

National Transport Casework Team
Tyneside House
Skinnerburn Road
Newcastle Business Park
Newcastle Upon Tyne
NE4 7AR

Ref: [REDACTED]
Date: 25th November 2020

Sent by email only to: nationalcasework@dft.gov.uk
Cc: [REDACTED]

Dear Sir or Madam,

Re The Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road) Compulsory Purchase Order 2020

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

Plot(s) 107, 108, 109, 110, 111, 112, 113, 114 and 115

Land Lying to the South of Saxby Road, Melton Mowbray (Title Number LT351523)

Land Lying to the South of Saxby Road, Melton Mowbray (Title Number LT342140)

We act on behalf of Mrs Barbara June Barnes and R A Barnes & Sons in respect of the aforementioned Compulsory Purchase Order and Side Roads Order.

We confirm that our clients wish to oppose The Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road) Compulsory Purchase Order 2020 and The Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road, Classified Road) (Side Roads) Order 2020, hereinafter collectively referred to as “the Orders”.

Please therefore accept this letter as a statutory objection on behalf of Mrs Barbara June Barnes and R A Barnes & Son to the Orders. In preparing this objection, we have been mindful of the Statement of Reasons set out by Leicestershire County Council as its justification for the making of the Orders. The main grounds of our clients objection are set out as follows:

1.0 Diversion of the River Eye (Main River) Site of Special Scientific Interest

In justifying the diversion of the River Eye, the Council discounted four other options identified in the Flood Risk Assessment Report (Appendix 16.4 of the planning application). NB We note here that the planning application reference provided at 1.24 of the Statement of Reasons is incorrect – the reference is 2018/Reg3Ma/0182/LCC not 2018/1204/06 as stated.

The options identified were as follows:

Option A: Construction of a Bridge beneath the Powerlines

Option B: Realignment of the Proposed Highway to the West

Option C: Realignment of River Eye without Powerlines Diversion

Option D: Diversion of Powerlines to Enable Bridge Construction

Option E: Diversion of Powerlines and Realignment of Scheme to avoid the Meander in the River Eye

Therefore, it would not appear that the option of undergrounding the powerlines has been considered, to remove the need to divert the River Eye. This option should be assessed before a bend is created in what is currently a straight section of the river. Introducing a bend could lead to flooding immediately next to the road and detrimentally impact the SSSI.

Furthermore, we note from the Statement of Reasons at 7.32 that the realignment of the River Eye was chosen “by agreement with landowners, Natural England and the Environment Agency”. On the contrary, we confirm our clients have not agreed to the diversion of the river through their land and have voiced concerns about flooding in meetings with the Council.

We also note the references at 7.32 and 7.33 to “flood compensation areas” in the vicinity of the diverted channel. Paragraph 11.3 also refers to the creation of “species-rich semi-improved floodplain grassland” and that the “proposals would create a wider wetland area than currently exists”. This conflicts with what our clients have been advised by the Council.

In a meeting with the Council, our client was advised that (although their land does not currently flood) the diversion of the River Eye would result in their land in that location being better drained than it is currently. This would appear to conflict with the above proposed wider wetland area and flood compensation areas referred to in the Statement of Reasons.

2.0 Attenuation Pond Location and Design

We note from continuation sheet 10 of the planning permission dated 4th June 2019 that balancing pond P09, situated within our clients land, is highlighted as falling within Flood Zone 3 and that creating the pond in this location may compromise its effectiveness during a flood event. The Planning Authority suggests that this pond be relocated to higher ground.

The siting of the pond within our clients land would also make farming the remaining section of land to the north of it extremely difficult. The road is already proposed to take the only section of land that is not ridge and furrow and which is therefore the location our client uses for sheep handling, hence this worsens the impact on our clients farming operations.

We believe that the attenuation pond should be situated within a larger, flatter, field outside of the flood risk zone so as to remove these issues. It is not clear what other options were identified and the reasons for them being discounted as unsuitable. Details of the form of construction of the balancing pond have also not been released to our client by the Council.

3.0 Approvals Required for Development

We note from the planning permission that a significant number of approvals are required before development can commence, some of which are dependent on consents being obtained that may not be forthcoming in the timeframe required or at all. These are listed below, although there are additional approvals required prior to completion of construction.

Construction Environmental Management Plan (CEMP) to be submitted to and approved by the County Planning Authority.

Biodiversity Management Plan (BMP) to be submitted to be submitted to and approved by the County Planning Authority.

River Eye Mitigation, Compensation and Enhancement Scheme to be submitted to and approved by the County Planning Authority.

Protected species surveys to be submitted to and approved by the County Planning Authority (at least 6 months prior to the commencement of each construction phase).

Plan detailing the protection and/or mitigation of damage to populations of otter and its associated habitat to be submitted to and approved by the County Planning Authority.

Surface Water Drainage Scheme to be submitted to and approved by the County Planning Authority.

Details in relation to the management of surface water on site during construction of the development to be submitted to and approved by the County Planning Authority.

Scheme to provide compensatory floodplain storage (as detailed in section 4.2, p36 of the submitted FRA) to be submitted to and approved by the County Planning Authority.

Final designs for the scheme to provide Environment Agency access to the Brentingby Flood Storage Reservoir to be submitted to and approved by the County Planning Authority.

Construction traffic management plan to be submitted and approved by the County Planning Authority.

Written Scheme of Investigation to be submitted to and approved by the County Planning Authority.

We further note from continuation sheet 10 of the planning permission that The Environmental Permitting (England and Wales) Regulations 2016 may require a permit to be obtained for any activities which will take place within the vicinity of the River Eye. There is no guarantee that these approvals and permits can be obtained or in the timeframe required.

4.0 Financial and Economic Viability

At 1.33, the Statement of Reasons provides that in July 2018 the Director of Corporate Resources was authorised to sign a Memorandum between the County Council and Melton Borough Council, setting out the financial arrangements for funding the local contribution to the scheme, also stating that “this document is being discussed between relevant parties”.

It is not clear from the Statement of Reasons if the Memorandum of Understanding setting out the financial arrangements has been agreed. This is particularly as we note from a Statement about the Melton Distributor Road published on the 25th March 2020, by Melton Borough Council, that the County Council refused to accept the Housing Infrastructure Fund.

The statement made by the Borough Council, quoting the leader of the Borough Council Cllr Joe Orson, appears to conflict with what is stated in the Statement of Reasons at 1.35, which is that Cabinet resolved to accept the Housing Infrastructure Fund. It is also not evident from this if the masterplan for the housing developments required to support it is in place.

We also raise concern about the Council's ability to recuperate £13.6million by way of developer contributions. This is because we understand there are strict requirements for charging such contributions. For example, Section 106 can only be used where the legal tests set in the CIL Regulations 2010 (as amended) are met. That is that the obligations must be:

- a. necessary to make the development acceptable in planning terms;
- b. directly related to the development; and
- c. fairly and reasonably related in scale and kind to the development.

Finally, it is not immediately apparent if the cost of settling claims under Part 1 of the Land Compensation Act 1973 has been factored in to the overall costs of the scheme. We estimate that there are approximately 200 residential dwellings within the vicinity of the proposed route which are likely to be injuriously affected, leading to significant compensation liability.

5.0 The Use of Compulsory Purchase

The *Department of Transport Local Authority Circular 2/97* states "The Secretary of State for Transport will require to be satisfied in every case that the land included in the CPO can reasonably be regarded as required for the purposes of the acquisition". It further states that "the only land to which the CPO should relate will be the land falling within the highway".

Hence, the Secretary of State for Transport must be satisfied that the land is "required". The word "required" was included in section 226(1)(a) of the Town and Country Planning Act 1990 and the meaning of the word "required" in that statute was considered in the case *Sharkey v Secretary of State for the Environment and South Buckinghamshire District Council* (1992):

"the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word "desirable" satisfactory, because it could be mistaken for "convenient," which clearly, in my judgment, is not sufficient. I believe the word "required" here means "necessary in the circumstances of the case."

The Council must also demonstrate a compelling need in the public interest for the use of compulsory acquisition, as directed by *Guidance on Compulsory Purchase and the Criche Down Rules*, Department for Communities and Local Government, February 2018. It is more difficult to show compellability if the underlying scheme lacks financial or economic viability.

We note that there is a significant amount of land proposed to be included in the CPO which will not fall within the highway as newly constructed and is not required permanently. Table 1 of the Statement of Reasons appears to identify 34 such areas of land that are proposed to be compulsorily purchased, but which the Council states may be offered back to owners.

The Council does not clarify why freehold title is essential in respect of these areas, that are only needed for construction. There would not seem to be any reason why these plots could not be occupied under licence or lease or acquired on a temporary basis, like the blue areas. However, we also contend that the blue areas are not required to be included in the CPO.

In respect of our clients land alone, there are four plots to be acquired permanently (plots 112, 107, 115 and part of plot 108) which sit outside the boundary of the embankment to the proposed road. These plots of land should only be acquired permanently at the request of our client, for example if they are unwanted due to being severed from their retained land.

There are a further five plots in our clients land proposed to be acquired temporarily (plots 109, 110, 111, 113 and 114). These will also not fall within the highway and there is no reason a licence could not be put in place instead, as was agreed recently for a storage compound for Ground Investigation work, in accordance with rates paid by other statutory undertakers.

We further contend that granting the Orders would be premature in circumstances where there have been no reasonable attempts to acquire the land by agreement and there are only 50 known ownerships. We presume this can only be for convenience, which does not meet the conditions of being “required” or showing compellability in the public interest.

6.0 Deliverability in the Time Scale Envisaged

The construction start date is said to be programmed for August 2021. We would question whether this is realistically achievable in light of the foregoing points, as regards to the approvals required beforehand, relocation of the balancing pond and potential issues in respect of unforeseen compensation costs and securing the necessary funding agreements.

7.0 Biosecurity During Construction

During the survey stage, our client received correspondence assuring them that biosecurity measures would be in place. However, the contractors were not aware of this and drove through fields containing different farmers livestock without disinfecting their tyres. The Council has not detailed any biosecurity measures that will be in place during construction.

8.0 Access During Construction and After

Provision will need to be made for suitable pedestrian and vehicular access to our clients retained land during and after construction. Such access is needed 24 hours per day, 7 days per week at all times to monitor and maintain the welfare of the livestock in the field. The access must also be capable of accommodating the vehicles used to transport the livestock.

9.0 The Convention of Human Rights

The Convention of Human Rights requires proportionality. The appropriate test of proportionality requires a balancing exercise and a decision justified on the basis of a compelling case in the public interest and as being reasonably necessary but not obligatorily the least intrusive of Convention rights (*R (Clays Lane Housing) v Housing Corporation* [2005]).

It is our opinion that authorising the CPO prematurely, before the approvals necessary to implement the Orders have been obtained and where changes to the design are needed and where there are questions over viability, deliverability and the use of compulsory purchase, is not in the public interest and does not justify interfering with our clients human rights.

This represents our clients objection to the Orders. We reserve the right to add to or amend this objection upon sight of further information from the Council.

Yours faithfully,

