

Our ref: [REDACTED]

Your ref:

Date: 26 October 2020

SPECIAL DELIVERY

Secretary of State for Transport,
National Transport Casework Team
Department for Transport
Tyneside House
Skinnerburn Road,
Newcastle Business Park
Newcastle upon Tyne
NE4 7AR

By Post and Email to nationalcasework@dft.gov.uk

Dear Sir

Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road) Compulsory Purchase Order 2020 ("the CPO")

Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road, Classified Road) (Side Roads) Order 2020 ("the Side Roads Order")

We act for Asfordby Storage and Haulage Limited, who are the freehold owners of plots 91 to 94 as identified in the CPO. These plots are located in the immediate vicinity of the Saxby Road Industrial Estate ("**the Estate**"), in which our client has significant landholdings and from which it operates its business.

We write on our client's behalf to object to the CPO and the Side Roads Order (together referred to as "**the Orders**"), which were made by Leicestershire County Council ("**the County Council**") on 29 July 2020. The various grounds of objection discussed below apply to both the CPO and the Sides Road Order given the role of both Orders in delivering the Distributor Road scheme.

Unnecessary Acquisition of Land

Part of the land comprised within plot 91 of the CPO is proposed to be acquired in order to provide a section of bridleway between points 'N' and 'P' marked on plan 5 of the Side Roads Order (copy enclosed for ease of reference). This section would form part of a broader stretch of bridleway running for approximately 3.5 kilometres between Lag Lane and Sawgate Road ("**the Bridleway**").

The currently proposed route for the section between points 'N' and 'P' would deviate from the north to south course of the Bridleway as it approaches Roundabout 5, with a new equestrian

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crossing installed between points 'P' and 'Q'. However, any connectivity benefits associated with the Bridleway would still be achieved by pursuing an alternative design which avoided the need to deliver the part of the route between points 'N' and 'P', and which continued the Bridleway's north to south alignment.

Specifically, it is unclear why the Bridleway could not continue to head southwards between points 'N' and 'R' as shown on plan 5 of the Side Roads Order, rather than deviating to the south-west between points 'N' and 'P'. Indeed, a pedestrian route is already proposed to be created between points 'N' and 'O' (see reference N8 of the Side Roads Order) which could be redesigned so as to also accommodate equestrian users. It has also not been demonstrated that a section of bridleway could not be created between points 'O' and 'R' as part of a bridged oversail or underpass.

Such a route for the Bridleway would prevent the section between points 'N' and 'P' from needing to be provided, as well as the requirement for an equestrian crossing between points 'P' and 'Q'. Such a route would therefore reduce the extent of land needed to be compulsorily acquired by the County Council pursuant to the CPO, and prevent unnecessary interference with our client's land interests.

Failure to Properly Consider Scheme Impacts and Development Designations

The Estate and plots 91 to 94 have been designated by the Secretary of State for Housing, Communities, and Local Government as forming part of the Melton Mowbray Manufacturing Zone ("**the Manufacturing Zone**"). The Manufacturing Zone has been awarded public funding from the Midlands Engine, and has been identified by Melton Borough Council as a specific location intended to deliver distinctive food and drink focussed industrial development. Feasibility studies and viability work has been undertaken by the Borough Council in support of the Manufacturing Zone, with the Estate (including plots 91 to 94) identified as a preferred area to be developed in the short / medium term.

Notwithstanding this fact, no consideration has been given to this designation in selecting the preferred route for the Distributor Road, and no assessment has been undertaken of the extent to which the Orders may prejudice the delivery of the Manufacturing Zone. Given that the Orders propose to acquire land and create new rights within the Manufacturing Zone area, the full extent of its development and associated benefits may not be delivered should the Orders be confirmed. The extent to which delivery of the Distributor Road scheme and the works proposed by the Side Roads Order could deter investment in the Manufacturing Zone has also not been assessed.

Similarly, and given that the Distributor Road scheme does not take account of the Manufacturing Zone, the case in favour of the Orders fails to properly consider the physical impacts of the Distributor Road on industrial buildings that would be delivered as part of its development. The Distributor Road is a significant public highway that will inevitably result in increased noise, vibration, and other disturbance impacts on nearby buildings. Notwithstanding this fact, the case in favour of the Distributor Road and the Orders proceeds in the absence of any assessment of such impacts upon the intended development of the Estate and plots 91 to 94 as part of the Manufacturing Zone.

Given that the Distributor Road scheme has not been informed by an assessment of its impacts anticipating delivery of the Manufacturing Zone, it is not possible to conclude that all reasonable alternative routes for the Distributor Road have been considered. Indeed, it is possible that a different route would result in lesser impacts, whilst still achieving the underlying objectives of the Distributor Road scheme.

Notwithstanding the above, and irrespective of the Manufacturing Zone designation, we have not had sight of any information submitted with the Orders which considers the security impacts of the Distributor Road scheme and the works proposed by the Side Roads Order on existing properties. The Orders propose to designate new vehicular highway and bridleway across our clients' existing land, with these routes being located in closer proximity to the Estate than current highway boundaries. Established vegetation that presently provides a robust boundary between the Estate and plots 91 to 94 from existing public highways would be also removed as part of the works proposed by the Orders.

The Distributor Road scheme and the Side Roads Order works will therefore undermine existing site boundaries, whilst also intensifying levels of public movements in the vicinity of the Estate. These factors will increase opportunity for trespass or unauthorised access upon our client's land in the absence of appropriate security measures being implemented. However, no details are provided in support of the Orders which demonstrate how the boundaries of proposed new highways will be contained, and how the security of nearby premises will be preserved.

Failure to Make Reasonable Attempts to Acquire Land and Rights by Agreement

Paragraph 2 of the Guidance on Compulsory Purchase Process and the Crichel Down Rules ("**the Guidance**") reiterates the well-established principle that powers of compulsory acquisition should only be utilised as a measure of last resort. The Guidance expressly states that an acquiring authority will be expected to demonstrate to the Secretary of State that reasonable attempts have been made to acquire land and rights included in an order by agreement before any such order is confirmed. This is entirely understandable given that meaningful prior discussions with affected landowners can often overcome objections, and avoid the need for a public inquiry.

Notwithstanding this fact, the County Council has not made any attempt to acquire the interests in our clients' land specified in the Orders by agreement. It is plainly premature for the County Council to be seeking to deprive the company of its property by way of compulsory purchase on this basis, and without any exploration of potential alternative solutions.

Indeed, paragraph 9.2 of the County Council's Statement of Reasons for making the Orders ("**the Statement of Reasons**") indicates that the authority has pursued a CPO in the absence of any prior negotiations with affected landowners in seeking to deliver the Distributor Road "within the shortest possible timescale", and so as to "meet its programme". However, the County Council's own internal delivery timetable cannot justify disregarding statutory requirements, or making a CPO in conflict with the Guidance. In the absence of any previous discussions with our client upon potential alternatives to acquiring land and rights compulsorily, it is argued that the County Council has failed to have proper regard to the Human Rights implications of the Orders, and the protection of property rights.

Acquisition of Excessive Rights and Interests

The County Council has included over 30 separate plots within the CPO over which permanent interests would be acquired, but in circumstances where the authority acknowledges that it would only need temporary use of such land during the construction phase. Paragraphs 4.3 to 4.4 of the County Council's Statement of Reasons expressly recognise this fact, with Table 1 identifying the land and rights "which may be capable of being offered back to the owners" for these purposes.

Plot 92 is not mentioned in Table 1, although we presume that this is an oversight given that the CPO accepts that such land is required solely to provide a works compound for the diversion of the River Eye to the south of Saxby Road. Plainly the rights proposed to be acquired by the CPO over this plot will no longer be relevant once the watercourse diversion works have been completed. Indeed, notices previously served by the County Council on our client under section 5A of the Acquisition of Land Act 1981 expressly referred to “temporary rights” being acquired over plot 92 through the Orders.

We appreciate that the statutory powers in the Neighbourhood Planning Act 2017 authorising the temporary acquisition of land and rights through compulsory purchase orders are yet to be brought into force. However, this does not prevent the County Council from entering into agreements with affected landowners committing to return ownership of land or terminate any rights that will only be required during the construction phase once such works have been undertaken. In its current form, and in the absence of bespoke agreements with relevant affected landowners reflecting the above approach, the CPO therefore proposes to acquire rights beyond those which are necessary to deliver the scheme.

In the event that the Orders are confirmed, and if indeed the County Council only requires the rights proposed to be acquired over plot 92 on a temporary basis, we would be grateful for clarification that the authority will (at its own cost) voluntarily terminate and withdraw such rights once the relevant watercourse diversion works have been completed. We would also be grateful for confirmation that the County Council will fully restore any land used by it on a temporary basis before such land being offered back to affected owners.

Procedural Issues

We note that the statutory Notice to Qualifying Persons issued by the County Council in respect of land comprised in the CPO (“**the Notice**”) (copy enclosed) fails to correspond with the requirements of the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (“**the 2004 Regulations**”). Specifically, paragraph 1 of the Notice refers to an incorrect date upon which the CPO was made, with paragraph 6 also specifying that objections ought to be made to the County Council, rather than to the Secretary of State. The Notice therefore fails to comply with Regulation 3(d) of the 2004 Regulations, and section 12(1) of the Acquisition of Land Act 1981 (“**the 1981 Act**”).

We appreciate that the Council has since issued further correspondence dated 8 October 2020 indicating that objections to the CPO ought to be sent to National Transport Casework Team. However, such correspondence primarily related to extending the objection period as a result of procedural irregularities associated with the Side Roads Order. It is obviously imperative that all qualifying persons for the purposes of the 1981 Act are clear on the procedure for making objections. We therefore invite the County Council to consider whether the Notice ought to be withdrawn and reissued, with the objection period to the CPO being extended accordingly.

The Secretary of State is invited to refuse to confirm the Orders for the reasons discussed above. However, please contact us if the Secretary of State requires any further information at this time. We would be grateful if we could be copied into all relevant future correspondence regarding this matter.

Yours faithfully

Walter and Co

Walton & Co

CC – Director of Law and Governance, Leicestershire County Council, County Hall,
Glenfield, Leicester, LE3 8RA (by email to [REDACTED]
reference [REDACTED]

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