

Local Authority Orders

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Your ref: LS/A/00692/23

Our ref: DN5062/55/9/6, DN5062/55/7/57 &
DN5062/60/1/81

Date: 23 December 2008

Sir

HIGHWAYS ACT 1980

ACQUISITION OF LAND ACT 1981

THE KENT COUNTY COUNCIL (MILTON CREEK BRIDGE) (No. 2) SCHEME 2007
("the Scheme")

THE KENT COUNTY COUNCIL (SITTINGBOURNE NORTHERN RELIEF ROAD) (No. 2)
(SIDE ROADS) ORDER 2007 ("the SRO")

THE KENT COUNTY COUNCIL (SITTINGBOURNE NORTHERN RELIEF ROAD) (No. 2)
COMPULSORY PURCHASE ORDER 2007 ("the CPO")

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to the concurrent Public Local Inquiries held at Swale House, Sittingbourne between 8-18 July 2008 before Mr J P Watson BSc FIHT MICE MCMI an Inspector appointed by the Secretary of State to hear objections to and representations about the above named Scheme and Orders submitted by Kent County Council ("the Council").

2. If confirmed by the Secretary of State the Scheme would authorise the Council to construct over the navigable waters of Milton Creek (The Swale) a bridge, as part of the highway which they are proposing to construct from the roundabout joining Swale Way and Ridham Avenue, Kemsley, in a generally south easterly direction to the roundabout joining Castle Road and Swale Way, Sittingbourne.

3. If confirmed by the Secretary of State the SRO would authorise the Council to improve highways, stop up highways, construct new highways, stop up private means of access to premises and provide new means of access to premises, all on or in the vicinity of the classified road which the Council propose to construct from a point 108 metres north west of the junction of Swale Way and Ridham Avenue generally south eastwards to the junction of Castle Road and Swale Way, at Kemsley and Sittingbourne.

4. If confirmed by the Secretary of State the CPO would authorise the Council to acquire compulsorily land and rights on or over land in connection with the construction of the classified road referred to at paragraph 3 above; the construction of highways and the improvement of existing highways in the vicinity of the above mentioned highway in pursuance of the SRO; the provision of new means of access to premises in pursuance of the SRO; the diversion of the non-navigable watercourse known as Kemsley Drain and the carrying out of other works in connection with the construction/improvement of highways and the provision of new means of access to premises aforesaid; mitigation of any adverse effects which the existence or use of the highways constructed or improved or proposed to be constructed or improved have or will have on the surroundings thereof; and use by the acquiring authority in connection with the works aforesaid.

THE INSPECTOR'S REPORT

5. At the commencement of the Inquiries there were 39 objections outstanding and 31 supporters. The Inspector has considered all the objections to and representations about the Scheme and Orders both as made in writing and presented orally at the Inquiries and has submitted his report to the Secretary of State. Two copies of that report are enclosed with this letter. References in this letter to the Inspector's report are indicated by the abbreviation "IR" followed by the paragraph number in the report.

6. The Inspector's report summarises the case for the Council at IR 4.1 – IR 4.11.24 and the cases for the supporters is set out in paragraphs IR 5.1 to IR 5.2.5. The cases for the objectors can be found at paragraphs IR 6.1 to IR 6.9.5, whilst the Council's responses can be found at paragraphs IR 7.1 to IR 7.9.2. The Inspector's conclusions can be found at paragraphs IR 8.1 to IR 8.4.15. The Inspector recommends at paragraphs IR 9.1 – IR 9.2 that the Scheme and Orders be confirmed as made.

OBJECTIONS TO THE PROPOSALS

7. The main grounds of objection to the Council's proposals were that the proposed bridge would be too low above the navigable waters of Milton Creek.

SUPPORT FOR THE PROPOSALS

8. Support for the proposals included support from The Port of Sheerness Limited, Swale Borough Council, Spenhill Developments Limited and Sparshatts of Kent Limited.

THE INSPECTOR'S CONCLUSIONS AND RECOMMENDATIONS

9. A full copy of the Inspector's Conclusions and Recommendations can be found at Annex A to this letter.

10. In light of his conclusions the Inspector has recommended at IR 9.1 – IR 9.2 that the Scheme and Orders be confirmed.

MODIFICATIONS

11. In the event that the Secretary of State were to confirm the SRO, a minor technical modification to amend 'south westwards' to 'south eastwards' in the classified road definition is proposed. This modification has been put to and agreed by the Council.

POST INQUIRIES CORRESPONDENCE

12. Following the close of the Inquiries, the following correspondence was received:

- (i) a letter dated 17 July 2008 from Berwin Leighton Paisner on behalf of Spenhill Developments Limited with regard to rebuttal evidence submitted by Kent County Council and clarifying that their clients development proposals do not include any property/buildings directly fronting the creek and which will have a minimum 10 metre wide buffer zone between any development and the creek edge. Additionally, any water feature of the proposed development would not be linked to the creek;
- (ii) an e-mail dated 6 August 2008 from Kent County Council, enclosing two letters from Bates NVH Solicitors on behalf of their clients Salebeece Limited with regard to the Dolphin Sailing Barge Museum occupation of the site off Crown Quay Lane, Sittingbourne and the terms of their lease and which the Council stated cast doubt on the statement to the Inquiries from the landlord about whether the Museum had a right to remain on its present site;
- (iii) a letter dated 15 September 2008 from Clive Reader of the Dolphin Yard which enclosed a copy of a letter from (their solicitors) Bates NVH dated 11 July. Mr Reader stated that he considered that their solicitor's letter clearly confirmed the legal position regarding the Sailing Barge Museum Trust and that they had been granted a perpetually renewable lease which had been stated during the Inquiries; and
- (iv) an e-mail dated 23 October 2008 from Kent County Council, responding to (iii) above and stating that the assertion of the Barge Museum Trustees regarding the issue of a long lease at the Dolphin Yard had not been tested in the Courts and that, should the CPO be subsequently confirmed by the Secretary of State then negotiations under the compensation code would follow.

THE DECISION OF THE SECRETARY OF STATE

13. The Secretary of State has considered carefully all the objections to, and representations about, the Scheme and Orders including alternative proposals put forward. He has considered the Inspector's report and accepts his conclusions and recommendations subject only to the making of the minor modification to the SRO as referred to in paragraph 11 above. The Secretary of State has also taken matters raised in post inquiries correspondence into account but they do not alter the decision he has arrived at to accept the Inspector's conclusions as aforesaid.

14. The Secretary of State has carefully considered whether the purposes for which the CPO is required sufficiently justify interfering with the human rights of the objectors, owners and lessees and he is satisfied that they do. In particular, he has considered the

provisions of Article 1 of The First Protocol to the European Convention on Human Rights. In this respect, the Secretary of State is satisfied that in confirming the CPO a fair balance has been struck between the public interest and interests of the objectors, owners and lessees.

15. The Secretary of State does not consider that the objections, singly or together, constitute grounds for not proceeding with the proposals. For these reasons he has decided to confirm as made: -

- (i) The Kent County Council (Milton Creek Bridge) (No. 2) Scheme 2007; and
- (ii) The Kent County Council (Sittingbourne Northern Relief Road) (No. 2) Compulsory Purchase Order 2007; and

as modified by him: -

- (iii) The Kent County Council (Sittingbourne Northern Relief Road) (No. 2) (Side Roads) Order 2007,

and this letter constitutes his decision to that effect.

COMPENSATION

16. Details of compensation arising as a consequence of confirmation of a compulsory purchase order are for negotiation with the acquiring authority and not the Secretary of State. Accordingly, owners and occupiers of land included in the CPO will need to be approached by the Council about the amount of compensation payable to them in respect of their interests in the land required for the proposals. If the amount cannot be agreed the matter may be referred for determination by the Lands Tribunal under the Lands Tribunal Act 1949 and the Land Compensation Act 1961.

AVAILABILITY OF DOCUMENTS

17. A copy of this letter, together with a copy of the Inspector's report has been sent to those objectors, their representatives and the other persons who appeared and made representations at the Inquiries. A copy of this letter has been sent to all other supporters of the scheme and outstanding objectors and to the Editor of the East Kent Gazette. Copies will be made available on request to any other persons directly concerned. Please arrange for a copy of the Inspector's report and of this letter to be made available for inspection at the offices of the Council and at all other places used to deposit the Orders for public inspection at making stage. Any person entitled to a copy of the Inspector's report may apply to the Secretary of State for Transport, at this address within 6 weeks of the receipt of this letter, to inspect any document, photograph or plan submitted by the Inspector with the Inspector's report. Those documents, photographs or plans, are retained at this office, and will be made available at a local place of inspection.

RIGHT OF CHALLENGE

18. Notice is to be published of confirmation of the Scheme and Orders. Any person who wishes to question the validity of the confirmed Scheme and Orders, or any particular provision contained therein, on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements in confirming the Scheme and Orders may, under the provisions of Schedule 2 to the Highways Act 1980 and section 23 of the Acquisition of Land Act 1981, do so by application to the High Court. Such application must be made within six weeks of publication of the notice that the Scheme and Orders have been confirmed. The High Court cannot entertain an application under the said Schedule 2 or section 23 before publication of the notice that the Secretary of State has confirmed the Scheme and Orders.

I am Sir
Your obedient Servant

JULIE HUME
Authorised by the Secretary of State
to sign in that behalf