

Meeting Note

File reference	TR050001
Status	Final
Author	Tracey Williams

Meeting with	DIRFT Project Team
Meeting date	18 November 2011
Attendees (IPC)	Susannah Guest – Case Leader Robert Upton – Pre-application Commissioner Tim Hallam – Lawyer Tracey Williams – Case Officer
Attendees (non IPC)	Morag Thomson – Marrons Kate Harrison – Marrons Julie Russell – Marrons Robin Woodbridge – ProLogis
Location	IPC Offices, Temple Quay House, Bristol

Meeting purpose	To discuss draft application documents
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Summary of key points discussed and advice given	<p>Discussion followed a series of questions raised by Marrons on behalf of the developer.</p> <p>1. Book of Reference and Crown Land</p> <p>The developer raised queries about Part 5 of the Book of Reference and whether land subject to Special Parliamentary Procedure (SPP) (for example statutory undertaker's land) needs to be included in it, even if it is not to be acquired. The IPC confirmed that SPP would only arise where it was proposed to compulsorily acquire land or rights over land in which case the names and addresses of persons/each plot of land in question would have to be included in both Parts 1 and 5 of the Book of Reference.</p> <p>The IPC also responded to queries from the developer about s.135 of the Planning Act 2008 (PA2008). In particular, whether s.135 only applied to those categories referred to in s.135(4) or all Crown land and whether the developer would need to include provisions relating to highways works on Highways Agency land which would be carried out under separate agreement. The IPC advised that the developer would need the consent of the Highways Agency or the Department for Transport if the Development Consent Order (DCO) includes any provisions relating to works on Crown Land, even if the developer is not seeking to compulsorily acquire that land. The IPC advised that s.135 applied to all relevant Crown land not just those categories</p>
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referred to in s.135(4). s.135(1) only applied where it was proposed to compulsorily acquire Crown land. It was likely that 'Highways Agency land' was Crown land, although the developer would need to satisfy themselves on this point, and if so obtain the requisite consent. If s.135 and other relevant provisions of the PA2008 were satisfied such provisions could be included in a draft DCO. The IPC also noted the advice that it had provided to the developer via the letter dated 31 October 2011.

2. Requirements of PA2008 s.26

The IPC advised that the Explanatory Memorandum should be clear about how the proposals meet each of the relevant requirements of PA2008 s.26.

3 and 4. Plans, phasing and description of development

The developer talked through their draft works plans and framework plans, and the relationship between them and how these related to what was being proposed in the draft DCO.

The IPC indicated that a number of developers have sought advice from the IPC on the degree of flexibility that would be considered appropriate with regards to an application for a Nationally Significant Infrastructure Project (NSIP) under the PA2008 regime. The IPC had previously advised the developer on these matters via its letter of advice dated 31 October 2011.

The IPC advised that the developer would need to be satisfied that there was an adequate level of detail in the plans and in the draft DCO to satisfy the IPC at acceptance stage and, if accepted, the Examining authority (ExA) at examination stage. The IPC explained that the ExA have to be clear about what proposals they are examining and making a recommendation on and referred the developer to the advice contained in IPC Advice Note 9 on the '*Rochdale Envelope*' approach. The developer said that their approach to the framework plans was to allow for some flexibility in the final design of the scheme but within the specified parameters set out on the plans, which it considered was consistent with the '*Rochdale Envelope*' approach. The IPC highlighted that applications for development consent under the PA2008 regime were different from outline planning applications under the Town and Country Planning Act 1990 (TCPA 1990) regime. As such this would have implications for the amount of detail that could reasonably be expected to be set out in a draft DCO and shown on draft application plans.

The IPC reiterated that the ExA would need to understand what was being applied for. The developer should satisfy themselves that in the application they will have provided sufficient clarity and certainty about what the proposed development is and what the ExA would, if the application is accepted, be examining.

Wording in a draft DCO such as "if and when desired by the

undertaker” could be considered too vague and insufficiently precise, and phrasing such as “in a subsequent phase” would be clearer.

There was discussion around the maximum floor-space figure of 730,665 square metres set out in Schedule A of the draft DCO. The developer queried whether permitted development rights would apply to a development built under a DCO for example to enable the inclusion of mezzanine levels within some or all of the proposed storage and distribution units. The IPC said that the developer would need to consider how this could be dealt with given this maxima in the draft DCO, the limited scope to make changes to an application once it had been submitted, and that any changes to a granted DCO would have to be dealt with under the relevant PA2008 provisions and Regulations.

5. ‘Further site wide development’

The IPC noted the use of this phrase in the draft DCO. The developer advised that similar wording had been used in the Rookery South DCO. The IPC noted that Rookery South was just one example of an application, that it related to a different type of development and in that case the use of this phrase was linked to particular plans and named structures. The IPC noted that the wording in the current DIRFT draft DCO does not directly relate to a plan or to any named structure.

6. Habitats Regulations Assessment (HRA)

In response to the developer’s statement that the application submitted would include a negative screening statement, the IPC noted that such a statement should be based on evidence and reminded the developer of the advice published in IPC Advice Note 10. The IPC also referred to advice it had given the developer on this point in its letter of 31 October 2011.

7. Definition of ‘Maintain’

It was noted that the definition of ‘maintain’ had been subject to discussion during the examination of the Rookery South DCO. The outcome of that discussion is set out in the final version of that DCO. The IPC said that the developer would need to be satisfied that it was appropriate to include such a wide definition of maintenance in relation to a proposed development such as this.

8. Permitted Development Rights

The developer was concerned to be clear as to whether or not the development, once constructed, could take advantage of permitted development rights. The IPC advised that since a DCO is made through the PA2008 regime, there are provisions as to how any proposed changes to any consent granted should be handled. Variations to a DCO should be dealt with specifically through the PA2008 regime rather than by reference to the TCPA 1990 regime.

9. Definition of 'Compulsory Acquisition Notice'

The IPC advised that developers should identify and explain in the Explanatory Memorandum any deviation from the Model Provisions. The IPC noted that the developer's draft Explanatory Memorandum contained a statement that the definition of 'Compulsory Acquisition Notice' had been removed from the draft DCO, but the reason for removing this was not explained.

10. Footnote to Article 8 of the Model Provisions

The IPC noted its previous advice on this point contained in an email to Kate Harrison dated 16 September 2011.

11. Compulsory acquisition funding

The developer noted that in the case of Rookery South a parent company guarantee was considered necessary in respect of compulsory acquisition funding and asked whether this would be a standard requirement. The IPC advised that some form of funding security, such as a guarantee or bond, was likely to be required in respect of any application that sought compulsory acquisition powers, and this should be explained in the Funding Statement. The particular form of security that might be appropriate, such as a guarantee or bond, would depend on the circumstances of the case. The IPC noted that in this draft DCO, unlike for Rookery South, the compulsory acquisition provisions in Articles 17 to 22 were excluded from the transfer provisions in Article 6.

12. Definition of 'street'

The developer raised a query about whether the definition of street includes private roads/accesses as well as public highways. The IPC advised that the definition of 'street' can be found in s.48(1) of the New Roads and Street Works Act. A street need not be a highway maintainable at the public expense for the purposes of s.36 Highways Act 1980, or even a highway at all. The IPC also noted that the Model Provisions are advisory, not mandatory.

13. Category 3 s.44 of PA2008

There was discussion around the provisions of sections 44, 126, 152 and 158 of the PA2008. The IPC said that the developer would need to satisfy themselves as to what provisions to include in their draft DCO, which parties, if any, may be able to make relevant claims, and the extent to which the developer might benefit from any defence to such claims.

14 and 15. Off-site highway works

The developer sought advice on the extent to which off-site highway works could be considered an NSIP in their own right, but noted that they were unable at this stage to provide any plans showing these proposed works. The IPC referred to s.22 of the PA2008 and advised the developer that they would need to

	<p>satisfy themselves about whether the proposed development was an NSIP. The IPC further advised that more than one NSIP could be included within one application and draft DCO. The developer would need to satisfy themselves that the consultation and publicity requirements in Chapter 2 of Part 5 of the PA2008 had been complied with in respect of each and every proposed NSIP.</p> <p>16. Format of draft DCO</p> <p>The IPC noted the Stationery Office template for preparation of Statutory Instruments (SI) and IPC Advice Note 13 'Preparing the Draft Order and Explanatory Memorandum'. If a draft DCO applied, modified or excluded a statutory provision (s.120(5)(a)) then it would have to be in the form of a SI. The IPC noted that it was generally accepted drafting practice for defined terms in statutory orders not to be capitalised, and the Model Provisions followed that approach. If the developer was departing from the Model Provisions then they would need to identify such departures and explain the reasons for making these in their Explanatory Memorandum.</p> <p>Supplementary 1. Special Parliamentary Procedure</p> <p>The developer sought clarification on why the Rookery South application is subject to SPP. The IPC explained that SPP would arise where compulsory acquisition powers were being sought in a draft DCO, and objections were raised by local authorities or statutory undertakers (as owners of the land), and these objections had not been withdrawn.</p> <p>Supplementary 2. Special Category Land</p> <p>The developer noted that in their view, in IPC guidance the term special category land was used generically so that it could be taken to refer both to special category land and other categories of land that could be the subject of special parliamentary procedure. The IPC noted this concern and that Regulation 2 of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 defines Special Category Land. The IPC invited the developer to identify any such references they considered occurred in IPC guidance and advice notes.</p> <p>Supplementary 3. Acquiring rights over land for off-site highways works</p> <p>The IPC advised that if public highway land needs to be used for highways works then this could potentially be secured by a s.278 agreement. A draft DCO might though need to include provisions seeking to acquire land compulsorily if the developer knows or thinks such agreement will not be forthcoming. The IPC also referred to the provisions of s.122 of the PA2008.</p>
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Specific decisions/ follow up	<ul style="list-style-type: none"> The developer indicated that they intended to upload the draft application documents including the draft DCO onto their project website.
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required?	<ul style="list-style-type: none"> • The developer would publish a further Statement of Community Consultation (SoCC) and undertake s.42 and s.47 consultation and s.48 publicity in relation to the whole of their proposed scheme. • The developer will send in a query in relation to the Habitats Regulations and Protected Species Licences.
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Circulation List	Attendees