

**Application by Esso Petroleum Company Limited for the Southampton to London Pipeline Project**

**Written Representation submitted on behalf of The Independent Educational Association Limited**

**Planning Inspectorate Reference No: EN70005**

**Interested Party Reference No: 20022533**

## Introduction

1. This written representation (**Written Representation**) is submitted on behalf of The Independent Educational Association Limited (**IEAL**) in response to the application by Esso Petroleum Company Limited (**Applicant**) for the Southampton to London Pipeline Development Consent Order (**DCO**). The DCO seeks development consent for the authorised development described in Schedule 1 to the DCO and any other development authorised by the DCO (**Proposed Development**).
2. The IEAL submitted a section 56 representation [**RR-095**] on 19 July 2019 and attended the Preliminary Meeting on 9 October 2019. The IEAL is also planning to attend the Issue Specific Hearing on 27 November 2019.
3. The IEAL owns and operates St James Senior Boys School at 10 Church Road, Stanwell, Ashford TW15 3DZ (**School**) which would be affected by the Proposed Development.
4. The IEAL does not object in principle to the Project as a whole but it does object strongly to the proposed route of the pipeline through the School and to the compulsory acquisition of its land, rights it has over the land and the compulsory creation of rights over land owned by IEAL or in which IEAL has an interest. The proposed route and the exercise of the compulsory acquisition powers sought by the Applicant will have a serious detrimental effect on the School as summarised in the IEAL's section 56 representation [**RR-095**].
5. The IEAL also objects to the seeking of powers to carry out works over and/or in the vicinity of its land without first securing appropriate protections for the School's benefit.
6. In order for the IEAL to be in a position to withdraw its objection to the DCO the IEAL requires:
  - (a) An application to be submitted by the Applicant for a material change to the application so that the pipeline follows a route along the north western boundary of the School which will significantly reduce the impacts of the pipeline scheme on the School
  - (b) An agreement in respect of the revised route from the Applicant that any acquisition of rights over the School's land (including the extinguishment of any rights and restrictions on land) is on terms agreed with the IEAL, and that compulsory powers will not be exercised in relation to the School's land; and
  - (c) That sufficient protection for the School's benefit is put in place for the carrying out of works over and in the vicinity of the School's land.

## Impacts on the School

7. The IEAL has interests in a number of parcels of land (**Land Parcels**) identified in the Book of Reference and the Land Plans submitted with the application for the DCO. The affected Land Parcels are as follows:

- (a) Land Parcels 2227 and 2234 are affected by the works to construct a temporary construction access to the north of the B378 Stanwell Road, using the entrance to St James School (**Works No. 9AS**);
  - (b) Land Parcels 2236, 2237 and 2238 are affected by the works to construct a high-pressure aviation fuel pipeline approximately 8 kilometres in length (starting at the indicative end point of Work No. 1G shown on Sheet 49 of the Works Plans and ending at the indicative point shown on Sheet 53 of the Works Plans) comprising –
  - (c) construction and installation of the pipeline by trenched and trenchless methods which may include the installation of concrete-lined sleeve tunnels, reception shaft, launch shaft and backfilling of permanent structures; and
  - (d) installation of pipeline marker posts and cathodic protection test posts along the pipeline route
  - (e) subject to the limits of deviation in article 6 (limits of deration) (**Works No. 1H**).
8. The Proposed Development, if carried out as proposed by the Applicant, will have the following detrimental impact on the School and the land on which the School is located (**School's Land**).

***Operation of the School and School's Reputation***

9. The carrying out of the Proposed Development within the School's Land and the use of the main entrance to the School for the purposes of the Proposed Development will have a serious adverse impact on the operation of the School.
10. The attractiveness of the School to prospective parents and pupils will also be seriously affected by construction workers and traffic being present at the School's Land and the very visible nature of the work, which will alert parents to the fact that a pipe carrying aviation fuel will be running underneath the School's sports field. This is likely to deter parents from choosing the School for their children and may also result in pupils being withdrawn from the School, which, in turn, will have an adverse impact on the School's short term and long term financial health and viability. The perceived risk of danger to their children of an aviation fuel pipeline through the School's Land is particularly acute in the light of current greater environmental awareness and perceived threats of terrorism. The school market is also extremely competitive in West London and small factors can easily sway parents to drop a school from their list of possible options.

***Protection of staff and pupils***

11. The Proposed Development will have an adverse impact on the safety of the School's staff, pupils and any other persons who are or may be present on the School's Land. As provided in the IEAL's section 56 representation [**RR-095**], the nature of the School's business means that every visitor to the School, including the Applicant's contractors, will either have to have passed

a Disclosure and Barring Service check or be accompanied by an authorised member of School staff at all times. The Applicant has had no regard to this essential requirement.

***Impact on sports facilities***

12. The definition of the Proposed Development in the draft DCO provides that the works undertaken on the School's Land will consist of the installation and operation of a high-pressure aviation fuel pipeline across the School's Land, which is currently used for a variety of sports by over 400 pupils on a daily basis.
13. The installation of an aviation fuel pipeline across the School's playing fields will render them incapable of safe use during and after the installation which will have a serious detrimental impact on the pupils with participation in sports being both an essential part of the School curriculum and important for pupils' health and well-being.

***Existing planning permissions***

14. The School has obtained and implemented a planning permission, and an associated Listed Building Consent, for the redevelopment of the School granted under reference 10/00460/FUL (**Assembly Hall Permission**) for:

*Erection of phase 2 of a senior school quadrangle including 2 storey laboratories, classrooms and an assembly hall. Erection of a new junior school quadrangle including classrooms following demolition of existing classrooms. Demolition of St. David's House and adjoining sheds and erection of new Boarding House. Erection of new changing room facilities and new pavilion.*

15. In addition, another planning application for redevelopment of the School's Land has been submitted to the local planning authority and permission was granted on 9 July 2019 under reference 19/00428/FUL (**Sports Hall Permission**) for:

*Erection of new sports hall facility to include 4 no. badminton courts, fitness suite, 2 no. changing rooms, storage, first aid room and reception area. Demolition of existing multi use games area (MUGA) and provision of an outdoor 5-a side pitch and car park.*

16. The IEAL notes that compulsory acquisition of the School's Land and rights over it will render impossible further implementation of the Assembly Hall Permission and implementation of the Sports Hall Permission.
17. The Assembly Hall permission has been implemented by the carrying out of the demolition of the old gym, the construction of a refectory and laboratory. However, the remaining elements of the permission, including construction of the Assembly Hall, remain to be implemented. That implementation will be impossible because of the proximity of the location of the pipeline and the compulsory acquisition of property rights.

18. It is proposed to implement the Sports Hall Permission in early 2020. There is currently a hockey pitch at the site of the proposed new Sports Hall and, before the Sports Hall Permission is implemented, the hockey pitch will need to be relocated to the playing fields to the east of the main school buildings. The Applicant's proposed pipeline route will mean that the hockey pitch will not be able to be relocated which will, in turn, prevent the implementation of the Sports Hall Permission.
19. Attached to this Written Representation are:
- (a) Applicant's Land Plan Sheet 122 showing the footprint of the development permitted by the Sports Hall Permission edged yellow marked 'Submission on behalf of IEAL – Plan showing location of the proposed Sports Hall';
  - (b) Applicant's Land Plan Sheet 122 showing the footprint of the development permitted by the Assembly Hall Permission edged yellow marked 'Submission on behalf of IEAL – Plan showing location of the proposed Assembly Hall'; and
  - (c) Applicant's Land Plan Sheet 122 showing the footprint of the proposed relocated hockey pitch shown edged green marked 'Submission on behalf of IEAL – Plan showing location of the Hockey Pitch'.

### ***Contamination***

20. The IEAL notes that the School's north fields, which a number of the Land Parcels, was subject to extensive decontamination and site remediation studies and works as follows:
- (a) comprehensive investigations have been carried out on the levels of contamination and ground build-up through soil samples and trial holes, both on the North field and on the Bunds (mounds) in the field;
  - (b) the Bunds (mounds) have been repositioned in accordance with guidance from the Environmental Health Officer;
  - (c) preliminary remediation works have taken place to the North field, including installation of approximately 25% of proposed land drains;
  - (d) new land drainage works have been undertaken and landfill material removed.
21. The Proposed Development will disturb this contaminated material and result in a release of toxic material into the atmosphere which will result in a consequential adverse impact on the environment and the health and well-being of the School's staff, pupils and the local population.
22. The Proposed Development is also likely to disturb and damage the new drains that have been laid by the School underneath the north fields, which, in turn, is likely to lead to water logging which will make the fields unusable.

### ***Loss of revenue***

23. The School's Land and premises are being used for weddings and other events. The Proposed Development will make it impossible for the IEAL to continue using the School's Land and its premises for such purposes while the works are carried out which will result in a loss of income for the IEAL.

### ***Future restrictions***

24. Finally, the proposed acquisition will impose unacceptable restrictions on the School's ability to manage its estate and carry out any new development on the School's Land in the future.

### ***Alternative route***

25. To reduce significantly the adverse impacts on the School described in paragraphs 9 to 20 above, the IEAL proposed an alternative route to the Applicant, which passes along the southern and western boundaries of the School Land and shown on the attached drawing marked "Plan showing the IEAL's Preferred Alternative Route" (**Alternative Route**).
26. The Applicant wrote to the IEAL on 8 July 2019 and suggested that a meeting be held so that the Applicant could present how it would address the IEAL's concerns and describe its technical assessment of feasibility of the Alternative Route. By letter dated 17 July 2019 the IEAL requested a copy of the technical assessment for the Alternative Route in advance of the meeting on 30 July. However no technical assessment for the Alternative Route was provided prior to the meeting and indeed at the meeting the Applicant stated that no such written technical assessment existed.
27. The Applicant has not provided a detailed written technical assessment as to why it will not pursue the Alternative Route. The Applicant did, in a letter to the IEAL dated 8 October 2019 confirm in writing that it will not propose a material change to its application for the Alternative Route and provided the following reasons for not doing so:
- (a) due to ground conditions and associated engineering challenges, certainly could not be given on construction timings, which may therefore extend into term time; and
  - (b) the Alternative Route could encroach into the footprint for the school's proposed sport hall development;
  - (c) the Alternative Route would require demolition of a residential property which lies within the curtilage of a listed building;
  - (d) The Alternative Route would be closer to the core operating area of the School;
  - (e) The Alternative Route is closer to the listed building and buildings in its curtilage; and

- (f) The Alternative Route poses significantly higher construction risks because of the ground conditions and existing utilities in the corridor.
28. The IEAL notes that the high level statement as to why the Applicant is not willing to pursue the Alternative Route was only received on 8th October 2019 over two months since the 30 July meeting and some 12 weeks since the document was requested from the Applicant.
29. The IEAL has not had sufficient time since the 8 October letter to instruct its own expert and to obtain a detailed assessment of the Applicant's reasons for refusing to seek a material change and powers to construct the Alternative Route. However, the IEAL has obtained preliminary advice from a firm of consulting engineers which has suggested that an open trench method of construction would be a viable and feasible method to deliver the Alternative Route.
30. The Alternative Route is viable and feasible and the IEAL submits that the Examining Authority should ask the Applicant to apply for a material change in respect of the Alternative Route.

#### **Applicant's consultation**

31. The IEAL had made clear in its response to the Applicant's section 42 consultation that its proposed route through the School grounds was not acceptable to the School for the reasons set out in this Written Representation. However, the Applicant has had no regard to the School's submissions; indeed the Applicant appears to have approached the consultation with a closed mind and without having undertaken the studies necessary to reach an informed decision on the feasibility of the Alternative Route.

#### **Compulsory acquisition of rights over School's land and appropriate agreements**

32. The IEAL considers that there is no compelling case in the public interest for the compulsory acquisition of, or the use by the Applicant of, the Land Parcels as the serious adverse impact on the School described at paragraphs 9 to 26 above and the serious interference with the IEAL's rights to property, outweigh the case for the Proposed Development so that there is no compelling case in the public interest for the confirmation of the compulsory purchase powers sought by the Applicant.

#### **Protective Provisions**

33. The IEAL also notes that there are no protective provisions in the draft DCO for the School's benefit and also objects to the DCO on this basis. It considers that, regardless of whether or not the Applicant proceeds to make an application for a material change to the application to reflect the School's preferred route, protective provisions should be agreed with the Applicant and included in the DCO to protect the School's interests.

## **Asset protection agreements**

34. The IEAL will not be in a position to withdraw its objection to the DCO unless sufficient protections are put in place in respect of the carrying out of works over and in the vicinity of the School's Land. The IEAL submits that if the Applicant does not make an application for a material change to seek powers in respect of the Alternative Route, the IEAL will require asset protection agreements in respect of those works to secure:
- (a) that no works are carried out without the IEAL's prior approval of the plans, specification, method statement and programme of works;
  - (b) that full access rights, during both the construction and operation phases, are retained for the benefit of the IEAL to enable the operation of the School's Land and any necessary maintenance, repair, renewal, inspection and enhancement works to such land;
  - (c) the recovery of the IEAL's legal and professional fees, costs and disbursements incurred in connection with the proposals to carry out the works and any other costs incurred by the IEAL arising out of the construction, operation and maintenance of the Proposed Development insofar as it affects the School; and
  - (d) that no works are carried out unless and until all consents, licences, registrations and authorisations (including any statutory or regulatory consents) are in place.

## **Conclusions**

35. The IEAL does not object in principle to the Proposed Development. However it strongly objects to the proposed compulsory and permanent acquisition of rights over the School's Land and requests that the Applicant is asked to submit an application for a material change in respect of the Alternative Route.
36. The IEAL requests that, even if an application for a material change to the application, is submitted by the Applicant, protective provisions sufficient to protect the School's Land are included in the DCO at Part 4 of Schedule 9.

**Addleshaw Goddard LLP**  
**14 November 2019**