

THE PROPOSED A15 LINCOLN EASTERN BYPASS

THE HIGHWAYS ACT 1980

THE ACQUISITION OF LAND ACT 1981

**THE LINCOLNSHIRE COUNTY COUNCIL (A15 LINCOLN EASTERN BYPASS)
(CLASSIFIED ROAD) (SIDE ROADS) ORDER 2014**

**THE LINCOLNSHIRE COUNTY COUNCIL (A15 LINCOLN EASTERN BYPASS)
COMPULSORY PURCHASE ORDER 2014**

**APPLICATION IN RELATION TO PROPOSED COMPULSORY PURCHASE OF
LAND HELD BY THE CANAL & RIVER TRUST**

PRE-INQUIRY MEETING:

Monday, 18 May 2015, 2.00pm

Epic Centre, Lincolnshire Showground, Grange-de-Lings, Lincoln, LN2 2NA

PROMOTER: Lincolnshire County Council.

THE INSPECTOR'S NOTES OF THE PRE-INQUIRY MEETING

INQUIRY DATE: Tuesday, 11 August 2015

Introduction

1. This Bypass scheme is promoted by Lincolnshire County Council (LCC) under the Highways Act 1980 and the Acquisition of Land Act 1981. The inquiry will broadly follow the Highways (Inquiries Procedure) Rules 1994 and the Compulsory Purchase (Inquiries Procedure) Rules 2007.
2. The Side Roads Order application and much of the land acquisition fall to be determined by the Secretary of State (SoS) for Transport. The application for authorising the compulsory purchase of land held for their statutory purposes by the Canal & River Trust is made to the SoS for Environment, Food and Rural Affairs.
3. My name is Stuart Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT and I am the Inspector appointed by the SoSs to hold the inquiry and to report back to them with recommendations. A programme Officer has been appointed to assist me in the administration of the pre-inquiry meeting (PIM) and the inquiry and she is Mrs Brenda Taplin. Mrs Taplin will be heavily involved with the organisation of the inquiry, but will take no part in the decision making process. She is the main point of contact for the inquiry and can be contacted on 01403 217799 or BTaplin@personaassociates.co.uk if there are any queries from the parties.

4. The principal purpose of a PIM is to discuss the practical arrangements for the inquiry. It is an opportunity for the Inspector to meet the Promoters and other persons who wish to appear at the inquiry, in order to explain/discuss matters relating to the organisation, conduct and timetabling of the inquiry. It is intended, as far as possible, also to establish the matters that need to be explored at the inquiry, a programme for submitting proofs of evidence and hearing the cases at the inquiry. In other words, the intention is to pave the way for the smooth and efficient running of the inquiry.
5. Copies of notes of the PIM will be sent to all parties who have made representations, or subsequently expressed an interest in appearing at the inquiry to make representation. Copies will also be placed on the inquiry web site at <http://www.lincolnshire.gov.uk/transport-and-roads/highway-improvement/projects-in-planning/lincoln-eastern-bypass/compulsory-purchase-order-and-ancillary-orders/public-inquiry-for-2014-orders/125858.article>.

Promoters

6. The Promoters of the scheme are LCC. The present intention is for LCC to tender a team of five professional witnesses led by Mr Simon Randle of Counsel, who is instructed by the Solicitor to LCC. LCCs main point of contact is Mr Lee Rowley on 01522 782070 or lee.rowley@lincolnshire.gov.uk.

Supporters

7. There are several Supporters of the scheme, but none have so far indicated that they wish to make oral representations at the inquiry. This will be kept under review in the period leading up to the inquiry.

Objectors

8. A number of Objectors have said they wish to appear at the inquiry. These comprise local residents, Parish Councils, action groups, undertakers and businesses. Several Objectors would appear as individuals, but under the umbrella of the Hawthorn Road Action Group.
9. Following the PIM, Objectors will be circulated with a short questionnaire asking about their intentions to attend and speak to the inquiry, expand their written submissions or rely on their current representations. Following this, a further questionnaire will be circulated to those intending to speak asking for further details and availability. This will be followed by a draft programme for the event.

Inquiry venue

10. The inquiry will be held **at the Doubletree by Hilton, Brayford Wharf North, Lincoln, LN1 1YW**. The Programme Officer can be contacted there during the inquiry and an inquiry document library will be available for

reference purposes. The Promoters confirmed that the documents could be left securely overnight at the venue.

11. There was some concern expressed about the venue, especially with regard to parking costs that would be incurred in attending the inquiry, which were suggested would be as high as £7.50/day. Clearly there would be parking charges, though a cursory check of daytime parking costs place some of the nearby car park charges significantly lower. In addition, there are the options of car share and use of public transport. Bus timetables can be gained from the website <https://www.stagecoachbus.com/timetable-landing.aspx> .

Inquiry Dates

12. The inquiry will open on **Tuesday 11 August 2015 at 1000 Hours**. The inquiry is programmed to sit for 2-weeks. As some objector parties are still in active negotiation with LCC a preliminary programme will be prepared as soon as practical, but the sitting weeks would be 11-14 and 18-21 August 2015.

Matters the SOSs consider should be examined at the inquiry

13. The Promoter raised queries about the extent of the inquiry, expressing concern that extending evidence to matters that could not be affected by the outcome of this inquiry should be avoided. It also submitted that the previous Inspector's Report and conclusions and the SoS's decision are material considerations that the current Inspector would have to take into account. Moreover, the Council contends that, in the interests of consistency of decision making, the conclusions reached by the Inspector and SoS should not be changed without good reason.
14. So far as the Council is concerned, this inquiry, which is due to commence in August, is currently an inquiry into the three matters, namely:-
 - the 2014 Side Roads Order (SRO);
 - the 2014 Compulsory Purchase Order (CPO); and
 - unless and until the objection is withdrawn, the objection from the Canal & River Trust to the compulsory acquisition of its interests.
15. Mr Nixon confirms that the forthcoming inquiry is not an investigation into the planning permission which has already been granted for the Scheme and neither will it examine the historical events which led to the permission being granted. The planning permission that was granted in June 2013, remains extant and relates to the main line of the Scheme. This was subsequently revised via a Section 73 permission granted in October 2014. As such it is a stand-alone inquiry, which will need to examine all matters relevant to the issues linked to the SRO and CPO Orders. The revisions granted by the Section 73 permission were considered to constitute 'minor material amendments' and do not substantially change the Scheme. A more recent grant of consent

for the Non-Motorised User Bridge to replace the stopped up Hawthorn Road was given in October 2014.

16. Accordingly the inquiry will take the existence of the planning permission as its starting point. LCC reassured the Inspector that all the relevant and appropriate statutory procedures were followed in granting the permissions and there are lawful consents capable of implementation subject to confirmation of the Orders before the Inquiry. There has been no subsequent challenge to those permissions either collectively or individually to question the validity of them. Consequently, the forthcoming inquiry is solely into those two Orders published in 2014, along with the specific objection raised by the Trust.
17. As for the weight to be given to the conclusions flowing from the previous inquiry, Mr Nixon recognises that a similar inquiry was held very recently into an earlier set of such Orders. That inquiry sat in February 2014 with the decision being issued on the 9 July 2014. In considering those Orders, Mr Nixon also accepts that the Inspector found that in most respects they were acceptable, but recommended that they were not made for a specific reason. Thus, this is the second inquiry in respect of the promotion of a SRO and CPO, which are required to allow the planning permission to be put into effect.
18. Against this background, Mr Nixon agrees that it would be perverse to reach different conclusions, without justification. However, justification for a change of view might stem from a number of areas, but the most likely would involve changes in the evidential base for the Orders and, of course, the traffic information and modelling are to be updated. In addition, the Inspector requested checking that the information on certain topics in the Environmental Statement remains up-to-date. Of course, Mr Nixon would be able to reach different conclusions on the same information as the previous Inspector on the basis of his particular expertise and qualification. However, this would not be an option without adequate reasoning. The apparent absence of a Safety Audit before the earlier inquiry is a case in point.

Environmental Statement

19. LLC has submitted an Environmental Statement (ES) as part of its planning application for the road scheme. Although there is no requirement to review this in its entirety, its content could have direct and indirect consequences for the evaluation of the Orders before this inquiry. In particular, the traffic and transport element of the ES is to be reviewed with an update report expected in mid-June. Mr Nixon also asked that the other elements that would merit checking include noise, air quality and ecology in connection with the waterways affected.

Witnesses

20. LCC said it would call 5-witnesses:-

Lee Rowley - **lead witness on behalf of LCC.**

Marc Willis - **Planning matters.**

David Chetwynd - **Engineering considerations.**

Gary Billington - **Transport considerations generally.**

Paul Smith - **traffic modelling.**

21. At the PIM the Objectors were not asked to give any specific indication of the matters they would cover, but their objections give the Inspector a broad indication. **All those intending to speak at the forthcoming inquiry will be asked to indicate as early as possible, through the letter to be circulated by the Programme Officer, those topics they wish to address and in particular which of LCC's witnesses they wish to question.** This will assist the Promoter in understanding which areas it needs to focus on and whether it could cover some of the matters in writing.

22. Mr Nixon is content for Objectors to put questions to witnesses under his direction or, if they wished to put them in writing, he would be happy to put them to the appropriate witnesses on their behalf. Clearly it would assist if the questions were known in advance to enable the witness to give the fullest possible answers.

Timetable and format for the Submission of Evidence

23. It was agreed that the evidence and accompanying statements from all parties would be submitted to the Programme Officer on or before Friday 10 July 2015. Any rebuttal evidence by LCC or by Supporters/Objectors should be submitted at least 14-days before the evidence of the Objector etc concerned is programmed to give evidence.

24. The Action Group indicated that it may experience some difficulty in submitting its evidence on traffic and modelling on time, having regard to the information to inform its submissions not being available until mid-June. The Council offered to discuss with Objectors where it was up to and to explain anything in connection with the evidence. Mr Nixon welcomed this conduit and encouraged as much dialogue as possible before the inquiry opens. However, if events conspire to make it impossible for the Action Group to submit evidence on time, they should contact the Programme Officer, with reasoned arguments to explain the difficulty, and Mr Nixon will give consideration to an extension of time.

25. There is one further time constraint and this relates to any alternative scheme or schemes being suggested by Objectors. To give those that might be adversely affected by alternative schemes a chance to respond with their views, alternative scheme suggestions must be submitted to the Programme Officer and LCC on or before 26 June 2015. This would also give time for the LCC to assess, publicise and comment on the proposals.
26. The evidence should reflect and respond to the topics identified by the SoSs, though, of course, any other topics relevant to the SRO and CPO, but not specifically covered may be included. To inform Supporters/Objectors the list of those topics prepared by LCC might be helpful.

The SRO.

The purpose of the SRO is to maintain access to all land and property directly affected by the Lincoln Eastern Bypass (LEB) and it 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. The SRO provides the means by which rights are removed and new rights created sufficient to cater for the effects of the LEB.

The essential test in looking at the SRO is whether the power given by s.14 of the Highways Act 1980 to deal with roads crossing the classified road or s.125 dealing with private means of access to premises have been dealt with appropriately. In respect of s.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 s.125 the order can only be made if no access is reasonably required or another reasonably convenient access is available or will be available. They are therefore the tests to be applied in seeking to make objections to the SRO.

The CPO

The CPO provides the means by which the land can be acquired to allow the Scheme to be provided. That CPO has 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 are not required permanently into the future. Without that land acquisition the Scheme could not proceed and that is what provides the justification. 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 Circular 06/2004. A series of questions are set out in that Circular.

Is there a compelling case in the public interest to justify the acquisition and the disturbance of the owner's rights?

Does the acquiring authority have a clear idea of how it is intending to use the land acquired?

Can the acquiring authority demonstrate that it has the resources to carry out the plans within a reasonable timescale exist?

Are there any impediments, which are likely to interfere with the progress of the Scheme?

There are other matters that fall to be considered relating to timescale (paragraph 18 Circular 06/04), the existence of any physical or legal factors to block the progress of the Scheme (paragraph 22) and the existence of planning permission (paragraph 23). None of these various considerations cast any doubt on the proposal going forward.

The Canal & River Trust Position.

This arises from the continuing objection raised by the Trust. In LCC's view this is capable of resolution as the point in issue is the extent of the compensation to be paid, which is a matter outside the parameters of the inquiry itself. LCC will keep the Inspector informed about this.

27. Summary proofs will be needed if the evidence is over 1500 words, though the Inspector would be perfectly happy if the summary of a proof was incorporated within the main proof of evidence, so long as this does represent a summary of a witness's evidence and not merely the conclusions drawn.
28. Mr Nixon asks that all paragraphs in the proof should be numbered, as should the pages. To make finding references easier, the appendices should be divided by indexing tabs and the pages numbered consecutively through all the appendices. For information, with the exception of road distances the submitted evidence should use metric measurements and the 24 hour clock throughout. It would help in copying if all documents are A4 size with plans, photographs etc capable of being folded to that size.
29. A set of Core Documents has been gathered together by LCC and will be placed on deposit. These include any baseline information, policy etc that would relate to more than one case or topic. They are numbered separately and prefaced with CD.
30. Copies of all the documents would be placed on deposit in the Council Offices and a copy kept available at the inquiry venue during the inquiry event. Having said this, the Council confirmed that all relevant documents would be available for viewing on the web site for the By-pass Scheme available at <http://www.lincolnshire.gov.uk/transport-and-roads/highway-improvement/projects-in-planning/lincoln-eastern-bypass/compulsory->

purchase-order-and-ancillary-orders/public-inquiry-for-2014-orders/125858.article .

31. Some Objectors expressed concern that many of the relevant documents had been produced electronically and if they did not have access to WiFi during the inquiry they would be disadvantaged. Contact has been made with the Hotel venue for the inquiry and it has been confirmed that WiFi would be available at nil cost close to where the inquiry will be held.

Numbering of Documents

32. The Inspector requests that all documents should be clearly numbered at the top right hand corner of the front cover and parties should adopt the consecutive numbering scheme. For example, the document numbers used by LCC could be preceded by identifying initials – e.g. 'LCC' and for the Supporters and Objector their statements should be prefaced by their discrete supporter or objector number which can be obtained from the Programme Officer. Where documents are split, they should be numbered individually. For example:-

- (1)The main proof of a witness might be LCC1;
- (2)The associated volume of appendices might be LCC2;
- (3)The summary proof of evidence might be LCC3;
- (4)Any rebuttal proof could be numbered LCC4 and if there is more than one rebuttal it can be numbered 4a, 4b etc. If there are no rebuttals then the document number should be recorded as not used.
- (5)The next document in this regime would be the proof of evidence of the second witness, which would be LCC5.
- (6)For Supporters/Objectors the numbering system should be, for example, SUPP14/1, SUPP14/2 etc or OBJ24/1, OBJ24/2 etc.

33. **Each party is asked to be responsible for maintaining an up to date list of their own documents and for keeping other participants, including the Programme Officer, informed of changes to this list. A list of documents submitted by the opening of the inquiry should be handed in on the opening morning. The final version of each party's list should be handed to or sent electronically to the Programme Officer at the close of the Inquiry.**

34. As noted above, a set of documents will be held on deposit at the Council offices and on the case website. Copies of documents will be retained at the inquiry venue during the inquiry.

Inquiry Procedure

35. The Inquiry will be run broadly in line with the Highways (Inquiries Procedure) Rules 1994 and the Compulsory Purchase (Inquiries Procedure) Rules 2007 and to accord with these provisions the Inspector will invite the LCC to make a brief opening submission. After this, the LCC will present its evidence in chief first, when questions may be asked by the Inspector. Other than questions of fact and accuracy, questions to LCC witnesses by Objectors will be held over until their representations are made at the time given in the programme. At this juncture relevant LCC witnesses will be made available. This means that Objectors will only be required to attend the inquiry once, though, of course, attendance is welcomed at any time through the inquiry. This should be more convenient and time saving for Objectors, with the onus of multiple attendances falling to LCC witnesses.
36. The LCC Evidence in Chief shall be followed by those Supporters wishing to make representation. Questions will be taken for each of these witnesses and any from Objectors directed through the Inspector. After this, Objectors can be heard according to the programme prepared by the Programme Officer. Questions may be asked by LCC Counsel and/or the Inspector. Before the evidence is given, any relevant LCC rebuttal evidence will be produced and questions about this and the Evidence in Chief previously delivered can be proffered. As far as possible, this will be done on a thematic basis.
37. At the opening of the inquiry, convenient times for representations to be made by any further interested persons and parties not so far identified will be arranged. Any changes in availability should be notified to the Programme Officer as soon as possible.
38. So far as is possible, Mr Nixon will allow time for advocates to develop and finalise their closing submissions. To this end in respect of LCC, he would look to conduct the accompanied site inspection on the penultimate day of inquiry, with closing submissions on the final day. Closing submissions should be in writing and capable of transmission electronically to the Programme Officer.
39. As to the convention that advocates should stand when addressing the Inspector, but should remain seated during evidence in chief and when questioning or re-examining witnesses, the Inspector will consider the position on the opening day of the inquiry when it should be possible to ascertain the extent of local interest and the audibility within the inquiry room. It will be necessary to find a suitable layout so that all can follow proceedings and to identify a suitable place for witnesses.
40. The inquiry will start at 1000 hours on Tuesday 11 August 2015 and adjourn for about an hour for lunch at approximately 1300 hours. A convenient time to break for the day will be sought after 1645 hours. Mr Nixon will seek short

morning and afternoon comfort breaks. A more detailed consideration of the programme will be discussed at the opening of the inquiry.

Site Visits

41. Mr Nixon will visit the site and its surroundings and view it from public advantage points before the opening of the inquiry. He will undertake an accompanied site inspection, when those features discussed during the inquiry can be pointed out to him. The 'formal' accompanied visit will take place at some convenient time during the inquiry. It would be decided at the inquiry who should accompany the Inspector, but the invitation will be extended to interested parties and those in attendance. To avoid everyone attending the entire site visit(s) Objector/ Supporter representatives may change as the visit progresses.
42. Mr Nixon is conscious that the inquiry will be held during a period when traffic conditions may not be considered to be typical, namely during the summer holidays. To ensure that he sees the area during typical conditions, Mr Nixon undertook to conduct an unaccompanied site inspection during term time.
43. **Objectors are invited to inform the Programme Officer of any particular sites or locations they wish the Inspector to view the site from.** Mr Nixon reminds the parties that there can be no discussion about the merits of the case during the site visit. The aim is to point out features on or around the site, which have been referred to during the inquiry.

Housekeeping Matters

44. The LCC confirmed that photo-copying and contact facilities were in place for the inquiry venue, and internet access would be available. Coffee/tea was available for participants/ observers in the Hotel. In addition, the Inspector would welcome being informed of the emergency evacuation/fire procedures.
45. An attendance list will be available and attendees are requested to sign it each day they attend the inquiry. This list will not be made public, but is necessary as part of the safety procedures in the unlikely event of evacuation. Participants should keep up to date with programme changes through the Programme Officer or the web site. A hard copy would be posted each day in the inquiry room.
46. The Inspector suggested that larger plans of the scheme might usefully be erected within the inquiry venue so that interested parties could refer to them during any adjournments. LCC said it would arrange this and possibly the ones used during the consultation process would be appropriate.
47. Some Objectors asked whether arrangements had been made to have the proceedings recorded. They felt this would assist them in reviewing the day's proceedings of the inquiry overnight, without having to attend full time. Mr

Nixon said he had no objection to this in principle, subject to the agreement of witnesses etc to them being videoed. The Council said it did not intend to video proceedings, but pointed out that such was encouraged in today's climate, where freedom of information is widely accepted. It would, therefore, not object to third parties videoing proceedings, subject to the caveat that witnesses acceptance was sought.

Other Matters

48. Some Objectors were concerned that the inquiry result was a foregone conclusion, and that the scheme would go ahead in any event. Mr Nixon responded by saying that he would be approaching the inquiry with an entirely open mind and make his recommendations to the SoSs based on the evidence presented to the inquiry in the context of published Government policies and the relevant development plans. If the SoSs decided to opt for a different outcome from that recommended then this would have to be justified in their decision letter and would, of course, be open to the usual protocols for challenge.
49. Mr Nixon said that in addition to circulating the minutes to all those persons and parties that had submitted comment on the SRO and CPO proposals the minutes would be accompanied by a programme form asking the following questions:
- a. Does the Supporter/ Objector intend to appear at the inquiry and if so, how long did they expect their representations to take?
 - b. For those Supporters/ Objectors appearing, is there any date during the inquiry period that they would be unavailable?
50. There being no other matters, the PIM closed.

J STUART NIXON

Inspector

21 May 2015