorised development, or to facilitate it, or is incidental to it, or is required as replacement land; and (b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the undertaking. It can be seen that the power under article 27(1)(b) relates to the land that has been acquired for the purposes authorised by the Order, and those purposes are set out by reference to the authorised development in under article 27(1)(a). The power to use land in connection with or ancillary to the undertaking should be seen in this context, and it is linked in any event to the undertaking.
- 3.2.32 Additionally, even though there are other controls pursuant to the Order, including the general arrangement plans etc, it is important that any compulsory acquisition makes provision for the use of land that is acquired, in a manner which relates to the undertaking that is implementing the Project. This provision ensures that the Project can be flexibly and effectively delivered in connection with the operation of the airport undertaking.
- 3.2.33 The ExA noted that this is an outstanding issue for Gatwick Green, so suggested that this is a topic for further discussion.
- 3.2.34 The Applicant confirmed that it would speak with Gatwick Green regarding the range of controls to be applied over that land in the wider context of the DCO so that it is clear what controls are going to apply.



- 3.2.35 The ExA noted that it is aware that final versions of the Book of Reference and the Land Rights Tracker will be submitted at the close of the examination but asked the Applicant to submit at Deadline 9 a new Status of Negotiations document detailing the number of option agreements and further information as the Applicant alluded to at the start of the CAH2. This should be similar to the Portishead Branch Line schedule (Portishead Examination Library reference [REP7-063]).
- 3.2.36 **[Post-Hearing Note:** the Applicant will submit the status of negotiations document at Deadline 9 in response to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1) Action Point 5.]
- 3.3. The ExA will invite submissions from APs to briefly set out any outstanding concerns that have not already been discussed.**
- 3.3.1 In response to the comments made by the Arora Group regarding the status of agreements of temporary or permanent acquisitions, the Applicant explained that it agrees with the characterisation of the status of the sites set out below, noting that good progress has been made and that agreement in principle is being reached with the Arora Group.
- 3.3.1.1. The Beehive Plot 6/700
- 3.3.1.2. Travelodge London Road Plot 1/098
- 3.3.1.3. Schlumberger House Plots 4/492, 4/544, 4/496 & 4/539
- 3.3.1.4. Premier Inn Longbridge Way 1/120
- 3.3.1.5. Sofitel North Terminal 1/209
- 3.3.2 In relation to the Sofitel, the Applicant confirmed that it is committed to working with the Arora Group on the details of a solution as far as the drop-off position is concerned. Following detailed design, traffic management safety will be planned and the Applicant is confident that a workable solution can be found.
- 3.3.3 In the **CoCP** (Doc Ref. 5.3), the Applicant has committed to undertaking appropriate accommodation works to ensure that management measures to mitigate impacts will be established in advance of the commencement of works. This is something that will apply across the board for those who may have a concern about the interface between the construction works and the functioning of their facilities. The Applicant is going to look at the wording and consider whether anything more specific could be added.

- 3.3.4 **[Post-Hearing Note:** The Applicant has considered this point in the updated CoCP (Doc Ref. 5.3) submitted at Deadline 8].
- 3.3.5 The ExA asked whether the design solution would be available before the close of examination, or whether that is a detailed design.
- 3.3.6 The Applicant responded that the concept would be made available to the examination but not the detail. The detailed design will occur following the grant of development consent in accordance with Requirement 4 of the **Draft DCO** (Doc Ref. 2.1).
- 3.3.7 The ExA further asked whether the concept will be discussed with the Arora Group prior to the close of examination as the ExA would like for as many of these issues as possible to be resolved prior to the close of the examination.
- 3.3.8 The Applicant confirmed that that is the intention and it is confident that a solution can be found.
- 3.3.9 In response to the comments made by SCC, the Applicant explained that there is a difference between the Applicant and the Council in respect of the design of the roundabout. It is happy to share information about its works, what is going to take place and when, but it is not for the Applicant to design a highways access for a development outside the Project. In the normal way, it will design to provide for the highways impact that results from its scheme. In the event that a developer comes forward on the allocated site in due course, then that development will need to take into account traffic conditions, the highways that are in place as a result of the Project and then mitigate accordingly. It is not for the Applicant to design an access that anticipates a development on an allocated site that has yet to come forward.
- 3.3.10 In response to SCC's second point relating to the traffic impact, fundamentally, the Applicant does not consider that there is a proposed development scheme that it should be assessing. As far as the point on the traffic impact assessment is concerned, the Applicant will take that away and relay that back to the JLAs in due course as part of wider discussions that are taking place in any event. The fundamental position is that it is for the Applicant to bring forward a scheme that mitigates the impacts of the Project. The Applicant has not seen a design relating to the scheme highlighted by SCC and it does not know what form it is going to take.
- 3.3.11 Lastly, in relation to the attenuation pond, the attenuation proposals across the scheme including the pond in question at South Terminal Roundabout were developed in consultation with Surrey County Council and West Sussex County

Council Lead Local Flood Authority (LLFA) teams as part of the technical engagement, as well as being developed in consultation with National Highways as the future asset owner. The proposed attenuation pond design and its location north-east of the South Terminal roundabout is the preferred solution on the basis of a range of factors, including alignment with LLFA policy in relation to preference for Sustainable Drainage Systems (SuDS) solutions over below ground tanks. It's also preferred on the basis of minimising safety risks associated with plane bird strikes at the airport, as opposed to alternative options, and also in relation to general adherence with National Highway standards including the nature of the associated maintenance access arrangements to the pond. Overall, the constraints around the site at this location limit the feasibility of the alternative options. The scheme's limits of deviation offer a limited degree of flexibility to refine the pond provision at its proposed location and that will be done in consultation with SCC as one of the technical approval authorities in their capacity as LLFA at the detailed design stage.

3.3.12 In relation to the strategic business park, the ExA encouraged effective communication and a clear summary of the positions from both parties in closing submissions.

3.3.13 The Applicant said this was noted and it will continue to discuss this matter with SCC, and if it cannot be resolved, the Applicant will make sure that the closing submissions address this matter accordingly.

**3.4. The ExA may ask questions of APs about matters arising from written and oral submissions.**

3.4.1 The Applicant made no submissions under this agenda item.

**4 Agenda Item 4: Sections 127 and 138 of the PA2008 - the acquisition of Statutory Undertakers' land and the extinguishment of rights and removal of apparatus of Statutory Undertakers**

**4.1. The ExA will ask the Applicant to provide a brief overview of any recent updates to the Land Rights Tracker in respect of negotiations with Statutory Undertakers.**

4.1.1 The ExA asked for an update on negotiations with statutory undertakers and asked whether it is anticipated that any further protective provisions will be included in the Draft DCO.

- 4.1.2 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 7.]
- 4.1.3 The ExA referred to REP6-110 and explained that the Applicant considered whether to incorporate protective provisions for Lead Local Flood Authorities (LLFAs) or whether they propose to apply for each consent during the detailed design stage post-DCO.
- 4.1.4 The Applicant explained that it has had confirmation from the JLAs that protective provisions for LLFAs are unlikely to be needed. The JLAs have agreed to cover those points in writing.
- 4.1.5 The ExA asked whether, in the event that agreement is not reached with the Statutory Undertakers, the relevant tests for the exercise of powers pursuant to s127 and 128 of the PA will be met.
- 4.1.6 The Applicant confirmed that the tests would be met because there are already protective provisions set out in Schedule 9 to the Order (which are to be supplemented at Deadline 8) and those are sufficient to meet the statutory tests, in that they ensure that the Order powers can be exercised over statutory undertakers' land and rights without serious detriment to the carrying on of the undertaking and with provision of other land and rights.
- 4.1.7 Part 1 of Schedule 9 is drafted to provide sufficient protection to any electricity, gas, water or sewage undertaker and Part 2 of Schedule 9 is drafted to provide sufficient protection to any operator of electronic communications code networks.
- 4.2. Any Statutory Undertaker wishing to speak in relation to an objection or issue raised that is relevant to the effects of the Proposed Development on its undertaking, apparatus or land will be invited to put oral submissions to the ExA.**
- 4.2.1 The Applicant made no submissions under this agenda item.
- 4.3. The ExA may ask questions of the Statutory Undertaker(s) or other relevant body, and the Applicant, about matters arising from written and oral submissions.**
- 4.3.1 The ExA noted that the update document referred to under agenda item 3.2 should include Statutory Undertakers. It should set out where the Applicant has received agreement, whether standard or bespoke wording has been agreed, the extent of the outstanding issues, details of negotiations to date, communication taking place and confirm the wording that the Applicant thinks suitable. Where no

response has been received, the Applicant should detail what attempts to engage have been carried out and why it thinks standard provisions would be adequate and why bespoke provisions wouldn't be necessary.

- 4.3.2 In terms of the Statutory Undertakers where bespoke provisions haven't been agreed, the Statutory Undertakers should provide a similar document detailing why bespoke provisions would be necessary, wording they think is appropriate, wording they think would be acceptable and a tracked changes version against the Applicant's proposed wording.
- 4.3.3 The Applicant is to lead on this, based on actions points set out by the ExA. This is to be set out for Deadline 9.
- 4.3.4 **[Post-Hearing Note:** the Applicant is responding to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 6.]

## 5 Agenda Item 5: Section 135 of the PA2008 – Crown Land

### 5.1. The ExA will ask the Applicant to provide a brief update on the progress of obtaining Crown consent.

- 5.1.1 The Applicant explained that, as far as the Office for National Statistics (ONS) is concerned, the MoU has been agreed and the s135 is being finalised, noting that there are no issues in the s135. With the Secretary of State for Transport, a number of meetings have been held and the DFT is finalising the s135.
- 5.1.2 As far the Home Office is concerned, a draft MoU has been shared and the Home Office has confirmed that they are reviewing that in detail and the Applicant hopes the MOU will be signed by the end of the week. The Home Office is currently confirming their execution process. The Applicant is confident that the correct contacts within the organisation are progressing the matter and s135 consent will be forthcoming. The Applicant does not foresee any issues as far as s135 is concerned.
- 5.1.3 The ExA asked the Applicant to explain what the MOUs are and how they work.
- 5.1.4 The Applicant explained that the MOUs give assurances that protect the Crown's interests throughout the construction and operation of the Project.
- 5.1.5 The ExA noted that it states that the Crown Authority's interests will be reasonably protected and asked the Applicant to explain what "reasonable protection" means.

- 5.1.6 The Applicant explained that a number of Crown interests by nature of the operation of the airport have occupational rights so when the Applicant says that they are protected, the reasonable protection means the re-provision of alternative facilities .
- 5.1.7 The ExA asked that, as Crown consent has not yet been received, could the Applicant set out how the proposed development could go ahead if such consent isn't forthcoming.
- 5.1.8 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from CAH2 (Doc Ref. 10.63.1), in response to Action Point 9.]
- 5.1.9 The ExA asked whether the Applicant is confident that such consent is to be granted before the close of examination.
- 5.1.10 The Applicant confirmed that it is.

## **5.2. The ExA may ask questions of the Applicant about matters arising from written and oral submissions.**

- 5.2.1 The Applicant made no submissions under this agenda item.

## **6 Agenda Item 6: Section 131 and 132 of the PA2008 - Commons, open spaces etc: compulsory acquisition of land and compulsory acquisition of rights over land**

### **6.1. The ExA will ask the Applicant to briefly outline their amended approach in respect of replacement open space.**

- 6.1.1 The ExA noted the Applicant's response to ExQ2 CA.2.9 [REP7-080] and that there had been a change in respect of what was to be replacement open land. The ExA asked the Applicant to give a high level summary of this change and any CA implications.
- 6.1.2 The Applicant has set out an explanation of the change in response to CA.2.9 at REP7-080 and updated s10.1 of the **Statement of Reasons** [REP7-009]. The Applicant is also aware that the ExA has the **Note on Acquisition of Special Category Land and Provision of Replacement Land** [REP4-041] which the Applicant can update if required.
- 6.1.3 The Applicant noted that it started this process with a strong preference to vest the replacement open space to the local authority as is normal and having regard

to community benefit and existing provisions that are made for open space through the local authority's control and maintenance, but what the Applicant has now done is to alter the approach taken, as set out below. As far as the current position is concerned, the latest update comes from the understanding that none of the local authorities wish to own the replacement open space or have any associated management or monitoring obligations. The case for the open space to date is set out in the **Statement of Reasons** [\[REP7-009\]](#) section 10.1 and has been based on a combination of:

6.1.3.1. in respect of existing open space owned by Reigate and Banstead Borough Council (RBBC), section 131(4) of the Planning Act 2008, which requires replacement open space to vest in the party from whom the open space is being acquired; and

6.1.3.2. in respect of existing open space owned by other entities, section 131(5), which applies to land for the widening of existing highways where the giving of other land is unnecessary.

6.1.4 These twin justifications were used originally because the Applicant had understood that RBBC originally wished to be vested with the replacement open space. However, as this is no longer the case, the Applicant considers that it would be simpler for all of the existing open space required for the scheme to instead be acquired on the basis of section 131(5), such that none of the replacement space has to be vested to RBBC.

6.1.5 As the SoR explains in section 10.1, therefore, special parliamentary procedure is not required in respect of the permanent acquisition of the plots of open space land specified in Part 1 of Schedule 10 of the **Draft DCO** (Doc Ref. 2.1) because the land is all required in connection with the widening or drainage of an existing highway; and the giving in exchange of other land is unnecessary because:

6.1.5.1. it has been communicated to the Applicant in its discussions with the local authorities that no authority wishes to be vested with the replacement land and they will be satisfied if the land is to be vested in the Applicant provided that the Applicant lays out and maintains suitable replacement open space for the benefit of the public; and

6.1.5.2. article 40 of the Draft DCO (Doc Ref. 2.1) continues to secure the laying out of replacement open space by the Applicant (albeit this is not "replacement land" under section 131(4) of the 2008 Act because it is not to be vested in the entities from which the undertaker is acquiring special category land) and this replacement open space is a suitable replacement for the special category land to be acquired for the benefit of the public, as

described in section 4 of the **Applicant's Note on Acquisition of Special Category Land and Provision of Replacement Land [REP4-041]**.

- 6.1.6 Importantly, this minor change to the legal justification would not affect the Applicant's commitment to deliver the full extent of replacement open space as described in the application and this would continue to be secured in article 40 of the dDCO and through the submission and approval of LEMPs under DCO Requirement 8.
- 6.1.7 The management required for the replacement open space, including the Church Meadows replacement open space, will be set out in the relevant LEMPs approved under DCO Requirement 8.
- 6.1.8 The ExA referred to Mole Valley District Council's response to ExQ2 CA.2.9 at REP7-111 which noted that all mention of replacement open space had been removed from the latest version of the draft s106 [REP6-063] with no details on where the maintenance commitment from the Applicant will appear. The ExA asked the Applicant whether this is still required and whether that wording will be put into the next draft.
- 6.1.9 The Applicant explained that there is nothing in the draft s106 Agreement because the provisions for maintenance would be included in the LEMPs included under draft DCO Requirement 8. Wording was included in the s106 Agreement when the Applicant understood the local authorities would be taking responsibility but that position has now changed.
- 6.2. The ExA will invite submissions from the Joint Local Authorities and any other relevant body in respect of the amended approach.**
- 6.2.1 The Applicant considers that the management details will be effectively dealt with through the approvals process under draft DCO Requirement 8. Insofar as reference is made to 30 years, this was designed to align with BNG related requirements. At this stage the Applicant will reflect on what it has heard but this situation has arisen because of the changing position of the JLAs over the last couple of months namely; the JLAs not wanting to take responsibility for maintaining the replacement open space as they currently maintain the existing open space. The Applicant maintains that this is a matter which could be resolved through approvals of LEMPs pursuant to Requirement 8, and management can be dealt with by that process in any event.



**6.3. The ExA may ask questions of the Joint Local Authorities, other relevant bodies, and the Applicant about matters arising from written and oral submissions.**

6.3.1 The Applicant made no submissions under this agenda item.

## **7 Agenda Item 7: Funding**

**7.1. The ExA will ask the Applicant to advise of any updates to the Funding Statement.**

7.1.1 The Applicant confirmed that there has been no updates to the Funding Statement since the last CA hearing.

**7.2. The ExA will ask the Applicant to advise of any changes to the property cost estimate for the acquisition of land rights.**

7.2.1 EXA referred to the EXQ1 CA 1. 22 property cost estimate for land acquisition was around £121 million. It asked if this is still correct and for evidence the Applicant has to confirm that this figure remains reasonable.

7.2.2 The Applicant confirmed the figure for the property cost estimate remains correct. This matter is kept under review, but the Applicant does not foresee any reason for that figure to change. Should there be any change, between now and the close of the examination, the Applicant would inform the ExA.

7.2.3 The ExA asked about category three persons and possible relevant claims. How much funding has been put aside to deal with any compensation payments, and is that level of funding included in that £121 million figure? And if not, where is that budgeted for?

7.2.4 The estimate for relevant claims stands at approximately £4.4m and is included within the larger figure mentioned.

7.2.5 The ExA asked how that compensation figure was calculated.

7.2.6 The Applicant explained that it has been based on the assumption that 100 in 200 properties may experience more than 3dB cumulative Leq day and night increase and that has been the working assumption on which the figure is based.

7.2.7 The ExA asked for this figure be revisited for the final deadline considering the BoR has undergone changes.

- 7.2.8 The Applicant agreed to revisit this and will confirm to the ExA if any changes are necessary prior to the close of the examination; however, does not anticipate that to be necessary.
- 7.3. The ExA will ask the Applicant for an overview of the funding arrangements for the Noise Insulation and Compensation Scheme, the Schools Insulation Scheme, and the Home Relocation Assistance Scheme. Questions in relation to the practical application of these schemes may also be asked.**
- 7.3.1 In relation to the Noise Insulation Scheme, the ExA asked for an estimate of the number of residential properties who could be eligible, who live in either a conservation area or will require listed building consent or both.
- 7.3.2 The Applicant confirmed that it has looked at the number of listed buildings eligible for the Noise Insulation Scheme and it is approximately 5% of the total number of eligible properties.
- 7.3.3 The ExA asked what happens if the relevant consent required is refused by the Local planning authority. Further, if on appeal the appeal is dismissed what happens then and who is responsible for the costs in making such an appeal (in reference to listed building consent for noise insulation works if required)?
- 7.3.4 The Applicant explained that it would centralise the listed building applications so it is the Applicant's cost not the resident's. The homeowner has to instigate the request for listed building consent, but the Applicant will then do it centrally. It's more efficient and effective to do it that way working with the relevant planning authorities. In terms of whether that could be refused, it's worth remembering the nature of the works. The Noise Insulation Scheme does describe for listed buildings that the Applicant wouldn't change the windows but will go for secondary glazing internally, so that it doesn't change the appearance of the property. The Applicant doesn't believe that consent would be refused on this basis. But if it is, the costs associated with any appeal would be borne by the Applicant.
- 7.3.5 If an appeal is dismissed, the Applicant will work towards whatever solution is practicable, particularly in the inner zone where there is a policy requirement to offer that noise insulation because it's above the significant observable adverse effect level. However, that policy requirement to avoid that noise level is expressed to be in the context of the government's sustainable development policy, and that policy means that it won't always be possible necessarily to do that. In other words, any noise mitigation scheme which is required to avoid a significant effect in policy still has to be considered in the context of sustainable development, so there will be exceptions which are allowed, where it's just

actually not practicable to do that and still comply with the policy requirement. That judgement would ultimately be made by a Planning Inspector on appeal. The Applicant therefore believes that its approach meets the requirements of policy.

- 7.3.6 The ExA explained that the reasons for its question is to make sure that the mitigation proposed, is feasible and that it is workable. However the document as it stands makes reference to planning applications and does not go further and therefore asks the Applicant to revisit that.
- 7.3.7 The Noise Insulation Scheme (**ES Appendix 14.9.10 Noise Insulation Scheme Tracked** (Doc Ref. 5.3)) has been updated for Deadline 8 to clarify that the Applicant will fund any work required by its contractors to secure listed building consent, including going to appeal if necessary, and to work with the conservation officers and the homeowner to agree what measures can be installed.
- 7.3.8 The ExA agreed that this would close the circle. The documents have to be a reassurance for people to understand what would happen at each stage. The ExA further noted that the Noise Insulation Scheme maximum amount available to residents is £26,000. What mitigation would a resident get for £26,000?
- 7.3.9 The Applicant explained that that is a figure it has put in the documents because it needs to budget and the number of cases who might need more than that is very small. This is a concern that the local authorities have expressed to the Applicant at a meeting on 18 July to further these discussions. The parties have agreed terminology where, if in a particular case more was required, a second surveyor would be needed to verify that those works were needed and that the budget cost could be exceeded if absolutely necessary. The NIS has been updated at Deadline 8 to provide for this.
- 7.3.10 As to the specifics of the question, for £26,000 one is looking at a fairly large home requiring replacement acoustic glazing to all rooms. They would also have taken up the offer for acoustic ventilators in all of those rooms. They may also have taken thermal insulation to roof spaces above. It also accounts for the fact that in the bedrooms there could be poor roof design such that aircraft noise comes through the ceiling so the Applicant has accounted for upgrading the acoustic insulation in the loft space where practical for all the bedrooms. If there is a very large house, or a listed building, the Applicant allowed for has greater costs for this as the glazing may be a more expensive bespoke solution.
- 7.3.11 In relation to the Schools Insulation Scheme, the ExA asked how much funding is available and for an estimate of how many schools are likely to apply.

7.3.12 £400,000 of funding has been allowed. There are 25 schools, including nurseries and the Applicant has estimated which of those may require assistance. Many of them are in the quieter noise zones, and about a quarter of them actually have less noise as a result of the project. Fifteen have either no noise change or an increase of noise from the project. The Applicant has assumed that five may require noise insulation survey and treatment.

7.3.13 In relation to the Home Relocation Scheme, the ExA asked how the figure of £40,000 was calculated as that has doubled since the original submission.

7.3.14 The Applicant advised it includes costs of moving and associated costs (including SDLT on the new property).

**[Post-Hearing Note:** During the Hearing the Applicant wrongly indicated that the Home Relocation Scheme was to be increased to £46,000. This is not the case, the amount is £40,000.]

7.3.15 The ExA asked, in terms of funding for all of these schemes, it is assumed that this is not contained in the land acquisition figure. Or is it?

7.3.16 The Applicant confirmed that it is not. It is a separate budget.

#### **7.4. The ExA may ask questions of the Applicant about matters arising from written and oral submissions**

7.4.1 No further questions were asked of the Applicant.