

## **ORAL EVIDENCE PRESENTED AT THE COMPULSORY ACQUISITION HEARING 27<sup>TH</sup> NOVEMBER 2019 ON BEHALF OF MHA FLEET LIMITED (MHA)**

MHA are an Affected Party pursuant to the Planning Act 2008 in respect of Esso's application for a Development Consent Order (DCO) for the Southampton to London Pipeline Project (the Scheme).

### **The Property**

Our client owns a long leasehold interest in land at **Beacon Hill Road**, Fleet, (the 'Property') part of which has been included with the DCO Order Limits, where the Applicant is seeking "compulsory acquisition of permanent rights for the pipeline and associated works". The Property has consent for development as a mixed-use retail/light-industrial site, with two anchor tenants secured (subject to MHA satisfying delivery requirements).

Construction is to start end of March with a 12-month construction programme.

### **Plot numbers: 886, 889, 890, 891, 894**

MHA have been actively engaging with the Applicant and as the consequence of such discussions the Applicant realigned part of the route, removing it from the only service road to the site, which went some way to mitigate the impacts which will be felt by our client.

However, the proposed route still severs the entrance of this mixed-use retail and light industrial development site which will require 24-hour access, and the frontage to the site will be sterilised in perpetuity.

There have not been any genuine efforts to acquire the land by negotiation. The terms issued were generic and did not reflect the nature of our client's property or the value of the site. Instead, there were multiple references to agricultural land, and, whilst it is recognised that compensation is not a matter for the Examination, the commercial levels proposed were not appropriate or reflective of the compensation code or draft DCO articles. **[References B and H]**

Further, the Applicant has sought to carve out the protective measures included in the draft DCO from the private treaty agreement, and it would be inappropriate for us to advise our client to accept the amendments, as they would be to the landowner's detriment. (i.e compensation for temporary acquisition, reinstatement provisions).

The Applicant sought to 'pause' negotiations on commercial terms whilst they considered whether or not a commitment could be made to install the pipeline in the road.

**(Reference C)**. Despite a long delay no commitment could be made, with The Applicant stating that no decision could be made until a contractor was on board.

**(Reference D)**. Esso appeared to seek to revisit this question at a recent meeting (11<sup>th</sup> November), but it was confirmed again that they couldn't make a commitment to install the pipeline in the road **(Reference G)**.

### **In Summary**

- 1) Confirm what information on the highway land The Applicant possesses and set out what information is still required to make a commitment to move the pipeline into the highway by a prescribed deadline in the Examination.
- 2) If a commitment can't be made, engage in meaningful negotiations on the commercial terms, as provided for in the DCO and the compensation code.

## **Timeline**

### **a) 5th April 2019 - Gateley Hamer commercial terms issued to Fisher German**

### **b) 25 April 2019 – Rebuttal email from Fisher German**

'We are not aware of any substantive evidence to support your assessment of the diminution. **Esso's offer is not based in any way to land values** or linked to Agricultural values as you have suggested'

### **c) 10th September 2019**

Fisher German email:

'The project is moving quickly into detailed design development and is gathering data on buried services and ground conditions to enable informed decisions to be taken regarding detailed routing in local areas including the locality of your clients site. As you are aware from previous discussions there is scope to either install the pipeline within the public highway (Beacon Hill Road) or at the western edge of your client's property. If the pipeline were to be located in the public highway many of the issues under consideration might change and the potential impact on your clients site may be quite different.'

### **d) 11th October 2019**

Fisher German email:

'Unfortunately it was not possible at the meeting to be in a position to confirm a pipeline alignment within the current Limits of Deviation in this area.

**This is primarily due at this stage to the lack of adequate data on the presence of underground apparatus existing in the highway which is preventing selection of a final alignment.** Esso's design development is progressing however it now appears unlikely that this design detail will be determined until the main works contractor is appointed by Esso which is programmed to occur in the first quarter 2020 so before the end of the examination period.'

### **e) 11th November - meeting**

Suggested that if there was a conflict between the Scheme construction programme and the construction programme for the site they could look at the doing a bespoke piece of work to review the apparatus in the road.

### **f) 13th November 2019 – Gateley Hamer email providing the detail requested**

### **g) 20th November – response from Fisher German**

'In a word no. Until either a contractor is appointed next year or further detailed design is completed in the interim period the precise alignment at this location cannot be determined at this time.'

**h) Compensation Provisions:**

Schedule 6 Paragraph 5 (3) (amendment for the 1965 Act)

"7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."