

M42 Junction 6 Development Consent Order Scheme Number TR010027

8.83 Written Submission of Oral Case for ISH on Compulsory Acquisition and Temporary Possession on 22 October 2019

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1. Introduction

- 1.1.1 This document summarises the case put forward by Highways England (the Applicant), at the second compulsory acquisition hearing which took place at the Ramada Hotel, Church Hill Road, Solihull on 22 October 2019.
- 1.1.2 Nick Evans (NE) of BDB Pitmans represented the Applicant and was assisted by experts at AECOM and Skanska in providing submissions.
- 1.1.3 The ExA confirmed that the purpose of the hearing was for the Applicant to provide an update on the status of any compulsory acquisition issues relating to the Scheme to assist the ExA in determining whether the legal and policy thresholds for compulsory acquisition will be met.

2. The Applicant's proposed non-material changes to the DCO

- 2.1.1 The ExA noted that the Applicant had submitted proposed non-material changes to the DCO, which included rerouting the Severn Trent Water aqueduct and moving the attenuation tank, as well as removing certain plots of land from the DCO. The ExA noted that the Applicant had conducted public consultation and appraisal of the changes sought, and had submitted a Consultation Statement in respect of the proposed changes at D6 **[REP6-009/Vol.8.67]**.
- 2.1.2 The Applicant considers that the proposed changes to the DCO would be non-material changes. The ExA confirmed that it would consider the changes and would determine whether the changes are material or non-material by D7.

3. Representations at ISH 7

3.1 Crown land and High Speed 2 (HS2)

- 3.1.1 The ExA said that it understood that the Applicant was waiting for Solihull Metropolitan Borough Council (SMBC) and the Land Registry to complete the process of registering title to the parts of highway that were no longer part of the strategic highway network. Once this process had been completed, title to those roads will be registered in the name of SMBC. The ExA noted that the Applicant was scheduled to provide more details at D9.
- 3.1.2 NE confirmed that the process for registering the title SMBC was ongoing with the Land Registry and that the Applicant could not be certain when that process would be completed. He said that the Applicant therefore intended to include the parcels of land concerned within its Crown land application as a precaution in case the registration of title is not concluded before the DCO is decided.
- 3.1.3 So far as HS2 is concerned, NE explained that HS2 had provided the Applicant with plans showing the land within the scope of its powers which fall within the scope of the Scheme but are unable to confirm when they intend to acquire or take possession of that land. However, it is likely that HS2 may exercise its

powers in respect of some of the land concerned before the DCO decision is made. NE therefore confirmed that the Applicant will make a Crown land application in respect of those parcels of land by D9. He said that there are approximately 20 parcels of land within HS2's powers that fall within the Scheme.

- 3.1.4 NE explained that the Crown land application would be drafted so that the land for consideration will be the land that the Crown has an interest in at the time of the decision on the DCO.

3.2 Warwickshire Gaelic Athletic Association (WGAA)

- 3.2.1 Jonathan Stott (JS) of Gateley Hamer read a statement on behalf of the WGAA, which set out the WGAA's support for the proposed "legacy" reconfiguration scheme for Páirc na hÉireann. He confirmed the WGAA's view that acquisition of land for the reconfiguration meets the compulsory purchase tests, and explained why the WGAA did not consider that the reconfiguration proposed by the Applicant is sufficient.
- 3.2.2 NE explained that the Applicant's position is that the reconfiguration of Páirc na hÉireann proposed by the Applicant **[REP2-019/Volume 8.21]** is proportionate, taking account of the impacts on neighbouring landowners, and meets the tests in paragraph 5.1.74 of the National Policy Statement for National Networks (NPSNN). However, the Applicant also recognised the public benefit that could arise from the provision of improved facilities for the WGAA that would be available to a wider public, and allowing "foreign games" to be played at the WGAA facilities. These improved facilities are the "legacy scheme" supported by the WGAA. The Applicant is therefore negotiating a separate agreement with the WGAA, under which the Applicant would provide the legacy scheme, and the WGAA would make its new facilities available for use by the wider public. The improved facilities would require a separate planning application. That application will be consulted on and will be scrutinised by SMBC as the local planning authority. NE explained that if SMBC do not grant planning consent for the legacy scheme, the Applicant will implement the reconfiguration of Páirc na hÉireann as set out in **REP2-019/Volume 8.21** as part of the DCO Scheme.
- 3.2.3 NE explained that the legacy scheme fell within the Order limits, and so if planning permission for the legacy scheme was granted by SMBC, the Applicant may exercise compulsory purchase powers in the DCO in order to deliver the legacy scheme. NE explained that it was not unusual for a planning proposal to include compulsory purchase powers in one instrument and planning consent in another.

3.3 Geoffrey Cattel (GC)

- 3.3.1 Nick Barlow (NB) of Barlow Associates on behalf of GC, set out his client's concerns that the reconfiguration of Páirc na hÉireann, either through the legacy scheme or through the DCO, would sever part of GC's land (plot 3/1d) from the remainder of GC's land and would render it unusable. NB said that his client would be able to use the land to the south of the WGAA, and currently farmed plot 3/1d with it. He would wish to sell 3/1d if the DCO scheme went ahead, and so it should be retained within the DCO. NB made the point that as GC farmed his land

to earn a living, his interests should take priority over the WGAA's, which was a recreational facility.

- 3.3.2 NE explained that the Applicant had originally included 3/1d within the DCO to allow for the reconfiguration of Páirc na hÉireann. However, having further considered the design of the reconfiguration, the Applicant determined that 3/1d is not necessary to implement the reconfiguration proposed within the DCO **[REP2-019/Volume 8.21]**, or within the Legacy scheme. Therefore, the Applicant requested that 3/1d be removed from the DCO as it could not justify retaining it.
- 3.3.3 NE said that the Applicant considered that plot 3/1d would remain capable of use if proper access is in place. He said that the Applicant had written to NB with details as to how 3/1d could be accessed and that the Applicant was open to discussing those proposals. The reconfiguration design within **[REP2-019/Volume 8.21]** includes access track alongside the WGAA to enable access between GC's northern and southern fields. Any residual land to the south of Páirc na hÉireann once the reconfiguration is complete would be returned to GC.
- 3.3.4 NE said that even if 3/1d was retained within the DCO the Applicant would not seek compulsory acquisition of it as it will not be required to implement the Scheme. He said that GC may have recourse to a material detriment claim if 3/1d is left unusable as a result of the Scheme. If a material detriment was found the Applicant may be required by the Upper Tribunal to purchase 3/1d. However, that process would take place once the Scheme is implemented and would be for the consideration of the Tribunal determining that application.
- 3.3.5 NB asked whether the Applicant had considered relocating WGAA to a separate site. NE confirmed that the Applicant had considered alternative sites for the WGAA but that those sites could not be justified. Both Philip O'Reilly of Four Winds (PO'R) and Mark McLoughlin of the WGAA also set out their experience of the Applicant's consideration of alternative sites. NE said that in order to mitigate the impact of the Scheme on WGAA the Applicant determined that reconfiguring WGAA's existing premises was a more sensible approach than looking for an alternative location, which would result in the similar issues for a different landowner. NE said that the Applicant would provide further information about the alternative sites considered for the WGAA and why those locations could not be justified. He clarified that the Applicant does not consider the reconfiguration of the WGAA to be a case of equivalent reinstatement, but of mitigation of an impact on them.
- 3.3.6 In response to NB's concern that the Applicant had not made sufficient efforts to acquire GC's land voluntarily, NE noted that NB had made it clear during discussions that GC would not consider selling only part of his land.

3.4 William Freeman & Sons Limited

- 3.4.1 NB on behalf of William Freeman & Sons Limited said that the Applicant's proposal to remove 3/45c from the Scheme and to keep 3/45a within it would render 3/45c unusable for farming as it is a modest plot of land that would be difficult to farm in isolation. NE confirmed the Applicant's view that the land would still be farmable.

3.5 Akhtar Ali and Parvez Choudhry (AA and PC)

- 3.5.1 NB on behalf of AA and PC asked the Applicant why it no longer intended to include the entirety of land parcels 3/53a, 3/53c, 3/53d and 3/55a in the DCO for environmental offsetting.
- 3.5.2 NE said that the Applicant had considered the land it requires and determined that it no longer requires 3/53d and would only need use of 3/53b temporarily. He said that the Applicant was writing to the landowners separately to update them on the Applicant's intentions for the land to provide them with certainty as to the land required to deliver the Scheme.
- 3.5.3 NE said that the Applicant had sent option agreements to AA and PC and that heads of terms would be sent to them shortly. He said that the Applicant would provide position statements as to how much land it would require.
- 3.5.4 NE clarified that the Applicant does not intend to remove 3/53c from the Scheme as it intends to use it for environmental mitigation.

3.6 The Gooch Estate

2/3v and 3/4a (the "Teardrop Land")

- 3.6.1 Isabella Tafur (IT) of Francis Taylor Building on behalf the Gooch Estate, said that the compulsory acquisition of the Teardrop Land was not justified to provide environmental mitigation to the Scheme as there is sufficient grassland and scrub being provided elsewhere in the Scheme. She suggested that the location of the land meant it was not the most efficient land to provide environmental mitigation and a habitat creation.
- 3.6.2 NE said that as the Teardrop Land contains existing woodland the Applicant considered it an appropriate location for environmental mitigation.
- 3.6.3 Marcus Wainwright-Hicks (MWH) of AECOM confirmed that the location was considered appropriate for grassland and scrub as it is consistent with important habitats in the area such as Castle Hill Meadow wildlife site.
- 3.6.4 MWH explained that the proposed location for the bat box is on the edge of woodland habitat which is sheltered and near other habitat which would be used by bats. He said that the Applicant had made commitments to use directional lighting so far is practicable to minimise the impact on bats. He said that the site also provides enhancements for scrub specialist bird species.
- 3.6.5 NE noted that there was an error on page 21 of the Applicant's Responses to Actions in respect of ISH on Compulsory Acquisition on 20 August 2019 **[REP6-015/Volume 8.73]**. He said that the Applicant's response to action point 11 should have said that the existing use of the land included arable land.
- 3.6.6 NE said that the Applicant had had productive discussions with the Gooch Estate regarding the use of the land. He said that in any event there would be a need to retain some of the Teardrop Land for the permanent works and landscaping features, including hedgerow. He said that the Applicant would require rights to the north of the Teardrop Land to make sure there is opportunity to deliver the pumped works for delivering a water supply to the SSSI as a fall-back solution in

case the proposed passive solution for the SSSI did not work effectively, as set out in **REP6-015/Volume 8.73**. The Applicant was considering whether acquiring the appropriate rights for the pumped works, rather than acquiring the freehold of that land, would be sufficient.

2/22 and 2/3h

- 3.6.7 IT said that the Applicant's intention to exercise temporary rights over this land for 24-36 hours, rather than permanent acquisition, went a significant way to alleviate the Gooch Estate's concerns. She said that the Gooch Estate wanted to retain access the road at all times, but that if the Applicant required only 24-36 hours of access the Gooch Estate may be in a position to accommodate exclusive access for the Applicant, depending on the time of year, as the Gooch Estate would require access during the harvest period.
- 3.6.8 The ExA asked whether the translocation of soil would need to take place in the autumn when the Gooch Estate would need access for harvest. MWH said that the optimal period for soil translocation would be between late autumn and winter and there would be a significant timescale in which the translocation could occur. He said that the actual translocation of the soil was a quick process as it is preferable to translocate the soil to the receptor site within a day.
- 3.6.9 MWH confirmed that the Applicant currently intends to translocate the soil in the late autumn, after the harvest period. MWH said that the Applicant would check and report on the translocated soil once in place at the receptor site.
- 3.6.10 NE noted that there would also be the potential of access to the translocation site from the north, rather than from plots 2/22 and 2/3h, depending on when works are taking place.

2/3w

- 3.6.11 IT said that the Gooch Estate had concerns about the extent of the land that the Applicant was proposing to take for storing topsoil.
- 3.6.12 Mark Sutton (MS) of Skanska explained that across the Scheme approximately 150,000m³ of subsoil and topsoil would need to be removed from the Scheme and stored. He said that some of that topsoil would be kept on site for reuse and the remainder be stored temporarily for loading onto road wagons for beneficial use off site. He said that the sites for storing topsoil and subsoil had been identified as locations next to where the soil would be returned. The material removed would be stored to the north of the motorway for the ease of loading the material onto wagons to move onto the road network.
- 3.6.13 MS said there would be approximately 1,000,000m³ of earthworks materials to be excavated, the majority being of the Mercia Mudstone Group. He said approximately 250,000-300,000m³ would be retained on site for the new embankment construction. The remaining 700,000-750,000m³ would be temporarily stockpiled prior to removal off site.
- 3.6.14 MS said that a portion of 2/3w would be required for topsoil taken for the construction of the temporary road alignment for Solihull Road. He explained that the location of overhead cables and the pond within 2/3w would restrict the area

soil could be stored. He said that the ecological surveys identify the possibility of newts in the pond within 2/3w. The area to the northwest of 2/3w would be required as a means of access to install and maintain the mitigation fencing to protect the newt population. Once the fencing is in place the north-western portion of 2/3w could be returned to the Gooch Estate.

- 3.6.15 MS said that the Applicant will prepare an application to Natural England to obtain a licence to trap and relocate the protected species within this land parcel. Further consultation with Natural England, during the detailed design stage, will determine the final alignment of the mitigation fencing.

3.7 Camilla and David Burton, Church Farm Accommodation

- 3.7.1 Philip Cowan (PC) on behalf of Camila and David Burton raised questions concerning the attenuation tank and proposed access across his clients' land. He noted that four locations for the attenuation tank had been considered by the Applicant and that the option to place the attenuation tank within plot 3/68 had been dismissed as it would cause visibility issues to the neighbouring roads. He suggested the Applicant consider whether the priority of the junction between St Peter's Lane and the realigned Catherine-de-Barnes Lane could be adjusted so that the attenuation tank could be located within 3/68.
- 3.7.2 NE said that the Applicant would need to consider SMBC's views on the proposals as it is the local highways authority. James Hemingway (JH) of AECOM said that the Applicant had designed an option with a changed priority at the preliminary design stage which SMBC considered. He said that the Applicant could consider those designs with SMBC.
- 3.7.3 PC raised concerns that there is no access from St Peter's Lane to this part of his clients' land at present and that access would be required for the attenuation tank. His clients were concerned that creating a new access would cause a security risk to their property, and a risk of fly-tipping. He asked how frequently access would be required to the attenuation tank.
- 3.7.4 NE said that SMBC would require access to the site approximately once every six months. The access would also be used by Severn Trent Water and Jacqueline Melbourn, to replace the existing farm access that would be severed by the link road.
- 3.7.5 PC asked who would be responsible for the long term maintenance of the track to the attenuation tank. NE said that Severn Trent Water and SMBC would require rights over the track and that Jacqueline Melbourn would require access. He said that ownership would most likely revert to Jacqueline Melbourn but that the liability for the access may be most appropriately dealt with by SMBC.
- 3.7.6 The ExA asked whether provisions regarding access to and maintenance of the track should be secured in the DCO. NE said that the Applicant intended to secure these provisions in agreements with relevant landowners after the works are completed.
- 3.7.7 In response to a question from PC regarding the removal of hedgerow, NE said that the removal of hedgerow would be subject to detailed design but that the Applicant would aim to remove as little as possible.

- 3.7.8 PC asked whether the exit from the main compound could be moved to use the Airport Way slip road. MS said that the Applicant could consider the proposals and provide comments.

3.8 Cadent Gas

AGI – 4/138-5/29

- 3.8.1 NE said that the Applicant was meeting with Cadent Gas that week to clarify their concerns and proposals submitted at D6 [REP6-031]. The Applicant had intended to move the AGI and had discussed with Cadent Gas how it may be optimised. The Applicant's understanding was that the current AGI is one of the oldest on Cadent Gas's network and would not get permission were it to be built today; the proposed new AGI is larger and mostly underground.
- 3.8.2 NE explained that the Applicant believes that its powers to move the AGI are sufficient, but would clarify this. He noted that Cadent Gas may wish to acquire the freehold of the AGI in particular, so the Applicant intended to fit this within its permanent land take. However, the Applicant does not want to cut off access to the National Exhibition Centre's (NEC) southern car park, which is next to the proposed location for the new AGI.
- 3.8.3 NE said that the Applicant had reached an agreement with the NEC and believes it can fit the new AGI within its permanent land take if changes to the engineering of the road are made. However, the Applicant is seeking clarification from Cadent Gas as to whether the proposal for the AGI has been fully optimised or whether it could be made any smaller.
- 3.8.4 NE noted that the DCO requires the Applicant to seek adequate rights before making any alterations to the existing AGI. He said if it becomes necessary the Applicant will acquire rights voluntarily to put in place the new AGI but that the Applicant believes it has the necessary powers within the DCO to acquire the appropriate rights.

Proposals for pipeline to cross the new mainline link road

- 3.8.5 The ExA considered Cadent Gas's drawing 2010744-DCO-002-001 for the gas diversion. NE explained that Cadent Gas's submissions at D6 suggest it may have misunderstood the effect of Schedule 7 to the DCO, which sets out the purposes for which the Applicant may acquire rights, rather than the rights themselves. However, he said that it was positive that Cadent Gas's drawings enabled the Applicant to reduce the amount of the Gooch Estate land that was needed for this diversion.

Proposals for pipeline to cross under the M42

- 3.8.6 NE said that it had been the Applicant's understanding prior to seeing Cadent Gas's designs at D6 that this apparatus could be retained. He noted that a portion of Cadent Gas's proposals fall within the Applicant's permanent land take but a portion falls outside the Order limits. He said that the Applicant intended to keep the design within the permanent land take to ensure that Gooch Estate has certainty over its land required to deliver the Scheme.

3.8.7 NE said that the Applicant would provide an update on the viability of Cadent Gas's proposal, following their meeting, and noted the Gooch Estate's request to be sent all information on Cadent Gas directly.

3.9 Further updates on agreements between the Applicant and Interested Parties

3.9.1 NE provided the following updates:

- a. **NEC:** the Statement of Common Ground (SoCG) between the NEC and the Applicant and the NEC was agreed and was at the time of the hearing in the process of being signed.
- b. **Birmingham Airport Limited:** the Applicant and Birmingham Airport Limited were discussing head of terms. The Applicant expected that the parties were close to an agreement.
- c. **Natural England:** the Applicant and Natural England were discussing the compensation planting ratio to mitigate against the loss of ancient woodland. NE said that Natural England had considered the SSSI monitoring plan and that the parties were close to an agreement.
- d. **Severn Trent Water:** NE said that the Applicant and Severn Trent Water are in the process of agreeing protective provisions and expected to reach an agreement shortly.
- e. **Arden Hotel:** NE said that a draft SoCG was being considered by Arden Hotel.
- f. **Royal Mail:** the Applicant and Royal Mail had reached an agreement which was in the process of being finalised.
- g. **National Grid:** the Applicant and National Grid had agreed protective provisions which the Applicant intended to include in the next draft of the DCO. NE confirmed that the parties were in the process of finalising a side agreement.
- h. **SMBC:** NE confirmed that discussions with SMBC were ongoing.
- i. **HS2:** NE confirmed that the Applicant and HS2 were in the process of agreeing protective provisions.

3.10 The Applicant's responses to questions from Interested Parties

3.10.1 In response to PO'R question regarding how much of the land around Catherine-de-Barnes Lane would revert to his ownership, the Applicant had showed PO'R a copy of a plan illustrating the nature of the land around his property. NE said that the Applicant would need to conduct further research to confirm the ownership of the subsoil under Catherine-de-Barnes Lane.

3.11 Update to the Statement of Reasons and Book of Reference

- 3.11.1 NE confirmed that the Applicant intended to submit final drafts to both the Statement of Reasons **[APP-018/Volume 4.1]** and Book of Reference **[APP-020/Volume 4.3]** with the final draft of the DCO at D9.