3 April 2019

THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER

SUMMARY OF REPRESENTATIONS FOR

THE INGLEWOOD INVESTMENT COMPANY LIMITED

REFERENCE 20015438

FBC Manby Bowdler LLP
Routh House
Hall Court
Hall Park Way
Telford
Shropshire
TF3 4NJ
NACB/SRT/933834/6

1. In summary:
   1.1. Inglewood supports the basic principle of the DCO, and considers that a strategic rail freight interchange in this general location would be an appropriate response to the need identified in the National Planning Statement for National Networks.
   1.2. To be considered as a rail freight interchange, for the purpose of the DCO procedure, the land must comprise at least 60Ha.
   1.3. There is no necessary correlation between the scale of the planning consent within the DCO, and the extent of the CPO powers given to the Applicant.
   1.4. The Application should be considered on the basis that the disputed land ownership identified below is resolved and that Inglewood own parcel 103 so that this parcel is part of the expropriation proposed.
   1.5. In 2008 Kilbride brought forward a project for a smaller scheme which (i) excluded parcels 101, 102 and 103 on the north side of Vicarage Road, and (ii) did not include any land to the south of Vicarage Road. This is a strong indication that a smaller scheme would be viable.
   1.6. The Applicant does not demonstrate that the acquisition of the Inglewood land is essential for the creation of a viable interchange. The Applicant does not demonstrate why the scale of the land-take has increased during the consideration of the project. The evidence brought forward in the Alternative Site Assessment, the statutory Statement of Reasons, the Planning Statement, the Statement of Economic Benefit and the Market Assessment, simply builds on an *assumption* that the project is one that covers 297Ha: the extent of this acquisition is *more than is reasonably required* to establish a viable project and is therefore contrary to Government policy.
   1.7. In the absence of any attempt by the Applicants to explain the viability of their scheme, Mr Owen has examined the cost and returns, assisted by Gleeds and by JLL, companies which are well known in their relevant areas of expertise. The expert evidence of Mr Owen establishes that if granted planning permission, then, without the Inglewood land, the Applicant's scheme would meet a reasonable expectation for a developer's return on risk and investment, and indeed is regarded by Mr Owen as being '*significantly in excess of a reasonable level of developer's return for such a scheme*'. This must lead to a conclusion that whilst in planning terms the scheme is one for which permission should be granted, there is no compelling case for the Inglewood land to be expropriated from them. The effect of the expropriation would simply be to create a super profit on their part. This is precisely the kind of situation which Government policy seeks to avoid.
   1.8. The time scale for the development of the interchange on the Inglewood land, in terms of policy, is into the remote future. It is inappropriate to expropriate land not required for development within a reasonable timeframe. Government policy requires an exceptional case to be made out for such acquisition.

1.9. The effect of acquisition now would sterilise an allocated mineral reserve. Extraction of that reserve would not prejudice the DCO project. No consideration has been given to the sensible and achievable potential for realising the mineral allocation and then proceeding with the development.

1.10. Inglewood are the owners of a relevant part of the allocated mineral reserve. The Book of Reference should be amended to make expressly clear that Inglewood is the owner of the minerals.

1.11. The Applicants have put forward an ambiguous position on the question of whether they propose to acquire Inglewood's minerals. Despite a request for clarification, the Applicants have not resolved that position. The Book of Reference is a statutory document and it should be clear and should be consistent with the statutory Statement of Reasons.

1.12. The Inglewood land includes an area which is already allocated as a mineral reserve within the Minerals (Local Development) Plan. There is no need for that allocation to be sterilised, and to do so is contrary to normal planning policy. Since there is a sensible prospect for the mineral to be extracted without apparent prejudice to the project, given the timescales, that prospect should not be prevented through the CPO powers being given to the Applicant.

1.13. The Mineral Code should be excluded. Its incorporation gives the Applicant the power to prevent extraction and given what is said in the Application Documents, it appears that the Applicant would prevent extraction, leading to sterilisation. By excluding the Code, that potential is removed. No attempt has been made to explain the reasons for its incorporation, something which is required by the Government guidance, so as to avoid the risk of sterilisation.

1.14. No compelling case exists, in the public interest, as to why the Inglewood land has to be acquired. The authorisation of compulsory acquisition would therefore be contrary to policy.

1.15. The ExA should confirm the DCO in so far as it provides for planning consent for the warehousing development. This would still mean that if the development is implemented and the railhead is provided, then the Inglewood land can be used to provide phase 3 or 4 of the development.

1.16. In the meantime, Inglewood would be in a position to secure planning consent for the mineral extraction envisaged by the Minerals Local Plan. This would serve the already identified need for aggregates in this area. If an application were to be made, then the County Council might indeed also be prepared to grant permission on the unallocated land to the south of Vicarage Road, but that is a matter for their judgment. However when considering after use of any of that land, the County would be able to condition either agricultural after use, or warehousing development in accordance with the DCO permission

2. **Conclusions:** In conclusion,

2.1. Inglewood is the owner of the sand and gravel reserve across the whole of Heath Farm. An allocation has been made within the Minerals Local Plan for part of the Inglewood landholding. Significant weight should be given to a development plan allocation, notwithstanding the policy supremacy of the NSIP. However the NSIP contains a particular policy cautioning against the sterilisation of mineral reserves. Very significant weight must be given to that policy, since it underpins the policy balance which Parliament has approved.

2.2. It is clear that the effect of the DCO if consented and implemented would be to sterilise the reserve. There is an inadequate justification for that, on any view of the Applicant's case. But in fact the phasing plan which the Applicant puts forward demonstrates that working the reserve could be facilitated within the Minerals Local Plan period anyway. The reserve should not be sterilised unless there is a compelling case in the public interest, and none is shown here.

2.3. If the mineral were to be worked, then the effect would be that the land would be let down to a lower level, consistent with the existing Calf Heath Quarry levels. Those levels appear satisfactory for the Applicant. The cut and fill calculations put forward in the application for the DCO are not precise (the building heights are indicative, and the FFL is subject to a tolerance of 2m), so that there is no particular case on that ground for sterilisation. Reduction of effective building height, by the reduction of the FFL would be beneficial in visual terms. The extraction is not inconsistent with the DCO

2.4. The Applicant has not made any attempt to explore this issue in the evolution of its design. It ought to have done so. Since the issue is linked to a development plan allocation and directly relates to a NSIP policy to safeguard minerals, it was a reasonable alternative that ought to be considered.

2.5. The Applicant has sought to include the Mining Code without providing any justification for that despite the requirement to give careful consideration before including it.

2.6. The DCO should therefore be amended to exclude the Mining Code.

2.7. The DCO should also be amended to exclude the Compulsory Acquisition proposals against the Inglewood lands so that it can work its minerals prior to the development of warehousing on the worked ground.

2.8. Whatever decision is made in relation to the minerals aspects, Inglewood submit that there is no compelling reason for confirming the CPO is relation to their lands. The DCO is

supported, but if the Applicant wishes to have CPO powers in addition, a proper justification for each element of land acquisition has to be provided.

2.9. This would require a high degree of proof, because in doing the state is supporting the expropriation of land to provide a benefit to a commercial entity to the prejudice of the present landowner.

2.10. The scheme is a market driven scheme. A developer such as the Applicant would assess the viability of the scheme on the basis set out in section 7 of Mr Owen's evidence. He explains why a 10% ratio of developer's profit on cost would expected for a pre-let/funded commercial scheme with planning consent achieved through the DCO. The scheme reaches a notional tipping point at the end of Phase 3, broadly corresponding with the scheme as proposed until 2016. The Inglewood lands are not required until the tail end of the development project, many years hence, as part of Phases 4 and 5. If the Inglewood land is excluded from Phases 4 and 5, the scheme delivers a profit on cost ratio of 12.92%, a figure which Mr Owen describes as significantly in excess of that which could reasonably be expected from a scheme of this kind; in other words it would be deliverable in the market. It is unreasonable to allow *additional* land to be taken now in these circumstances. The effect as demonstrated by Mr Owen is to allow the Applicant to take the land at its existing use (compulsory purchase regime) valuation and then to profit from it by achieving a further, super, profit, with a profit on cost ratio of 15.06%. The Applicant is entitled to expect support for its CPO in so far as land is needed to get the project underway, but the Applicant cannot expect that support for unlimited acquisition.

2.11. The onus lies on the Applicant to make its case, and it has not done so. Authorisation of acquisition in these circumstances would be contrary to the Human Rights provisions of Article 1 of the First Protocol.