

SOUTHAMPTON TO LONDON PIPELINE
APPLICATION BY ESSO FOR AN ORDER GRANTING DEVELOPMENT CONSENT
SUMMARY OF ORAL EVIDENCE FOR SURREY HEATH BOROUGH COUNCIL
COMPULSORY ACQUISITION HEARING 27TH NOVEMBER 2019

1. Land affected/Plots

- 1.1. Surrey Heath Borough Council (the 'Council') have multiple plots affected by the Scheme, covering a range of land uses including highway land and open space land, some of which is designated as Suitable Alternative Natural Greenspace (SANG).
- 1.2. The plots affected by the scheme and included in the Book of Reference are:

Permanent Rights (and temporary occupation)

1292, 1294, 1299, 1300, 1301, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1312, 1354, 1358A, 1358B, 1359, 1441, 1444, 1463, 1475, 1371, 1446

Temporary Acquisition

1296, 1302, 1309, 1313, 1329, 1330, 1335, 1337, 1357, 1445, 1459, 1464, 1467, 1470, 1473, 1477, 1369, 1372, 1373

2. Background of Engagement (in respect of land matters)

- 2.1. The Applicant has set out some of the engagement to date in the Statement of Common Ground with SHBC (submitted at Deadline 2 **[Application Document REP2-035]**). However, the dates relevant to the engagement on land negotiations are as follows:

- Heads of Terms issued in March 2019;
- Meeting with The Applicant and advisors on 8th July 2019 (at Runnymede Borough Council Offices);
- Meeting on site with The Applicant's advisors on 6th September 2019 (line of route through Borough);
- Meeting on site (St. Catherine's Road SANG) with The Applicant and advisors on 14th October 2019;
- Proposal for mitigation option issued 30th October 2019;
- Meeting with The Applicant and their agents (without SHBC) on 11th November 2019 to review marked up draft agreements;
- Formal response received to mitigation proposal received on 13th November 2019;

Approval of amended documents reviewed at meeting on 11th November 2019 remains outstanding (as of 22nd November 2019).

3. Key Issue: Impact on land designated as SANG at St. Catherine's Road (principally plots 1357 and 1359); the 'SANG land'

3.1 The Council objects to the use and compulsory acquisition of rights over land at St. Catherine's Road SANG, nearly 50% of which is within Order limits. As set out in the Local Impact Report and the Council's Relevant and Written Representations, the land is of environmental and planning importance, and it is the Council's position that the case for the use of the land has yet to be made by The Applicant.

4. The Applicant's Guiding Principles

4.1 The Applicant's 'Guiding Principles' [Environmental Statement Chapter 4 **Application Document APP-044**] stipulate that, in considering route options, any option for the corridor for the new pipeline would have an advantage if it:

- *would benefit from existing equipment (infrastructure) and relationships with landowners;*
- *would be likely to have better environmental outcomes versus the other options considered, especially relating to internationally and nationally important features along the final route.*

4.2 The land to the south of the SANG land at St. Catherine's Road (plots 1360 and 1361 on Sheet 113 of the Land Plans [**Application Document AS-005**] – the 'Frith Hill MoD land') is subject to rights (pursuant to a Deed dated 22 January 1974), benefiting The Applicant for the laying, operation and maintenance of (three) pipelines.

4.3 Given there is existing infrastructure, rights and relationships with the landowner(s), benefitting The Applicant over the 'Frith Hill MoD land,' the decision to route the new pipeline through the adjacent SANG land (which is also of environmental significance) is in contradiction to The Applicant's own Guiding Principles.

5. Modifications to the scheme

5.1 As per the Guidance¹, The Applicant needs to demonstrate that:

'there are no reasonable alternatives to compulsory acquisition (including modifications to the scheme) which would have a lesser impact; (paragraph 8 in the Guidance).'

5.2 It has yet to be demonstrated to the Council that there are no reasonable alternatives to the compulsory acquisition (of rights) over the SANG land. St. Catherine's Road itself is subject to rights benefiting multiple owners of apparatus [SSE, British Telecommunications, Esso, Openreach, Southern Gas Networks and South East Water], and is demonstrably narrower (by circa 10 metres by our own calculations) than the 'Frith Hill MoD land' [that accommodates the rights only of Esso, Southern Gas Networks, South East

Water and SSE]. It would therefore appear that there is scope to install the new pipeline within the 'Frith Hill MoD land,' over which The Applicant benefits from an existing relationship and rights.

- 5.3 The Applicant has indicated that there are technical difficulties in following the alignment of their existing apparatus but is yet to provide the detail (despite it being requested) to expand on these technical difficulties and confirm whether alternatives to compulsory acquisition have been properly considered.

6 Necessity and Proportionality

- 6.1 The Applicant is required to demonstrate that the acquisition of land/and or rights is necessary and proportionate (*paragraph 8 of the Guidance*).
- 6.2 There continues to be ambiguity over the need for at least some of the SANG land. In the response to the Examining Authority's Written Question ExQ1 CA.1.15 [**Document REP2-041**], The Applicant confirmed that the 'white' land, that is not subject to a works number, was potentially required for stringing out of the pipeline, if the pipeline was installed by means of Horizontal Directional Drilling (HDD). In responding to the Examining Authority's ExQ1 BIO1.43 [**Document REP2-040**], and as confirmed by The Applicant at the on-site meeting with the Council on 14th October 2019, the option of HDD is unlikely to be pursued at this location (with an open cut trench method along St. Catherine's Road preferred by The Applicant). As such, the 'white' land should be removed from the Order Limits.
- 6.3 In addition, there is uncertainty for the requirement for the works compound CO5C (see Sheet 113 of Works Plans **Application Document AS-009**). The Applicant has confirmed that there is a direct relationship between compound CO5C and the site at Deepcut (MoD Land: Deepcut Bridge Road, Frimley Green), which had been included in the application as a temporary logistics hub but is now being consulted on as a works compound. The Council has been provided with inconsistent information over the role and length of occupation of the works compound (CO5C), with periods of occupation being suggested at being intermittent over a period of up to two years.
- 6.4 The Applicant has made a commitment to narrow working through the SANG land with a maximum of up to 15 metres width (NW20 in the REAC). However, the limits of deviation are drawn far wider (approximately 30 metres by our calculations). The Applicant has stated this is to provide flexibility in the final location of the pipeline.
- 6.5 The design development of the Scheme does not appear to have been progressed to the stage where The Applicant can demonstrate with any confidence either the need for all the land in the Order limits, or proportionality in the extent of the land over which rights are sought. The 'white' land was included when it was not needed, the logistics strategy has evolved resulting in land being removed from the Order limits, and the Order limits are drawn excessively wide to compensate for a lack of meaningful pre-application surveys. It is the Council's concern that the application was submitted too early in the

development of the design, resulting in excessive amounts of land being subject to an application for compulsory acquisition powers.

7. Efforts to acquire by agreement

7.1 Paragraph 25 of the Guidance sets out that:

‘Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.’

7.2 The terms in the Option and draft Deed of Easement are generic and have an agricultural bias, and don’t deal with the complexities of the land areas in the Council’s ownership.

7.3 Further, a lot of effort has gone in to negotiating with The Applicant to incorporate terms which are included for the protection of landowners in the DCO but have been omitted from the Option and Easement documents. One of the points in debate includes compensation for ‘any loss or damage’ in consequence of the temporary occupation of land. Esso has sought to include a condition that compensation is payable only on displacement. Much of the land affected will not result in the displacement of occupiers, but a loss will still be suffered, and compensation should be payable as per Article 29 (5) of the DCO. Feedback from a page turn of the documents carried out with The Applicant on the 11th November remains outstanding, despite commitments that the documents would be returned by 15th November.

7.4 The private treaty terms offered by The Applicant should be an expansion on the articles included in the DCO and should provide for greater detail and certainty on how the Scheme is going to be delivered. The Applicant cannot be considered to be making genuine efforts to acquire land by agreement if the terms offered are more prejudicial to the landowner than if powers were implemented.

7.5 The Council has worked positively in an effort to reach a private treaty agreement with The Applicant. In addition to the detailed negotiations of the draft documents, it was agreed at the on-site meeting attended by Esso and their advisors (14th October 2019), that a mitigation proposal in the form of a proportionate financial contribution to support the establishment of additional SANG land in the Borough should be submitted to The Applicant. Despite the consensus at the meeting that there was merit in this approach, and the Council taking steps to secure Cabinet consent to the proposal, The Applicant spent two weeks considering the Proposal before rejecting it very shortly before Deadline 2.

8. Closing Remarks

- 8.1 It is the Council's experience that The Applicant has not made genuine attempts to acquire by land by agreement, by proposing terms which are prejudicial to the interests of the Council as a landowner.
- 8.2 In respect of the SANG land, the Council will maintain its objection to the compulsory acquisition of the land unless an appropriate means of mitigating the impact on the SANG can be agreed.
- 8.3 The Council does not consider that modifications to the scheme to avoid acquisition of rights over the SANG land have been properly considered, and the Council requests that the Examining Authority seeks further confirmation from The Applicant as to why the 'Frith Hill MoD land,' over which The Applicant benefits from existing rights, cannot be used as an alternative to compulsory acquisition of rights over the SANG land.
- 8.4 If the Examining Authority is satisfied that there are no alternatives but to use the SANG land, it is then requested that the Order limits are refined (in accordance with commitments made in paragraph 7.3.7 of the Statement of Reasons, **[Application Document AS-010(a)]**) to limit the incursion on the land to the maximum 15 metre working width committed to in the REAC (NW20), and that the 'white land' is removed from Order limits.
- 8.5 Further, pending the final outcome of the on-going consultation for the re-use of the Deepcut logistics hub as a construction compound, we request that the Examining Authority requires The Applicant to demonstrate that the construction compound (CO5C) is still required on the SANG land. If this is demonstrated to the satisfaction of the Examining Authority, we request that The Applicant confirms the size of the compound and amends the Order limits appropriately, with a commitment on the length of occupation of the land for use as a compound.
- 8.6 Finally, it is requested that if the Examining Authority supports the use of any of the SANG land, then The Applicant is directed to engage in meaningful negotiations to agree an appropriate mitigation package with the Council.

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