

Surrey County Council as Landowner – Bayhorne Farm

Compulsory Acquisition Hearing 2, 30th July 2024

Update on Position:

- SCCaL has now drawn negotiations to a close due to a lack of transparency by the Applicant in sharing information and in proceeding with discussions in good faith. In order to seek to move negotiations forward, SCCaL and the Applicant met on the 14th August 2024 but it became quite clear during the meeting that the Applicant was entrenched in its position and unwilling to share relevant information in a timely manner before the Examination process closes. This means that SCCaL's is unable to properly consider the impact of the DCO scheme on its land and agree protective measures to mitigate said impacts.

Location of Attenuation Pond

- As at the date of this Update, it appears unlikely that agreement will be reached in relation to the location of the attenuation pond. The SCCaL consider that the location of this pond sterilises a part of the Bayhorne Farm site ("the Site") that could be developed for alternative uses and frustrates SCCaL's ability to bring this part of the Site forward at a later date.
- Despite the Applicant's references to there being an agreed position between SCCaL and the Applicant on flooding matters at CAH2, SCCaL do not consider that these matters are agreed.
- SCCaL considers that that, save as set out below, there was apparently no consultation on alternative locations proposed for the highway drainage as an alternative to Bayhorne Farm nor that alternative engineering solutions have been considered. Therefore, SCCaL remain of the view that the Applicant has chosen the easiest option and not considered alternatives, despite the Site's allocation for employment uses. Furthermore, no compelling case in the public interest has been provided nor any justification for the size and extent of the proposed land take from the Site. We therefore request that the ExA remove the Bayhorne Farm site from the Order Lands under the DCO.
- GAL have spoken to SCC's flooding officers about the technical merits of an attenuation pond at Bayhorne Farm but they have not spoken to SCCaL as landowners or engaged on alternative locations for the attenuation pond.
- To date, no evidence has been provided of any optioneering reports or assessment of alternative locations at the design development stage having been carried out. In correspondence with SCCaL GAL state that the preferred location is on Bayhorne Farm because of alignment with LLFA policy and preference for SuDs solution to below ground attenuation tanks. However, no alternative optioneering has been considered to mitigate the impact on SCCaL's landholding.
- SCCaL has provided the Applicant with alternative locations which have not been properly considered nor due consideration been given as to why those locations are less preferable to sterilising development land. In the opinion of SCCaL the land to the south of London Road, currently a car park, could be suitable for highway drainage.
- To date SCC as landowners has not been involved in any discussions about alternative locations nor has it been consulted on the material impact of the proposals on its land at this location. We reiterate the deficit of evidence on this basis and that the Applicant has failed to mitigate the impact of its proposals on SCCaL
- We ask ExA take the above into consideration when determining to make a recommendation to grant the DCO – that it is incumbent on the Applicant to test alternative locations for highway drainage.
- **Lack of traffic modelling information**

- Whilst GAL seek traffic modelling from SCCaL for its scheme, it has failed to provide the modelling for its scheme which is required to inform SCCaL's modelling and which will enable it to be produced. We understand engagement with SCC as highway authority did not include any detailed modelling in respect of the STR junction which is required urgently.
- Without this information engagement with National Highways will not be meaningful to elicit a response in respect of SCCaL's scheme.
- We ask the ExA to insist that the Applicant provides this information to SCCaL immediately to enable it to assess the impact on its land and the proposed development of that land. Furthermore, reasonable time allowances need to be made to enable SCCaL to properly consider the impact of the Applicant's Scheme and suitable engineering solutions which do not undermine that scheme and which do not frustrate SSCaLs development aspirations.
- The Applicant has now agreed to provide the following modelling information no later than Monday 19th August:
 - o 2047 Future Baseline with Project turning flows for South Terminal Roundabout (extracted from the DCO VISSIM model);
 - o Trip generation flows associated with Bayhorne Farm used in the strategic model Cumulative Development test.
- Its not clear why this information could not have been provided earlier and certainly before 19th August given requests have been made since early 2022. We are of the view this is to frustrate SCCaL's ability to protect its land and development potential. Despite the Applicant's insistence that SCCaL engage with National Highways, to do so in the absence of this information, and with the prospect of requiring future connections into the SRN, such engagement would have proved futile.
- It is SCCaL's intention to review this information to inform its assessment of appropriate mitigation to make passive provision for access arrangements into the Site and formalise engagement with National Highways on this basis. Once this review is complete SSCaL will share its own modelling work and insist that the Applicant addresses SCCaL's concerns about access. This will be followed by further work to bring forward a planning application for the Site as soon as possible.
- However, given the late stage in the examination process that we have now reached, we do not believe the Applicant will deal with such requests on a fair and open basis.
- We draw the ExA's attention to the annexed email (Annex A) which was sent to SCCaL in open correspondence alongside dates to set up a meeting (held on 14th August) to help formulate the agenda items for that meeting. We draw your attention to the contents of the whole email, which reflects the tone and nature of engagement of the Applicant to date, but in particular to the penultimate paragraph which states "*the strategy might (should be in my opinion) be to justify our position at Closing Subs and aim to rely on powers.*"
- We are of the opinion that there is no genuine commitment to negotiate in good faith and work with SCCaL to mitigate the impact of the scheme on SSCaL's land ownership and minimise disruption thereto. It is considered that negotiations have proceeded at a superficial level only, so that the Applicant can demonstrate to the ExA that it has tried, but failed, to do so due to no fault of its own ignoring the long-standing attempts made by SCCaL to engage proactively and work with the Applicant to ascertain the constraints placed on its development site and how to deal with such risks through engagement on highway and planning matters.
- Without the above points being addressed there is a grave concern that the Applicant could further frustrate any ability for SCCaL's to bring forward its development through a positive planning application in the future.

- We ask the ExA to support SCCaL in ensuring that the powers that may be granted under the DCO do not sterilise Bayhorne Farm and, in addition, require the Applicant to make provision for access during its implementation of its Scheme. Without such a commitment being given, the capacity to bring forward development on a strategically important site will be severely constrained in the future.
- SCCaL are minded to, and willing to, bring forward its own planning application as soon as possible and has actively engaged with all landowners within the allocation. SCCaL has concerns that if the DCO is granted a ransom strip will be created and frustrate SCCaL's ability to bring forward the development due to the temporary and permanent land take as proposed in the DCO. We therefore request that SCCaL's land be removed from the DCO Order Lands.
- We draw the ExA's attention to National Highway's cover letter at Deadline 8 [REP8-130]. On page 3 of the letter, the first paragraph starting with "Justification for South Terminal Compound Access." Therein it is stated: *"National Highways has previously and as part of its continued liaison with the Applicant, requested clear justification be provided for the proposed introduction of a new temporary direct access from the South Terminal roundabout as the primary access point for construction vehicles during the construction of the surface access works. This has been subsequently raised with the Applicant several times and it is of increasing concern that this has not been provided. For completeness, this is not a matter in which the Framework Agreement provides protection and represents a policy decision for the Secretary of State."*
- The above shows that there is clearly a lack of engagement with National Highways on this matter and no agreement at the current date for a 4th spur to be taken from STR. Furthermore, access to the compound cannot be supported from Balcombe Road. We are of the view it is therefore unlikely that NH will give consent for access to be taken from STR and, therefore, there will be no ability for the land at Bayhorne Farm to be used as a construction compound. In that eventuality, we ask ExA to remove our land entirely from the DCO and the Applicant rely on other compounds nearby to construct the flyover on STR.
- For the avoidance of doubt if the DCO is granted as proposed it will sterilise development on the Site by constraining the quantum of development that could come forward at a later date and totally delay development until such time as the Applicant's scheme has completed. This is an important allocated site in the Local Plan for employment therefore protective provisions should be made to enable it to come forward as soon as planning permission for its development is granted.
- Whilst SCCaL appreciates that valuation of land is not a matter for the ExA, it should be noted that as part of the DCO process the Applicant has not taken reasonable steps to acquire land by agreement, as at the meeting of 14th August, the Applicant has not provided terms that reflect the market value of the land.
- We also draw your attention to supporting statement from an adjoining landowner at Bayhorne Farm [AS-160]. Sackville UK Property Select IV (GP) No.1 Limited ("Sackville") have provided a supporting statement with our submission. We draw your attention to Site Delivery Activities at page 4 which demonstrate a real intention to develop and bring the land forward. Set out therein is clear strong occupier demand, which shows the Site has real prospects of coming forward in the absence of the DCO. Furthermore, at page 5 Sackville set out the implications of the DCO scheme which will frustrate development for a 12 year period unless support is given for access arrangements that will enable development now.
- Given the issues set out herein we ask the ExA to consider:
 - o There is no compelling case in the public interest to justify the inclusion of SCCaL's land within the DCO
 - o The Applicant has not used the DCO as a measure of last resort
 - o Despite correspondence confirming that the Applicant is not seeking to create a ransom position, the last set of draft Heads of Terms issued by the Applicant suggests otherwise

- Reasonable steps have not been taken to acquire the land by agreement and the attached email explicitly demonstrates that the Applicant does not intend to do otherwise
 - The Applicant is effectively running down the clock by not engaging proactively and sharing information on a timely basis
- We ask the EXA to consider removing SSCaL's land entirely from the DCO.
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- If that is not possible, we also ask the ExA to intervene and insist the Applicant provides the relevant information and appropriate time allowances to consider this information, enabling SSCaL to complete its own modelling. We also ask that once the modelling has been assessed SSCaL should be permitted to make further representations as to the passive provision to be provided from the STR.

ANNEX A

From: [REDACTED]
Sent: Tuesday, August 6, 2024 11:07 AM
To: [REDACTED]
Subject: Re: Meeting recording

Morning all

I've had a catch up call with Nyear from ISH. It was brief and typically jumbled from her (to be fair she was in the car) but the following are my hastily taken notes:

NH promised a respond to our latest correspondence by the end of this week.

The Attenuation Pond location will be 'accepted' by SCC if GAL agree [REDACTED] acre land value. If GAL do not agree [REDACTED] then based upon SCC's opinion that GAL have undertaken 'poor' consultation, SCC will maintain their resistance. Poor consultation was described as:

- SCC saying they have not been consulted on other locations.*
- SCC saying that GAL have not provide sufficient detail to justify current proposals.*

NH: RBBC planners are saying that the existing landscape designation would be replaced / resolved.

MF: 4th Spur - very tricky to deal with in terms of consents. NH acknowledges that it won't be easy but SCC will get. NH : insistent that SCC consulted with Nat Highways when the site was allocated.

MF: if GAL were to accept [REDACTED] then what about Temp Compound Rent? NH believes we can work around that & it won't be the killer to a deal. NH will speak to SCC.

NH: SCC Cabinet have approved [REDACTED] per acre as acceptable. Comparables to come with response later this week.

[REDACTED]

MF : Costs? GAL to settle all costs but NH says SCC are ready for a discussion on quantum. When asked what costs to date are, she dodged the question.

NH: SCC talking to adjoining landowners and due to start talking to Nat High to progress their scheme.

We got cut off from our call and we didn't get chance to discuss whether SCC are prepared to progress Gatwick Dairy Farm HoTs. I've left a message to this effect and when I hear back I'll confirm the response.

NH & I agreed that a call on Wednesday next week would be a good idea - after they have sent their response letter and we have had time to digest. DM will get on with organising that and include you

We need to have a call (this week or early next) within the GAL team to really understand concerns about Nat Highways approvals and their possible implications on the Surface Access Works Programme - if Nat Highways get wind that the Temp 4th Spur couldn't be shared with SCC. Apart from the fact that as a land value is OTT, there are a number of matters at play and I suspect that concessions we might offer could compromise us. Could that happen in my absence this week?

Dependent on that call, the strategy might (should be in my opinion) be to justify our position at Closing Subs and aim to rely on powers.

- I don't think we ever received the outcome of JLL's feasibility study for Bayhorne but perhaps we could reinvigorate? I think they were missing Highways costings?

**Regards
Mike**