

## **OPENING REMARKS ON BEHALF OF LEICESTERSHIRE COUNTY COUNCIL.**

### **Introduction.**

1. The Inspector has, as part of the formal opening of the Inquiry, identified the orders that are being considered at this inquiry. Accordingly, in opening I do not need to describe those Orders in detail but rather I will seek to identify the purpose of each element and the statutory powers by reference to which they must be justified so as to assist objectors to direct their objections to the relevant orders and to relevant grounds of objection.
  
2. At this Inquiry there are two matters to be considered and they consist of the following: -
  - (i) The Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road, Classified Road) Side Roads Order 2020; the “SRO”.
  - (ii) The Leicestershire County Council (A606 North and East Melton Mowbray Distributor Road) Compulsory Purchase Order 2020; the “CPO”.
  
3. Those two matters, namely the SRO and the CPO, with their specific titles are drafted in the appropriate technical language required to meet the provisions of the applicable forms and Statutes. In respect of both Orders there are specific technical steps that have to be complied with and specific forms to be followed. The Inspectors request, which is made in relation to all such orders, for confirmation that all necessary statutory procedures and formalities have been complied with is to ensure that the Council has complied with the relevant requirements. In respect of these Orders I respond, on behalf of the Council, by indicating that they have been to the best of our knowledge and belief. That leads me to some other considerations.
  
4. The first of the other considerations is to identify formally that there are no other matters before the Inquiry that need to be considered. At one stage there were objections from the relevant electrical power authority, namely Western Power Distribution as an affected landowner and occupier. Objections from such a body, if

maintained may well have required a further report to be made to the Energy Secretary as part of the overall assessment. Given the withdrawal of that objection, there will be no requirement that I am aware of for that matter to be considered separately.

5. Similarly, objections raised by other affected landowners such as Network Rail might have caused other action to be necessary but once again, I can report that full agreement has been reached with that body.
6. At this Inquiry we are therefore concerned only with the two remaining Orders. Given the necessary formal nature of the two Orders and the way they are required to be drafted, they sound complicated and potentially difficult to comprehend. The position can, however, be easily understood, and any objection can be properly targeted, if we look at the two orders in the following way.
7. The purpose of the SRO is to maintain access to all land and property directly affected by the North and East Melton Mowbray Distributor Road (NEMMDR). Affected in that context means changes arising from the promotion of that Scheme and its constituent parts, which includes the closure of certain highways that currently exist. The SRO makes the necessary changes to the highway network. Necessary in that context means that required to meet those requirements arising from the planning permission granted. That statement of the position cannot be stressed highly enough. The SRO does not enjoy a “life of its own” to carry out any works the Council or for that matter any objector may desire to undertake. It is limited in both its terms and its effect to that which is required to meet the needs of the planning permission granted. The SRO provides the means by which rights are removed and new rights created sufficient to cater for the effects of the NEMMDR, including any beneficial effect such as the closure to traffic of Lag Lane and its reopening on a more limited basis. It would appear, especially given the withdrawal of much if not all of the objections from the Statutory Objectors, that many of the remaining objections to the Scheme arise in respect of this Order. That will be considered at the inquiry but in doing so it will have to be examined in the light of the existence of planning permission for the Scheme which I will deal with in more detail below. The essential test in looking at

the SRO is whether the power given by Section 14 to deal with roads crossing the classified road or Section 125 dealing with private means of access to premises have been dealt with appropriately. In respect of section 14 the order stopping up the highway cannot be made unless *“the Minister is satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up”* and in respect of section 125 the order can only be made if no access is reasonably required or another reasonably convenient access is available or will be available.

8. They are therefore the tests to be applied in seeking to make objections to the SRO. In respect of Lag Lane, which I mention as that is the issue that has raised specific objection the Council’s case summarised to its most succinct is that the test has been complied with. Accordingly, there is therefore no reason for the objections which relate to it to be accepted. In addition to that there are also significant advantages of the proposals to close Lag Lane to through vehicular traffic when compared with the option of maintaining it or even providing some form of additional provision which is not actually required.
9. The CPO provides the means by which the land can be acquired to allow the Scheme to be provided. That CPO had been drawn to reflect the position as shown in the planning permission that has been granted for the Scheme, including as it does all aspects of the Scheme including the land required to allow for the storage of spoil and for the construction compounds. The CPO therefore allows for the land required for the Scheme. As such it does contain areas of land that although needed to allow the Scheme to proceed and therefore the acquisition is essential is not required permanently into the future. Without that land acquisition, however the Scheme could not proceed and that is what provides the justification.
10. Following the publication of the CPO objections have been raised to seek to challenge the extent or in some cases nature of the land acquisition. The unfortunate fact is that at present land cannot be acquired under these statutory provisions on a temporary basis even where the land may not be needed permanently. The Council must however have access to all the land it needs to build and operate the Scheme. The publication of the CPO and the receipt of objections to it has enabled the Council to

identify that some land shown in the CPO can be removed and that is reflected in the modifications which the Council will invite the Inspector to recommend in respect of the CPO as identified in the evidence.

11. The principles that apply in relation to the use of compulsory purchase powers are set out most clearly in the guidance that is contained within the Guidance on Compulsory Purchase and the Crichel Down Rules. A series of considerations are set out in that Guidance (see generally Tier 1 of the Guidance from page 10 onwards) but they can be summarised to help objectors in the following way.

-Is there a compelling case in the public interest to justify the acquisition and the disturbance of the owner's rights? In this case given the overwhelming support for the NEMMDR from a wide range of stakeholders, which has existed for a significant period of time as demonstrated by the inclusion in the relevant Development Plan and Local Transport Plan (LTP) documents dating back ten years or more, the answer is yes.

- Does the acquiring authority have a clear idea of how it is intending to use the land acquired? In respect of all the land within the CPO the answer is yes. The land acquisition justification relates exactly to the detail of the areas contained within the planning permission granted and as such the position could not be clearer. Once again, the history of the development of the Scheme, following as it does from consideration as part of the Local Plan development and the ongoing support for the Scheme are relevant in that respect.
- Can the acquiring authority demonstrate that the resources to carry out the plans within a reasonable timescale exist? Once again, this question is answered positively. Planning permission exists for the Scheme and the detailed design works for it are continuing to fine tune the proposals in order to meet the planning conditions on the permission. Further the Council is keen to progress the matter and has a target commencement date in mind, subject to the outcome of this Inquiry, in order to ensure that it falls within the funding arrangement that are in place and apply.

- Are there any impediments which are likely to interfere with the progress of the Scheme? There are no known impediments to the Scheme progressing. The funding for the NEMMDR is part from central Government, part from the Council and part from the development of the large areas within the strategic urban extensions as contributions; see LCC1 and the supporting letter from the relevant Officer indicating the position. As indicated the Council is intending to underwrite all the necessary costs to provide the Scheme confident that the funding will be in place. As such that clearly meets the requirements as contained within the Guidance.
- There are other matters that fall to be considered relating to timescale, the existence of any physical or legal factors to block the progress of the Scheme and the existence of planning permission. None of these various considerations cast any doubt on the proposal going forward.

12. Collectively the two Orders form the Scheme in respect of which objections and representations are being considered by the Inquiry. There is a very significant matter that arises from what has been set out so far and that is that neither of the Orders actually provides for the Scheme itself. In highway terms there are two ways in which a scheme can be brought forward, the first is through the promotion of a Line Order which gives consent for the line of a road and is usually used by central Government when promoting schemes and the second is through the use of planning powers under the Town and Country Planning Act 1990. The more applicable of those two options in this situation is the use of the planning powers.

13. Accordingly, the reason why the Orders do not provide for the Scheme itself is that planning permission exists for the Scheme and there is no application for that before this inquiry. That planning permission was granted for the proposals on the 4<sup>th</sup> of June 2019 following an application made on the 8<sup>th</sup> of October 2018. The process, which was followed, and the vigorous and detailed steps undertaken by the Council in seeking that consent, including a number of separate consultation events, is fully described in the evidence. The result of that is that consent provides for the Scheme and identifies the purpose to which all the land to be acquired is to be put.

14. Accordingly, taking into account the 2019 consent, along with the non-material amendment granted recently, all the required planning permission necessary to provide the Scheme is in place. The Orders before this inquiry that are presented for examination are, in effect to provide the means that the planning permission is to be brought into effect.

### **The Planning Permission**

15. The grant of planning permission is the starting point for the consideration of matters before this Inquiry, but it is important to note that the planning permission, consisting of as it does of both the original and the non-material modification, itself is not before the Inquiry. Accordingly, any objection made that ultimately seek to strike at the planning permission is not a matter that should require too much consideration at the inquiry. The matters that are before the inquiry are those that relate to the orders listed above which provide the means by which the Scheme can be provided.

16. In order to assist objectors to understand that more completely reference can be made to the current guidance in respect of such matters. The Planning Inspectorate has published the document Notes for the Guidance of Inspectors Holding Inquiries into Orders and Special Roads Schemes, which are intended to guide the approach to the consideration of relevant matters. Although that is advice to Inspectors it is publicly available to ensure that everyone can familiarise themselves with the relevant approach.

17. In opening I would draw attention to two particular elements of that guidance to assist the Inquiry. The first is what it says in respect of the existence of planning permission in the context of a CPO objection (see paragraphs 2.9.2 to 2.9.3 inclusive) and secondly the guidance provided to Inspectors as to the context in which the Inquiry is being held (see paragraph 2.6.1).

18. The guidance makes it clear that in situations where planning permission has been granted the effect of that will depend on the circumstances that apply. The simple grant of permission is regarded as being no more than an indication that in land use

terms the proposal is acceptable (see 2.9.3). In doing so, however, it does provide the basis against which decisions in respect of all matters within the SRO and the CPO need to be justified. The guidance continues by indicating the following. In circumstances where permission has been granted to reflect a proposal that has been identified through the Development Plan system and the detail is included in the relevant planning document then questions of need for the proposal are in effect already decided (see 2.9.2).

19. In this case the history of the development of the NEMMDR is extensive and it is set out in detail in the Statement of Reasons. In essence a route for the road, which was endorsed by the relevant Development Plan documents, has been in existence for a considerable period of time. The need for such a proposal has not been questioned. In fact, the need for and benefits arising from such a distributor road has been accepted for many years and has been endorsed through the Development Plan process and recognised by the grant of a detailed planning permission.

20. As such although it cannot be claimed that it falls within the precise guidance contained within paragraph 2.9.2 of the Notes it does fall within that part where it states:

*“If the above stages (those relating to the inclusion in the Development Plan) have been completed but instead of a precise route the plan defines only the land to be safeguarded for the road, there would be scope for objections to the line and scope for the promotion of alternatives, but the need for the road should not be an issue.”*

21. There has been no challenge in relation to the need for the Scheme as I understand the position and further no suggestion that the route itself should be changed; in fact, it appears to be almost universally agreed that the Scheme should come forward and the alignment is the correct one but for minor changes. There is no alternative before this inquiry suggesting the route should follow a different alignment. Accordingly, the planning permission can be accepted, and the only question amounts to the promotion of certain changes that have been suggested. At the time of writing these opening remarks it is not known if they will be pursued or not, but if they are they will need to be assessed and that will include an indication of the consequences arising from them.

In stating that, the existence of the planning permission which currently exists to meet the needs arising from the Scheme will remain the starting point for the assessment.

22. The Council is not and has never been opposed to suggestions which may improve the Scheme but where the Scheme has been specifically designed to meet the ambitions of groups or individuals to meet the tasks set for it, including meeting the housing needs of the Borough, changes must be shown to achieve the same without causing any significant delay to the Scheme itself.

23. I turn briefly to the second matter I mentioned. That relates to the guidance given to Inspectors in respect of an Inquiry such as this. I would make it clear that these comments are intended to assist objectors as the Inspector will clearly be very familiar with this guidance. Paragraph 2.6.1 indicates the following: -

*“The Inspector should always bear in mind what he or she has been appointed to inquire into and therefore upon what he or she is required to make recommendations. The Inspector should be careful to confine his or her consideration to matters within the scope of the inquiry and resist broadening that consideration into matters that are not directly involved in the orders.”*

24. The approach is therefore one that relates to the Orders before the Inquiry itself and not some other provision or approach.

25. The final point to mention on the planning permission is that having been through all the relevant statutory procedures and permission having been granted the grant has not been challenged before the Courts and accordingly it exists as shown.

26. Having set that out there are a few matters that I would wish to address, albeit briefly in opening.

## **The Benefits of the Proposals**



27. I can deal with this shortly in opening especially as the position is clearly set out in the documentation starting with the application and it's supporting documents and continues through the various Statements (Reasons and Case) and into the evidence. It would appear that the need for the Scheme and the benefits which arise from it are largely accepted including by those making representations to the Inquiry, even those seeking some change to the provision.
28. The NEMMDR is essential to the delivery of the local policy and strategic objectives. It will seek to deal with current transport related problems and issues within Melton Mowbray as part of an overall transport strategy. The Town, as a result of the foresight of the various Councils responsible for the area, is moving efficiently towards a position where it seeks to address known problems and allows for what will be extensive growth into the future. To be able to do that the responsible authorities following extensive consultation with and input from those living and working in the area have devised an approach which utilises a full range of measures from road construction all the way through to traffic restraint through appropriate action. In that respect it is significant that this proposal has been brought forward following the ringing endorsement provided by the Inspector into the Local Plan examination where the merits of the proposal were considered, and an allocated route protected.
29. The role of the NEMMDR in that, as part of the road provision is critical. A major restriction on traffic wishing to travel through the area arises from the lack of options for traffic other than using the Town centre. At present that means that traffic wishing to get from one side of the Town to the other has to travel through the middle. By providing the means to bypass that centre significant advantages arise. That is, no doubt part of the reason why planning permission has been granted for the Scheme and why there is such a significant level of support for it; an examination of the Committee report shows how little opposition there was to the grant of that consent which is remarkable for a scheme of this sort.
30. The stated conclusions leading to the grant of planning permission as set out in paragraphs 125 -126 of that same committee report explains why.

*“In principle the proposal is in accordance with the policies and strategies of the Development Plan, which makes provision for an allocated corridor of investigation for the MMDR. There are no overriding objections to the proposal and the matters highlighted in the consultation responses and in the majority of representations have been addressed through the submission of the further information.*

*Subject to the control of the matters raised in the consultation process by planning condition, and given the significant public benefit likely to result from the construction of the MMDR, it is considered that the proposal, as set out in the application, accompanying ES, the further information provided in the two Regulation 25 submissions is in accordance with national planning policy and the policies of the development plan”.*

31. Given that the traffic figures show that the Scheme can provide traffic relief on parts of the network up to a figure of between 20 to 40% (depending on time period and location) of the current usage it is easy to understand not only why permission was given but the significant advantages that flow from the Scheme. In addition, the Scheme provides a significant element of the ability to cater for the anticipated and much needed growth for Melton Mowbray as well as providing a significant and highly beneficial return on the money spent. All those factors point to the Scheme not only being required to meet the purpose but further that spending the money to achieve it is highly beneficial.
32. In looking at the objections brought before this Inquiry and in particular those suggestions that have the potential to delay the Scheme, whether they intend to or not, the importance of the proposals and the potential for it being prevented from going ahead cannot be ignored.

## **Modifications**

33. I add a short comment about modifications just to ensure that the process is understood and to enable any one with anything relevant to add to be able to address it.

34. The Orders before this inquiry are currently presented in draft. The opportunity exists, provided any change does not amount to a fundamental alteration of what is proposed to make changes to those Orders to improve them. Improvement in that context means to make them clearer, more precise, and perhaps more certain. The Council has noticed that some modifications should be made to some part of the orders and the Department has also indicated where some matters can be improved.
35. Miss Walker, as the Council's lead witness, has produced a note of such changes for consideration at the inquiry as part of her evidence; see Appendix B to LCC1. That identifies 61 matters relevant to the SRO, many of which are to ensure accuracy in the plans themselves and 3 to the CPO. All such modifications are capable of being considered as part of this process.
36. To that list there needs to be added a further modification to the SRO, which arises from matters flagged up in the evidence produced. That relates to the adoption of a suggestion made that it would be advantageous to separate farm and bridleway users in the vicinity of Thorpe Bridge, which has been described fully in section 5 of Ms Leeder's evidence (LCC 05). That has been dealt with and has been permitted and will require an additional modification to be taken on board. Addenda LCC1A has been produced for that purpose.
37. The Council would wish to make it clear that the majority of the modifications are to the Orders only but for the Thorpe Bridge alteration, which does alter, albeit marginally the planning permission which is why it was granted as a non-material amendment. They are all, including the Thorpe Bridge change minor in nature and they are not sufficient to alter the assessment carried out in the Environmental Statement which supported the planning application. It is the Council's intention to keep an open mind throughout the inquiry to the potential for further modifications to emerge although at this time none are anticipated.

#### **Delay in the Provision of the Scheme.**

38. The Council would not wish to overemphasise this point, but the fact is that we are living in times where money is very strictly controlled and the need to make use of it within timescales has to be acknowledged. The evidence describes the need for the Scheme and the essential requirement to ensure that it could be brought forward within a timescale that avoids any unnecessary delay. The Council has achieved that, and the business case has been accepted and funding is available for the Scheme to go forward.
39. An essential advantage of obtaining planning permission for the Scheme in advance of any other step was to make sure that the Scheme could be defined and would receive support before it proceeded to land acquisition and the treatment of the side roads.
40. The intentions in respect of the whole Scheme were therefore broadcast widely in accordance with the statutory requirements and permission was granted on the basis that it was applied for.
41. Putting to one side what I set out above about objections to the SRO needing to be consistent with the permission that authorises and justifies the CPO another factor arises. If the objection now being raised, which should have been raised at the time the permission was being dealt with, has the potential to delay the Scheme and with it the loss of funding that needs to be taken into account.

## **Objections**

42. It is not the function of these opening remarks to seek to address in any detail the objections raised in respect of the Scheme. All I would wish to point out is that the Council will seek to place before the Inquiry all relevant material to allow the objections to be considered properly and fairly. I have tried to assist in that by setting out the relevant tests to be applied to the orders and to indicate that the planning permission itself is not before this inquiry.
43. The Council will seek to present a fair assessment of any matter that might be considered to be an alternative way of achieving the aims of the Scheme, it will seek

to produce a response to any live witness who appears and will respond to all the written representations in writing in a form that is intended to help the inquiry.

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