

HIGHWAYS ACT 1980

ACQUISITION OF LAND ACT 1981

PUBLIC LOCAL INQUIRIES into:

- 1. The Devon County Council A380 South Devon Link Road (Kingskerswell Bypass) Supplementary Compulsory Purchase Order 2009**
- 2. The Devon County Council (A380 South Devon Link Road (Kingskerswell Bypass) Classified Road)(No 2 Side Roads) Order 2009**
- 3. Notice of intention to issue a certificate under section 19(1)(a) of the Acquisition of Land Act 1981**

CLOSING SUBMISSIONS

on behalf of the

PROMOTING AUTHORITY

DEVON COUNTY COUNCIL

The Supplementary Orders

1. All the land the subject of the Supplementary CPO meets the tests referred to in the Pre Inquiries Meeting Notes¹ as follows:
 - (i) Human Rights Act: DCC/P/12 paras. 8.1.1 to 8.1.4;
 - (ii) Clear idea of the use of land: DCC/P/12 paras. 1.4.4 to 1.4.14, 5.1.2, 5.1.4 and 6.1.1 to 6.6.1;
 - (iii) Necessary resources within a reasonable timescale: DCC/P/12 para. 4.1.4;

¹ INSP/2 paras 9.1.4 to 9.1.8

- (iv) Land required immediately for the purposes for acquisition: DCC/P/12 paras. 1.4.4 to 1.4.14; and
 - (v) Public benefit outweighing private loss: DCC/P/12 para. 8.1.4
- The necessary planning permissions are in place² and there is no impediment to implementation.

2. Similarly, in relation to the No 2 SRO,
 - (i) There is no objection from any statutory undertaker;
 - (ii) Reasonably convenient alternative routes for highways would be provided (this only applies to FP 45:DCC/P/12 para. 6.2.4); and
 - (iii) Reasonably convenient alternative routes for private means of access would be provided: DCC/P/14 paras. 6.5.1, 6.6.1 and 5.1.8.
3. There are now no statutory objections and 18 non-statutory objections to the Supplementary Orders.
4. As stated in Opening, there have been no objections specifically to the Supplementary Orders in respect of Keyberry Mill, the Barn Owl Inn, private means of access to provide emergency access for Network Rail and an additional private means of access off Old Newton Road.
5. Two objections (174 and 177) question consultation in relation to the proposed diversion of FP 45 but raise no substantive issue in this respect. The objector who appeared at the Inquiry to make this point (Mr Griffey, 174) confirmed that he raised no substantive issue but said that a petition could have been supplied outside Sainsbury's. However, the process of advertisement of the No 2 SRO, and this Inquiry process, provides ample public engagement.
6. Otherwise, the objections are exclusively concerned with either general points in relation to the Scheme, which have already been the subject of examination at the earlier stage of the Inquiries and which raise no new

² The Scheme already has planning permission (which includes the proposed works on the Common Land in Kerswell Down). Otherwise by reason of the Supplementary Orders, planning permission is only required in respect of Keyberry Mill, which was obtained on 3 July 2009 (CD6.7). This was subject to negative screening for environmental effects: CD6.3 para. 3.3.4.

issues, or with the acquisition of the Common Land and of the Exchange Land at Kerswell Down. The No 2 SRO as it affects Kerswell Down does not appear to have elicited any specific objection-Mr Bright confirmed that this was the position of the Kingskerswell Alliance- although as it would make appropriate additional provision in respect of access to the Exchange Land, it is ancillary to the Exchange Land proposals.

7. In relation to the Common Land the subject of the Supplementary CPO (Plot 4/5) (described as the Order Land), there is no doubt that it is needed as part of the Scheme, assuming that the Scheme is justified. Both Mr Bright for the Kingskerswell Alliance and Mr Griffey concurred. Justification of acquisition of the Common Land will depend upon an examination of the matters already addressed as part of the main Inquiries.
8. In relation to the Exchange Land (Plot 5/6), the justification for its acquisition depends upon whether it is needed to discharge the requirements of section 19(1) of the Acquisition of Land Act 1981. This is examined below.
9. It is significant, however, that there is now no objection either from the owner of the Exchange Land or from the owner (and custodian) of the Common Land, Kingskerswell Parish Council.

The section 19 notice

10. There are 18 representations in respect of the notice of intention to issue a Certificate. Many of these similarly raise issues which go beyond the ambit of the Certificate and traverse matters already canvassed at the main Inquiries.
11. The preconditions for issue by the Secretary of State of a certificate under section 19 (1) (a) would be met, as set out below.

(i) Not less in area

12. The Exchange Land would be not less in area than the Order Land: indeed it would be double in size. This is a matter of fact that is not in issue.

(ii) Equally advantageous to the public

13. The Order Land includes land which is not particularly attractive for public recreation, including a former quarry (3620 m²) and certain areas which are steep (paras 14 and 24, INSP/6). It also includes a model car racing circuit (440 m²) and 190 m² of car park and access road: DCC/P/12 para. 5.1.10. These areas which are of limited recreational use comprise 7524 m² (86% of the Order Land): DCC/P/12 para. 5.1.19. The central area is correctly described as “of little or no recreational merit” in INSP/6 para. 24. Mr Bright for the Kingskerswell Alliance confirmed that with one marginal exception, none of the Order Land forms part of the general network of walking routes within the Common. Existing noise levels are generally in the region of 45 to 50 dBA, although this is regularly interrupted by the noise of passing quarry lorries (DCC/P/12 para. 5.1.12). Current views are influenced by the “mix of unattractive “non-natural” land uses” (DCC/P/12 para. 5.1.12). There is no reason to suppose that these attributes would be any different at the date of Exchange or thereafter.

14. The Exchange Land comprises two parcels of land with distinct characteristics. First, 8778 m² of deciduous woodland on slopes which are accessible for recreational walking (DCC/P/12 para. 5.1.11). There is a permissive path through this woodland (identified on the Parish Council plan at the entrance to the car park), and although parts of the woodland are wired off, there appears to be a degree of informal access over some parts of the woodland at present. The sign is consistent with usage by consent and there is no evidence of usage by right. But in any event, incorporation of this parcel as common land provides certainty where none exists at present and secures access to the entirety of the parcel. Secondly, 8778 m² of grassland, suitable for recreational walking (DCC/P/12 para. 5.1.11). There is no public access of any sort to this part

of the Exchange Land. Having regard to the Scheme at the date of Exchange (which would then be imminent), noise levels would be similar to those on the Order Land in respect of the grassland parcel and in the band above in respect of the woodland parcel (but similar to those currently experienced immediately abutting the Order Land to the east: DCC/A/9 Annex G; Ewings Day 11). However, with both parcels, there would be less noticeable traffic peaks than with the Order Land. (DCC/P/12 para. 5.1.13). From the edges of the woodland parcel and from the grassland parcel, there would be some views of the Scheme pending establishment of the planting both on the adjacent bunds and within the grassland parcel: DCC/P/12 paras. 5.1.16 to 18. These views would be against the backdrop of the current built up area of Kingskerswell. Pedestrian access to the Exchange Land would be available either via Maddacombe Road or via the Churchway Lane diversion: neither routes involve excessive journeys for walkers. Replacement car parking to serve the Common will be provided outside the Common (DCC/P/12 para 5.1.3) and satisfactory maintenance and emergency access would be provided. Woodland maintenance would be carried out by DCC on the woodland parcel and woodland planting undertaken by DCC on the grassland parcel (DCC//12 paras 5.1.6 and 5.1.7). A number of further detailed commitments have been made to the Parish Council: DCC/P/13 para. 3.2.1 and DCC/INQ/50. In respect of para.11 of the KA Closing, in contrast to the Order Land, there would be attractive potential for usage by walkers of the Exchange Land and there is no reason to conclude that it would not be attractive in practice.

15. There is no requirement for like for like replacement. It is unclear whether the race track is accessible to the public in general but there is plainly no requirement to provide for its replacement in the context of section 19(1)(a). In terms of the replacement of the recreational resource, even leaving out of account the various planting proposals, there would be equality of advantage with the Exchange Land for the public. There is no basis for concluding that the ecological interest (in so far as it forms part of the overall recreational experience) is likely to be any less over the Exchange Land than the Order Land—there is, however, no requirement for ecological equivalence. The fact that there is some informal access over part of the Exchange land is strongly outweighed by the other

advantages of the Exchange Land. It is reasonable to conclude that the Exchange Land would be equally advantageous to the public. In respect of para. 7 of the KA Closing, Mr Ewings confirmed that allowance in the Scheme estimates had been made for all the costs. In respect of continuing maintenance by the Parish Council beyond the 3 year period, the Parish Council is prepared to assume responsibility and there is no basis for concluding that it would not manage the Exchange Land responsibly.

(iii) Equally advantageous to the commoner

16. Much of the Order Land is ill-suited to grazing. The right to graze 10 cattle would be much better suited on the Exchange Land than on the Order Land: DCC/P/12 para 5.1.22; DCC/P/13 para 2.3.4. There would be equal advantage to the person entitled to exercise this right, from whom there is no objection. This is not in issue with any objector.

(iv) Vesting of Exchange Land

17. The Supplementary CPO makes provision for the Exchange Land to be vested in the Parish Council (in whom the Order Land is vested) subject to the same rights of common: DCC/P/13 para 2.3.10. This is a matter of fact and is not in issue with any objector.

18. Accordingly, it is submitted that the preconditions for issue of the Certificate are met.

Consequential modifications to the main Orders

19. As explained during the main Inquiries³, confirmation of the Supplementary Orders would require consequential modifications to the main Orders (including the deletion of the Common Land and Exchange Land at Kerswell Down from the main Orders). These modifications were originally explained in DCC/INQ/4 (paras 6.0-6.1) and DCC/INQ/5 (para. 7.1) and are repeated at DCC/P/12 at paras 7.2 and 7.3. These

³ See, for example, para 280 of DCC's Closing Statement (DCC/INQ/43)

modifications are separate from the other modifications to the main Orders which are unrelated to the Supplementary Orders.⁴

Other matters

20. A matrix identifying where the response to objectors in respect of the Supplementary Orders and the section 19 notice can be found has been produced. This has taken the form of updating the matrix in relation to the main Orders (DCC/INQ/46). This also takes account of the withdrawal of Sainsbury's and the Parish Council's objection.
21. The note on the status of statutory objectors to the main Orders (DCC/INQ/41) has been amended in the light of the withdrawal of Sainsbury's and Kingskerswell Parish Council's objections: the updated note is DCC/INQ/47. Accordingly para. 246 of the Closing Statement (DCC/INQ/43) should now refer to 10 statutory objections having been withdrawn in respect of the main Orders, leaving 11 remaining (Paras. 247 to 249 are superseded since they dealt with the Parish Council's then objection).
22. Apart from the minor, consequential changes to the proofs contained in Appendix 2 of DCC/P/12 and the typographical correction to DCC/INQ/5 contained in DCC/INQ/51, the evidence before the Inquiries in respect of the main Orders remains unchanged. There has been no material change of circumstances since the Inquiries adjourned on 22 July 2009 such as to warrant the introduction of new evidence unrelated to the Supplementary Orders and the section 19 process and no objector contends to the contrary.
23. It is therefore requested that the Secretary for Transport confirms the Supplementary Orders (and confirms the main Orders subject both to the consequential and the other modifications) and that the Secretary of State

⁴ Referred to at para 245 of DCC's Closing Statement (DC/INQ/43) and set out at DCC/INQ/4 paras 2.1 to 2.2 and DCC/INQ/5 paras 3.1 and 4.1. They involve no substantial change to the SRO (para 8 (3) of Schedule 1 to the Highways Act 1980) and do not involve the acquisition of any additional land (section 14 of the Acquisition of Land Act 1981).

for Environment, Food and Rural Affairs issues the Certificate pursuant to section 19(1)(a) of the Acquisition of Land Act 1981.

Andrew Tait QC
28 October 2009