

**THE HIGHWAYS ACT 1980
THE ACQUISITION OF LAND ACT 1981**

PRE-INQUIRY NOTE FROM LINCOLNSHIRE COUNTY COUNCIL

- 1. Lincolnshire County Council (A15 Lincoln Eastern Bypass) (Classified Road) (Side Roads) Order 2014** – Pursuant to the Highways (Inquiries Procedure) Rules 1994.

Department for Transport Ref: NATTRAN/EM/LAO/0084

- 2. Lincolnshire County Council (A15 Lincoln Eastern Bypass) Compulsory Purchase Order 2014** – Pursuant to the Compulsory Purchase (Inquiries Procedure) Rules 2007.

Department for Transport Ref: NATTRAN/EM/LAO/0084

- 3. Application in relation to proposed Compulsory Purchase of land held by the Canal & River Trust.**

Department for Environment, Food and Rural Affairs Ref: NATTRAN/EM/LAO/0084

1. Introduction.

1. LCC, having been informed of the intention to hold a Pre-Inquiry Meeting (a PIM) and having received the Agenda for the PIM thought it would be helpful if a note was prepared and distributed in advance of that meeting to indicate its views in respect of the matters listed within the Agenda.
2. LCC will follow the Agenda as presented to indicate its position.

3. LCC has no additional comments to make by way of introduction unless the Inspector raises something during the PIM that requires a further comment to be made.

2. Purpose of Pre-Inquiry Meeting and Scope of Inquiry.

4. LCC recognises that the PIM is a procedural meeting intended to identify and address those various matters that may affect the smooth and efficient running of the inquiry itself. The PIM is not the place to discuss the merits of any individual case, and LCC will not seek to do so but would intend to help with any matters that can ensure the Inquiry runs efficiently so that it can be completed within the time allotted for it. The PIM is an essential procedural step which should enable all participants to understand the basis on which the Inquiry will operate. By so doing it should save Inquiry time with irrelevant matters not being raised and not having to be dealt with.
5. The scope of the Inquiry is a matter which the PIM can indicate and the advantage of doing so at this stage is that the evidence which parties are intending to produce can be prepared in the knowledge of what is relevant or not and can be focused on those relevant matters.
6. The need for the Inquiry arises from the continued objection from the Statutory Objectors. LCC is currently in discussions with all of the Statutory Objectors with the intention, consistent with the approach adopted in respect of the previous set of Orders of seeking to minimise areas of dispute hopefully leading to the withdrawal of the objection prior to the Inquiry being opened. At present there are outstanding objections from the following six Statutory Objectors:-
 - (i). The Church Commissioners as landowners. The Church Commissioners withdrew previous objections made to the Scheme at the planning application but have objected to the Orders. Discussions with the Church Commissioners are

concentrating on matters of detail arising from the Orders which the LCC is hopeful may be resolved prior to the Inquiry. Similar objections to the Orders raised before the last inquiry were successfully addressed.

(ii). Jo Ward as tenant of land owned by the Church Commissioners. Ongoing joint discussions about land requirements continue with this objector and also the land owner. The LCC is hopeful that matters can be resolved.

(iii). Canal & River Trust. The Trust did not object to the Scheme at the planning application stage and did not object to the previous Orders or appear at the earlier Inquiry. Discussions have been commenced and have revealed that the main concern relates to the compensation payable in respect of the interest to be acquired rather than the acquisition itself which is required to construct the Bridge which has been authorised by the decision of the earlier Inquiry. The third matter listed above in the title to this note relating to the Application arising from the objection made indicates the position they enjoy. If the objection is maintained it will need to be examined.

(iv). Railway Paths. This body is the tenant of the former BRB land and did not respond to consultation at the planning application stage or object to the earlier Orders. Discussions are continuing and the LCC is hopeful that matters will be resolved.

(v). National Grid has raised its standard objection made in respect of schemes which interfere with its equipment. The complication here arises from the need to consider matters to ensure there is no interruption with the supply. LCC is hopeful that prior to the Inquiry matters may be resolved.

(vi). Western Power raised no objection to the Scheme at the planning application stage but has raised a similar objection to National Grid and similar discussions are being carried out with a similar expectation.

7. Accordingly although the Statutory Objectors remain as listed LCC is negotiating with each of them to seek to resolve the objections.
8. At the previous Inquiry certain Parish Councils who were opposed to the closure of Hawthorn Road were also given Statutory Objector status despite the fact that as they were not the PC's for the administrative area affected by the Scheme. LCC were of the view that those PC's should not have been given that status and they have not been treated as such in respect of these new Orders. There is therefore no local authority Statutory Objector.
9. LCC would wish to set before the Inspector at the PIM its understanding of the scope of the Inquiry to ensure that its understanding is correct.
10. The Inquiry which is due to commence in August is currently an Inquiry into the three matters listed at the top of the Inspectors Agenda, namely, and to put it shortly:-
 - the 2014 Side Roads Order (SRO);
 - the 2014 Compulsory Purchase Order (CPO);
 - And unless and until the objection be withdrawn the objection from the Canal & River Trust to the compulsory acquisition of its interests.
11. The inquiry is not an investigation into the planning permission which has already been granted for the Scheme; planning permission which is extant and relates to the main line of the Scheme was granted in June 2013 and was subsequently revised via a Section 73 permission granted in October 2014. 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.

12. Accordingly the Inquiry is an inquiry into those two Orders along with the specific objection raised by the Trust. I will indicate the aspects relevant to those specific Orders in the next section of this Note.

13. There is one other particular matter that needs to be identified in respect of the scope of this Inquiry. It is an inquiry into the Orders published in 2014 and as such it is a stand alone inquiry which will need to examine all matters relevant to the issues linked to those Orders. As I indicated above that will not include an investigation into the Planning Permissions granted and nor will it include the historical events which lead to the permission being granted. This inquiry will take the existence of the planning permission as its starting point and will not seek to investigate how it came to be granted. Having said that LCC would reassure 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 the Orders before the Inquiry. There has been no subsequent challenge to those permissions either collectively or individually to question the validity of them.

14. Having identified that position there is a further matter than must be taken into account. This inquiry, as all will be aware, 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. An 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 9th July 2014. That Inspector considered those Orders and found that in most respects they were acceptable but recommended that they were not made for a specific reason.

15. Both the Inspectors report and the Secretary of States decision in respect of the Orders then promoted will be before the Inquiry. In the LCC's view the decision made in respect of those earlier Orders is a material consideration of great weight

in the consideration of the acceptability of the new Orders being considered by the new Inquiry.

16. The reason for that is set out in considerable detail in the Statement of Reasons at paragraphs 1.1 to 1.21 inclusive and accordingly I do not repeat that here. To put it in a nutshell the reason why it is so significant and has such weight arises from the fact that it is a very recent decision, which was made following a thorough examination of all the relevant considerations in respect of a near identical scheme; albeit with a different solution at Hawthorn Road adopted to meet the previous Inspector's concern. The decision at this Inquiry should, unless there has been a material change to any of the relevant circumstance be the same as was made before subject to the change adopted to meet the Inspectors concern. That is a significant consideration in the context of this inquiry and it affects the scope of this inquiry as there is no requirement to re-examine at length those matters where the inspector expressed a clear view and the position remains the same.

17. Accordingly, based on the legal principle of consistency in decision making in the context of planning decisions which arises from case law the various matters taken into account by the previous Inspector leading to that decision would have to be materially different to cause a subsequent Inspector to adopt a different approach. It is well established that a previous appeal decision is capable of being a material consideration and that before departing from a relevant previous decision the decision maker should have regard to the merits of consistency and should give reasons for departing from it; see North Wiltshire District Council V Secretary of State for the Environment [1993] 65 P&CR. In addition in the case of R (Rank) v East Cambridgeshire District Council [2003] JPL 454 the High Court held that a consideration was material if it might make a difference in the way in which the authority dealt with the application. A previous appeal decision was capable of being a material consideration, because it was desirable as a matter of policy that there should be consistency in the appellate process; so too a previous decision of the Secretary of State as informed by an Inspector. It was held to be

relevant, not because there was a duty to decide similar cases in the same way, but because consistency was desirable and inconsistency might occur if the authority failed to have regard to a previous decision; see also Oxford City Council v The First Secretary of State and J A Pye (Oxford) Ltd CO/2767/2004.

18. The reason I set that out in detail now and give the Legal Authorities with their references is to enable all present to understand LCC's position on that important matter and to provide the basis for the comment that flows from that.
19. In the LCC's view this Inquiry is properly entitled to look at all relevant matters in the context of the new Orders as they are new and stand alone Orders published and promoted for a particular purpose. However, if that consideration entails examining matters which were fully considered by the previous Inspector and taken into account in reaching her decision and recommendation then unless there is something which is materially different the decision should be the same and the inquiry should not need to spend time considering that matter again.
20. In that context LCC would indicate that the relevant policy remains the same, the proposal is essentially the same in its location and effects and the road network feeding into it has not altered materially so as to change those various conclusions. The only change is the treatment of the Hawthorn Road crossing itself to meet the previous Inspector's concern. The new planning permission provides the scheme which resolves the previous Inspector's concern and in all other respects the position remains the same.

3. Matters to be considered by the Respective Secretaries of State.

21. I set this out first in respect of the SRO and then in respect of the CPO. At this stage I do so shortly.

The SRO.

22. The purpose of the SRO is to maintain access to all land and property directly affected by the 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.

23. The essential test in looking at the SRO is whether the power given by Section 14 of the Highways Act 1980 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. They are therefore the tests to be applied in seeking to make objections to the SRO.

24. In applying that test the previous Inspector was satisfied but for the single safety concern she raised which has been remedied by the relocation of the crossing point and the additional crossing of Hawthorn Road.

The CPO

25. 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.

26. Is there a compelling case in the public interest to justify the acquisition and the disturbance of the owner's rights?
27. Does the acquiring authority have a clear idea of how it is intending to use the land acquired?
28. Can the acquiring authority demonstrate that the resources to carry out the plans within a reasonable timescale exist?
29. Are there any impediments which are likely to interfere with the progress of the Scheme?
30. There are other matters that fall to be considered relating to timescale (paragraph 18 C06/04), 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.
31. The only concern raised by the previous Inspector related to the safety of the crossing and in all other respects the CPO was found to be required and justified. Nothing has changed to alter that conclusion.

The Canal & River Trust Position.

32. 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.

4. Parties Present.

33. LCC will be present throughout the Inquiry as promoters of the Orders. The case will involve the following:-

- Simon Randle Counsel instructed by the Solicitor to the Council.
- Lee Rowley as the lead witness on behalf of LCC1.
- Marc Willis dealing with Planning matters.
- David Chetwynd dealing with Engineering considerations.
- Gary Billington will present the evidence on Transport considerations generally.
- Paul Smith will present the detailed technical evidence on traffic modelling.

34. With the exception of Paul Smith and Marc Willis all those named appeared at the previous inquiry. The requirement for Mr Smith to attend arises from the fact that some additional work has been carried out since the last inquiry in respect of the traffic modelling itself to update the position. The requirement for Mr Willis to attend arises from the fact that the previous witness on planning Mr Andrew Gutherson has been promoted within the authority.

35. LCC would inform the Inspector that as the new information has become available it has provided that information to the various parties who have indicated a desire to see it. In the context of the Inquiry a Local Model Validation

Report (LMVR) Addendum Report and Forecasting & Economics Report will be available by 19th June.

36. LCC is aware that certain parties have requested that information in order to enable them to receive their own assistance in respect of it. LCC has responded to the requests made and has provided the information when it has been able to. LCC has however as part of that offered to meet with and explain any detail to any expert retained by any party. That offer has been made a number of times. So far that offer has been declined but the LCC remains keen to meet with any such expert or to communicate through written means if the identity is made known to them and as such further discussion has taken place regarding possible meeting dates which have all now passed.

5 Inquiry Venue.

37. LCC has retained the Doubletree by Hilton, Brayford Wharf North, Lincoln LN1 1YW for the period of 10th August 2015 to 21st August 2015. The venue will consist of a main hall with a retiring room for the Inspector. Car parking for attendees is available at the nearby public car park on Lucy Tower Street.

6. Inquiry Dates.

38. The Inquiry will run from 10:00am on 11th August 2015 for a period of approximately two weeks. All of the LCC representatives and witnesses are available through out that period as is the accommodation.

7. Inquiry Procedure.

39. The relevant Inquiry procedure to be adopted is a matter for the Inspector to decide as it is his inquiry. LCC anticipates that the applicable Highway Inquiry

procedural rules will govern the proceedings unless the Inspector indicates otherwise.

8. Format and timetable for the submission of documents.

40. This is also a matter to be put in place to meet the Inspector's requirements. LCC would intend to number all its documents presented prior to the inquiry in numerical order as attached to the Statement of Case. All evidential documents will be numbered as LCC 1 and following to ensure they are immediately recognisable in the top right hand corner of the front cover. A continuing list will be kept during the inquiry to ensure all documents are numbered.

9. Timetable for submission.

41. LCC will adopt the timetable required by the Inspector for the production of documents. Matters to be presented as evidence in chief will be produced prior to the inquiry as required. The production of rebuttal evidence will depend on the timetable for the presentation of objector's evidence. LCC does intend however to ensure that all such information is made available to objectors at the earliest opportunity but that will depend on when objection proofs are actually received. LCC would support a strict timetable for the presentation of all objectors' material to ensure that a rebuttal response can be compiled and presented in good time. If any alternatives are to be suggested LCC would request as much notice as possible of such suggestions with a clear indication from the Inspector of the consequences of failing to meet any prescribed timetable.

10. Site Visits.

42. In order to assist the Inquiry LCC has attached to this note the site visit arrangements which were undertaken for the last inquiry. The site visit note consists of a plan and an agenda detailing the site visit itself. It may be that the

note is of use to indicate what was undertaken last time and although it may need to be changed, as objections raised on the last occasion requiring a particular visit are not now being raised, it does provide a useful starting point for the consideration.

11. Housekeeping Matters.

43. LCC has no comment to make under this heading at the present time.

12. AOB.

44. LCC would reiterate the request made above in respect of taking the opportunity to meet, especially with those claiming some particular expertise, to try to resolve matters or to reduce areas of dispute.

45. LCC has been informed that there is an expert assisting some of the objectors and that detailed technical information has been requested for it to be sent onto that person. It may well assist with the presentation of the evidence and the understanding of it if the LCC was able to meet that person directly or at least converse directly with them.

46. At the previous inquiry due to the misunderstanding of information time was taken at the inquiry dealing with matters that were ultimately withdrawn as being irrelevant or mistaken. The LCC would wish, as would all participants I am sure, to avoid that happening this time thereby ensuring the inquiry runs smoothly. I do therefore request that if the contact can be made then the opportunity it presents is taken.

47. Finally LCC has identified in conjunction with the Department for Transport the need to make certain alterations to the Orders as published. The LCC will compile a full list of all such matters and make them available with LCC's view in relation

to them at the start of the Inquiry to ensure that they can be considered as part of the inquiry. The list of such changes as it stands at present is as below.

The Department noted in their letter dated 10th November 2014 the following (LCC response in italics);

Side Roads Order

- i. In Schedule 2 the description of the private means of access to be stopped up 'Access to field from a point 34 metres east of the proposed A15 Lincoln eastern bypass for a distance of 174 metres in a westerly direction (a)' appears to be more in the region of 80 metres east rather than the 34 metres stated. Please confirm distance and the Order will be modified accordingly.

RESPONSE: The measurement of 80 metres is confirmed and requires a modification to the Order.

Compulsory Purchase Order

- i. The arrows on the plan identifying Plot 5/6A and Plot 5/5D are pointing to the same plot. The plot sizes are also the same. I believe one of these should have been the south western part width of Sleaford Road which is smaller in size. Please confirm which number this south western part should be allocated and its measurement. These will be added to the Order by modification.

RESPONSE: The south western part is confirmed as Plot 5/6A and the area of the plot is 2757.50m² and requires a modification to the Order.

- i. Whilst a matter for the Council with regard to future Orders the Council may wish to consider amalgamating adjacent plots that have the same land interests. This would reduce the number of plots within the Order.

RESPONSE: The comment is noted.

- ii. As referred to in paragraph 1.20 of the Statement of Reasons Plots 2\11 to 2\11H inclusive and Plot 2\15 are now Crown Land. Should these plots have the "all interests other than interests of the Crown in..." wording (see Appendix N of ODPM Circular 06/2004)? If so the Order can be modified accordingly. Also, it is noted that discussions have commenced with the relevant authorities in relation to the acquisition of the Crown interests. I would be grateful if you could inform me when any agreements required are in place as this is required before we could confirm the Order.

RESPONSE: The wording should be modified as suggested to “all interests other than those of the Crown in...” The request regarding notification of agreements with the Crown is noted.

Note prepared by Simon Randle of Counsel on Behalf of Lee Rowley of LCC.
14TH May 2015.