

Planning Act 2008 – Infrastructure Planning (Examination Procedure) Rules 2010

Written Representation Regarding the Southampton to London
Replacement Pipeline Scheme

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On behalf of Ministry of Defence and Defence Infrastructure Organisation (MOD)

1 Summary

- 1.1 This Written Representation has been prepared by Carter Jonas on behalf of the Ministry of Defence and the Defence Infrastructure Organisation (known as the Owner).
- 1.2 The Owner is the freeholder of a large training estate across the counties of Hampshire and Surrey extending to approximately 20,000 acres which is primarily used for military training purposes.
- 1.3 In addition the estate fulfils an important habitat and ecology role in the local and wider areas. Part of the Estate is within the Thames Basin Heaths Special Protection Area and also includes significant areas of SSSI, SANGS and land managed in accordance with Countryside Stewardship Schemes.
- 1.4 All MOD land including land let to third parties is actively used or is capable of being used by the MOD for military purposes.
- 1.5 Overall a total of 37.20 hectares (91.91 acres) of land owned by the MOD has been identified for compulsory acquisition by the Applicant across Classes 1-4 as set out in the Book of Reference and Draft DCO.
- 1.6 The construction of the pipeline and the rights of maintenance being sought by Esso through the DCO, particularly in relation to restrictions on vehicular weight limits and

the use of explosives on the pipeline route, may prejudice the statutory status of the MOD estate in terms of its role as part of the UK's Defence Strategy.

- 1.7 The Owner is concerned about the threat of wildfires which may result from the construction works and is seeking specific controls and regulations regarding the construction of the works in order to minimise this threat.
- 1.8 The Owner has set out their concerns on a site by site basis within the main representation below.
- 1.9 The Owner believes there were flaws in the Applicant's consultation process particularly given their status as a Crown Interest.
- 1.10 The Owner believes there is no justification for the imposition of permanent powers over their land. In addition the Applicant has applied for the acquisition of freehold land from the Owner which conflicts with Section 135 of the Planning Act 2008.
- 1.11 The Owner is concerned about the damage to the ecology and the removal of a large number of trees for the project.
- 1.12 The Owner needs to be satisfied about how the Applicant will control invasive weed species during construction and has concerns about the adequacy of the land restoration.
- 1.13 The Owner is concerned how the Applicant will access their land for maintenance of the scheme and the wide ranging powers being sought which will conflict with military uses.
- 1.14 The Owner considers the minimum notice period for temporary access is insufficient and should be extended to a minimum of 3 months.
- 1.15 The Owner has made a request for a closed hearing to discuss sensitive military matters which may be affected by the project.

2 Introduction

- 2.1 These are the Written Representations of the Ministry of Defence (“the Owner”) to the application for a Development Consent Order by Esso Petroleum Company, Limited (“Esso”) identified as the Southampton to London Pipeline Project Development Consent Order (“the DCO”).
- 2.2 The Owner is the freeholder of various estates nationally, including Hampshire and Surrey which are used for a broad range of military training purposes including live firing ranges. In addition, the estates perform a wide ranging ecological and environmental function hosting a SSSI, SPA, various Sites of Natural Green Space (SANGS) and other land managed in accordance with Countryside Stewardship Schemes. The majority of the estates provide public access when not in military use.
- 2.3 Access to training areas surrounding Aldershot is subject to the Aldershot and District Military Lands Byelaws 1976.
- 2.4 This Written Representation concerns the land identified by Esso as being required for the Southampton to London Pipeline Project (“the Scheme”).
- 2.5 The matters raised in these Representations are matters concerning the acquisition of rights over the Owner’s land and the impacts it will have on the use of the Owner’s retained property which will be unduly affected by the acquisition and is required for matters of national security.

3 Compulsory Acquisition of Land

- 3.1 The draft DCO identifies a large number of plots in the ownership of the MOD as being required for the Scheme at various locations including Ewshot, Church Crookham, Twelesdown, Pirbright and Frimley.
- 3.2 Overall a total of 37.20 hectares (91.91 acres) of land owned by the MOD has been identified for compulsory acquisition by the Applicant across various Classes 1-4 as described below:
- 3.3 The different powers as described in the book of reference are:

Class 1 – being the acquisition of estates and interests in land.

Class 2 – creation of new permanent rights in relation to a 6.3 metre wide strip of land in which an underground pipeline and/or associated pipeline infrastructure may be located, over which:

- rights to enter with or without vehicles plant and equipment for all purposes associated with these rights;
- rights to install the Pipeline within the land at a depth of not less than 1200mm below the present surface of the land and afterwards to retain, inspect, maintain, repair, alter, renew, divert, replace and remove or render unusable the Pipeline or any part thereof in on or under the Order Land;
- rights to use the authorised development;

- right to inspect, survey and subsequently assess the surface of the 6.3 metre wide strip and the Pipeline from the surface or from the air;
- rights to prevent the planting of any trees and fell, trim, lop and remove any trees, bushes or other vegetation within the 6.3 metre wide strip;
- rights to prevent the construction of or remove any structures, buildings, material deposits, items or hazards that have been placed within the 6.3 metre wide strip;
- rights of continuous vertical and lateral support for the pipeline and ancillary apparatus within the 6.3 metre wide strip;
- rights to place or renew markers for indicating the position of the Pipeline or any part of it;
- rights to erect and maintain stiles, gates, bridges or culverts for the facilitation of access to the Pipeline or any part of it;
- rights to construct works for the facilitation of maintenance or inspection, or protection from damage and deterioration, of the Pipeline or any part of it;
- rights to install boreholes and such other monitoring equipment as may be necessary to ensure the safe operation of the Pipeline and to assess the state and condition of the land in the vicinity of the Pipeline;
- rights to temporarily place on land on or under which the Pipeline or any part of it is situated materials, plant or apparatus required in connection with the Pipeline or any part of it.

Class 3 – creation of permanent rights in relation to the land, over which:

- rights to construct, use and maintain works including the provision of means of access and parking;
- rights to remove buildings, structures and vegetation from the land;
- rights to construct works including the provision of means of access; and
- to carry out any activities ancillary thereto;
- rights to require the landowner not to do or suffer anything to be done upon the land which may interfere with the undertaker's access, including without limitation not to erect any building or structure or allow any plant or tree to grow within the land, not to change the level of the surface, ground cover or composition of the land or do or allow to be done anything that may cause the level of the surface, ground cover or composition to be altered, not to drill, dig or break up the land.

Class 4 – temporary possession powers which authorise the temporary possession of the relevant land for the construction and (for a duration of a 5 year maintenance period where the developer so chooses) the maintenance of the authorised development on the terms set out in those provisions.

4 Impact on the use of the Owner's Property

General

- 4.1 The land required for the Project is used for a variety of purposes including training estate, ecology land used as SANGS, land forming part of landscaping and recreational areas for adjoining accommodation and land let to third parties.
- 4.2 All MOD land including land let to third parties is actively used or is capable of being used by the MOD for military purposes. Therefore the construction of the pipeline and the rights of maintenance being sought by Esso through the DCO particularly in

relation to restrictions on vehicular weight limits and the use of explosives on the pipeline route, may prejudice the statutory status of the MOD estate in terms of its role as part of the UK's Defence Strategy.

- 4.3 Given the nature of the land and its use as a military training base there is likely to be significant areas where unexploded ordnance may be present in the ground. The construction of the pipeline through the estate therefore may interfere with buried ordnance thereby causing a health & safety risk not only to Esso's contractors but also other users of the estate who may be in the vicinity of construction works.
- 4.4 The Owner's estate is often subject to acts of arson and particularly during the summer months this (among other less common causes) can lead to large scale 'wildfires' on the estate. Such 'wildfires' could be caused inadvertently by Esso's contractors, by for example, discarding cigarette butts or emitting sparks from machinery, especially during a period of low rainfall. This creates a significant health and safety risk to all users of the estate, those in proximity to the estate and Esso's contractors.
- 4.5 The sections below outline the Owners concerns about the impact of the project on a site by site basis:

Site Specific – Ewshot/Church Crookham

- The Scheme traverses across a large part of this estate which is subject to a SANGS agreement with the local authority and is managed accordingly.
- The Owner is concerned as to how the construction works will impact the obligations to manage the land as SANGS such as the excavation of soil and material from the ground the installation of haul roads/construction sites.
- The Applicant has not yet demonstrated how the land will be suitably reinstated back to a condition which is compatible with the SANGS management.
- There are a number of low lying wet areas and water features which will be impacted by the construction of the pipeline.
- The Owner is concerned that Esso will be preventing public access over this SANGS land and as such will be a breach of its management agreement.
- Impact of noise and construction activities on the use and enjoyment of Naishes Lane community facility and the open spaces around Wakefords Park.

Site Specific – Twelesdown Racecourse

- Impact on tenant's business which is an renowned equestrian facilities used for schooling, major eventing competitions and training purposes;
- Impact on SSSI;

- Impact on night time military training activities which may conflict with the construction of the pipeline;

Site Specific – Estate north of Aldershot Road (Norris Hill)

- Loss of drop off/pick up point at car park off Aldershot Road. This is not acceptable to the Owner as 24/7 access required for military purposes;
- Large areas of the estate required for construction purposes with an impact on ecology and public access;
- Large areas of established trees may be lost to the project;
- The Owner needs various reinforced crossing points installed by the Applicant in order for them to continue using other parts of the estate
- The Draft DCO seeks the permanent acquisition of land east of Ively Road. Under the provisions of S135 of the Planning Act 2008 consent is required to permanently acquire an interest in land owned by the Crown Estate. No agreement has been reached with the Applicant yet in relation to this land.
- In any event it is not possible for a DCO applicant to permanently acquire land owned by the Crown Estate

Site Specific – Frith Hill/Blackdown Woods

- Large areas of the estate required for construction purposes with an impact on ecology and public access;
- Large areas of established trees may be lost to the project;
- The Owner needs various reinforced crossing points installed by the Applicant in order for them to continue using other parts of the estate
- Position of proposed construction compound is not acceptable as area is required for military training purposes and specialist third party uses.
- In any event it is understood the Applicant is carrying out consultation on all compounds and the status of this compound has been downgraded from a 'logistics hub' to a 'construction compound requiring a smaller area of land. Therefore the extent of land within the LOD in this location is not fully justified

Site Specific – Pirbright Firing Ranges

- Impact on public/military access along perimeter road. Access needs to be available 24/7 for all purposes including emergency vehicles
- The secure fence along the boundary of the firing range cannot be compromised

5 Adequacy of consultation with affected parties

- 5.1 Fisher German, on behalf of the Applicants, issued 'Key Terms' for various agreements to be agreed into between the parties including an Option Agreement to enter into a Deed of Grant of Easement, borehole licence and logistic hub lease.
- 5.2 Although it is recognised that the issuing of these terms indicated the Applicant's willingness to negotiate in parallel with the statutory process there are a number of key flaws in the terms and various documents which have prevented owners from entering into to them. For example through the key terms Esso sought restrictive rights over a much larger area than the pipeline corridor which, if granted, would have imposed these rights over the entirety of the MOD's estate including the right for Esso to require any incoming purchaser to enter into a deed of covenant in respect of the Option Agreement even if that was nowhere near the pipeline itself.
- 5.3 In addition Esso were seeking the right to consent to any charge, easement, right, licence or tenancy over any part of the Grantor's Property.
- 5.4 There has not been any engagement prior to the issuing of these key terms to reflect the unique nature of the Owner's land and their status as a Crown Body.

6 Disproportionate Use of Powers

- 6.1 The pipeline has a limited design life (as shown by the need to replace the current pipe). Therefore it is not clear why the Applicant requires permanent rights over land in perpetuity and has not established a compelling case when a time limited right would suffice.
- 6.2 In addition the Applicant is not 'relinquishing' the rights over the old pipeline. Therefore the Owner will be burdened by two easements which will sterilise more land than is necessary.
- 6.3 It should be a condition of the project that the rights over the old pipeline are released even if it remains in the ground once it has been decommissioned.
- 6.4 There are large areas of land required for construction purposes as shown in pink on the Order plans. The Owner is concerned about the cumulative impact of the loss of this land in terms of public access, military requirements and ecology.
- 6.5 In any event this is Crown Land and cannot be compulsorily acquired unless with the Owner's consent. That consent is not yet forthcoming.

7 Disturbance of Protected Species

- 7.1 The project could disturb or damage protected animal and plant species, the Owner asks that any disturbance to wildlife and damage to ground flora is minimised throughout the whole project.

8 Removal of Trees

- 8.1 The project will require the removal of a number of mature trees on the Owner's property. Under the terms of the DCO it will not be possible to plant replacement trees over the top of the pipeline width and therefore some of these trees will be lost forever.
- 8.2 Aside from the benefit of providing a screen for security purposes, we are not aware that the DCO seeks to address this loss at this location. Therefore, there will be a net loss of trees on the Owner's estate which conflicts with government's commitment to expand woodland coverage in England.

9 Invasive Plant Species Control

- 9.1 The construction process and vehicular movements associated with this project could cause the introduction or spread of invasive plant species such as Japanese knotweed (among other invasive species) on to the Owner's estate including the SSSI and SPA areas which would damage the protected natural environment and has the potential to burden the Owner with long term and costly control measures.

10 Land Restoration

- 10.1 The Owner is concerned regarding the quality of land restoration across both the pipeline line and working areas. Based on previous experience land restoration over an underground utility can be mixed in terms of quality and often the area is subject to depress and is uneven. This can cause issues to users of the estate including military vehicles and the general public.
- 10.2 Bringing soils back to use after the construction of a major infrastructure project is very difficult. Therefore the way soils are stripped and stored is very important, as is the method of de-compaction of working areas. Soils will take many years to recover

from this sort of treatment and it can take a very long time before grass and other crops are able to be grown to the same yield and quality as before.

- 10.3 There is no mention of the control of weed species but no indication of how this will be implemented and it depends on the method used in clearing and stockpiling topsoil and subsoil.

11 Impact on existing underground utilities

- 11.1 The Owner remains concerned about the impact of the installation of the pipeline on existing utilities and the potential severing of existing supplies which are vital to the safe running and maintenance of the owner's estate.

12 Access to land for maintenance purposes

- 12.1 The Owner has concerns as to how the Applicant will access his land in the event of an emergency or routine maintenance of their infrastructure.
- 12.2 There are certain access protocols required to access the Owner's land and these protocols conflict with the powers being sought in the DCO.

13 Temporary Notice Period

- 13.1 In accordance with Article 29 of the Draft DCO the Applicant can exercise its temporary possession powers by serving a minimum of 14 days' notice and can remain on the land for up to 1 year after the completion of the part of the authorised development specified in relation to the land.
- 13.2 Likewise the DCO, if granted, enables the Applicant to take possession of land subject to a minimum of 28 days' notice in the maintenance period which is 5 years after the completion of the relevant part of the project.
- 13.3 Both these notice periods, particularly the notice requiring possession of land for construction purposes is wholly inadequate and not practical. The Owner would like a provision requiring Esso to providing a minimum of 3 months' notice for all works required on his property.

14 Closed Hearing Reservation

- 14.1 The Owner regards any further details on military training activities as confidential information and not for the public domain.
- 14.2 A request for a closed hearing has been made and the outcome of that request is awaited.