

APPEAL A

Appeal by Blue Boar Motorways/Exors of Sir John Gooch

Reference APP/Q4625/A/98/1013084

Site: Land adjacent to the M42 motorway at Catherine de Barnes
Proposal: Application for outline planning permission for an MSA
Council: Solihull Metropolitan Borough Council

APPEAL B

Appeal by Shirley Estates (Development) Ltd

Reference APP/Q4625/A/06/1199380

Site: Land at Junction 4 of the M42, Stratford Road, Solihull
Proposal: Application for outline planning permission for an MSA
Council: Solihull Metropolitan Borough Council

NOTES OF THIRD PRE INQUIRY MEETING

held on Monday 27 November 2006 at 2.00pm in the Studio, Central Library, Solihull

INTRODUCTION

1. The Inspector, Michael Ellison, MA (Oxon), confirmed that he had been appointed to hear the conjoined inquiries and to report to the Secretary of State for Communities and Local Government having regard to the forthcoming retirement of Mr M P Hill, who had heard the 1999/2000 inquiry and conducted the first two pre inquiry meetings for the inquiry to be reopened into Appeal A and the inquiry into Appeal B.
2. Mr Ellison would have the advantage of being assisted by Colin Ball, Dip Arch, Dip Arch Cons, RIBA, FRSA, who had fulfilled a similar role in the previous proceedings.
3. Following the death of John Banbery, the Programme Officer for the inquiry would be Ian Kemp, whose could be contacted at 36 Campbell Street, Rugby, Warwickshire, CV1 2HY. His telephone number is 01788 562864, mobile 07723 009166, and email address idkemp@ntlworld.com. A website for the inquiry would be set up shortly, and parties would be notified of the address by the Programme Officer.

APPEARANCES

4. Information regarding anticipated appearances and the likely number of witnesses to be called was updated. The latest information on these matters is set out in Appendix A to these notes.

REVIEW OF EXISTING GUIDANCE

5. The Inspector indicated that, on a range of issues, he would be adopting the position previously taken by Mr Hill. The opportunity was provided for any disagreement on these matters to be raised, but nobody present took advantage of that. The Inspector therefore confirmed the following arrangements.

Order of presentation of cases

6. The order for a conjoined inquiry identified at the first PIM was confirmed. After introductory announcements by the Inspector, short opening statements would be invited on behalf of Blue Boar Motorways (BBM), Shirley Estates Ltd (SEL), Solihull MBC (SMBC), Birmingham International Airport (BIA) and the Highways Agency (HA). Evidence would then be heard in the following order:
 - i. the case for BBM
 - ii. the case for SEL
 - iii. the case for SMBC
 - iv. the case for BIA
 - v. the case for the HA
 - vi. the case for Welcome Break Group Ltd (if appearing)
 - vii. the case for the CPRE
 - viii. the case for Hockley Heath Parish Council
 - ix. the case for SAMSAG
 - x. the cases of any other groups or individuals.
7. Cross examination of each witness would take place after the evidence in chief of that witness.
8. The closing submissions of HA, BIA, SMBC, SEL and BBM would be heard at the end of the inquiry in that order. The closing submissions of other parties should be made at the conclusion of their case.

Sitting times

9. The inquiry was scheduled to open on Tuesday, 12 June 2007. The normal sitting times for the inquiry would be 10.00am to 5.00pm on Tuesdays to Thursdays and 10.00am to 2.00pm on Fridays. The lunch period would be 1.00pm to 2.00pm on Tuesdays to Thursdays, but there would be no break for lunch on Fridays. There might be short breaks each day mid morning and mid afternoon. These arrangements might be varied slightly during the inquiry to respond to the need to make progress with the inquiry.
10. To save time on the opening morning of the inquiry, it would be helpful if all parties intending to call witnesses would provide a list of the

witnesses to be called, in the order in which they are intended to be called, with a note in abbreviated form of their qualifications and their current posts.

Format of evidence

11. As indicated at the first PIM, proofs of evidence should be concise, and need not repeat the text of national or regional guidance. Where in the text of a proof a point is made in reliance on a document, whether a core document, one included within an appendix or national guidance, the page and paragraph number of the document should be identified. Proofs of evidence should have their pages and paragraphs numbered.
12. Any tables, appendices or plans should be of A4 size, or folded to A4 size. The appendices should be paginated throughout and contain a list of the documents included, with page references, at the beginning of the bundle. An appendix need contain only those extracts of a document that are relevant, but should always include the title page of the document. The full document should, however, be available for reference, if necessary, at the inquiry.
13. The Programme Officer would be issuing further guidance on the production and numbering of documents in the near future, which would cover both core documents and inquiry documents, including proofs and appendices.

The main issues in Appeal A

14. The Inspector adopted the list identified by Mr Hill and set out at paragraph 39 of the notes of the first PIM. For ease of reference, this is repeated here:
 - i. The extent to which the proposed development is consistent with the Regional Spatial Strategy (RSS) for the West Midlands and the adopted Solihull UDP.
 - ii. The extent to which the proposed development would conflict with national policies as set out in the White Paper "The Future of Air Transport" in relation to the development of the BIA.
 - iii. The extent to which the proposal would prejudice the review of airports policy in the RSS (which is to be undertaken in the light of the Air Transport White Paper, and is referred to in RSS Policy T11).
 - iv. The extent to which the proposal would prejudice the completion of the Master Plan for the BIA.
 - v. An updated assessment, in the light of any changed circumstances, of the consistency of the proposed

- development with policies set out in the 1998 MSA Policy Statement.
- vi. Whether the proposal is consistent with paragraph 3.30 of PPS6 (Planning for Town Centres) in respect of the retail element of the proposal.
 - vii. Whether the revised proposal for Walford Hall Farmhouse is consistent with the advice in PPG15 (Planning and the Historic Environment).
 - viii. Whether the planning obligation dated 27 August 2004 (or any proposed amendment to that obligation) is in accord with the guidance set out in ODPM Circular 05/2005.
 - ix. Whether the Environmental Statement and the Further Environmental Information dated June 2006 is adequate for the purposes of giving proper consideration to any likely significant environmental effect of the proposed development.
 - x. Any other matter which arises as a result of significant changes in circumstances since the original inquiry and which is material to the consideration of the appeal.

The main issues in Appeal B

15. The Inspector adopted the list identified by Mr Hill and set out at paragraph 24 of the notes of the second PIM. Again, that list is repeated here for ease of reference:

- i. The extent to which the proposed development is consistent with the RSS for the West Midlands and the adopted Solihull UDP.
- ii. The extent to which the proposed development would conflict with national policies as set out in the White Paper "The Future of Air Transport" in relation to the development of the BIA.
- iii. The extent to which the proposal would prejudice the review of airports policy in the RSS.
- iv. The extent to which the proposal would prejudice the completion of the Master Plan for the BIA.
- v. An assessment of the consistency of the proposed development with policies set out in the 1998 MSA Policy Statement.
- vi. Whether the proposal is consistent with paragraph 3.30 of PPS6 (Planning for Town Centres) in respect of the retail element of the proposal.
- vii. Whether the Environmental Statement and the Supplementary Environmental Statement distributed in November 2006 is adequate for the purposes of giving proper consideration to any likely significant environmental effect of the proposed development.

- viii. The impact of the scheme on the safety and free flow of traffic on the local road network and the M42 motorway.
 - ix. Whether the scheme would be inappropriate development in the Green Belt, and, if so, whether there are very special circumstances that outweigh the harm by reason of inappropriateness and any other harm.
 - x. Whether the scheme would cause unacceptable light pollution.
 - xi. Whether the scheme would cause unacceptable air pollution.
 - xii. The impact of the scheme on the countryside, the openness of the Green Belt and the purposes of including the land in the Green Belt.
16. In addition, although BIA were not objecting to the SEL proposal, issues relating to the impact of the scheme on Airports Policy and the Master Plan for BIA had been raised by other parties, and were matters which the Appellant wished to address.

PROGRESS ON ONGOING ISSUES

The Airport Master Plan

17. Mr S Hill, Head of Planning and Transportation at BIA, indicated that a progress report on the Airport Working Party was expected from the Department for Transport during December 2006. The Master Plan was expected to be finalised during 2007, but it would be dependent on a decision on the Coventry Airport inquiry.
18. Mr Phillips asked what was the latest position regarding the surface access report. His understanding was that the report of the consultants had been issued to the commissioning bodies, the HA, the NEC and BIA; but access to the report had not been made available to BBM. Such access was needed in order to prepare BBM's evidence on the issue. Mr Hill replied that work on the report was still continuing, but a joint statement would be issued shortly by Birmingham City Council, SMBC, the HA, the NEC and BIA. His understanding was that the technical work undertaken in the light of the report did not demonstrate the need for an extra access south of Junction 6. The report should therefore have no impact on the MSA proposals.

Discussions with the Highways Agency

19. Mr Goatley indicated that the HA had written to both Appellants setting out the information which would be required to assess the proposals in full. Some information had been provided in response by BBM, and dates for a series of meetings had been agreed to secure progress on consideration of the issues. Mr Crean indicated that SEL would be pleased to follow a similar process.

Statements of Common Ground

20. Mr Phillips stated that a second draft Statement of Common Ground (SCG) had been sent to SMBC, and was awaiting a response. Mr Crean asked whether a three party SCG was required or two, two party SCGs. The Inspector indicated that a three party SCG would be welcome if there was complete agreement between the parties on certain issues. It seemed to him, from his reading of the Inspector's conclusions in the report of the 1999/2000 inquiry, that there were matters, at that time at least, on which there had been agreement on all sides. Where that was not the case, but there was nevertheless agreement between the Local Planning Authority and one of the Appellants, it would still be helpful for this to be set out in a two party SCG. SCGs between the HA, BIA and other parties would also be useful on matters on which there was agreement. The Inspector encouraged all parties to identify, so far as possible, the issues on which there was agreement, and, in attempting to do so, to define, so far as possible, the nature and extent of the disagreement on the balance of issues.

Conditions

21. The Inspector explained that, in seeking and considering possible conditions on any planning permission which might be granted on either of the appeals, he was not indicating that he had already reached a conclusion in favour of the appeals. Consideration of possible conditions had to take place in a case such as this, where the decision would be made by the Secretary of State. Even if the Inspector considered that both appeals ought to be dismissed, he would still need to consider what conditions could be applied to each of them, in case the Secretary of State took a different view.
22. Draft conditions for each appeal were therefore requested from SMBC, and from each of the Appellants for their individual appeals. The suggested conditions would be the subject of a round table discussion within the inquiry, towards the end of the inquiry. Objectors could take part in that discussion, if they wished, without in any way compromising the strength with which their objection was pursued.
23. Mr Goodall of SAMSAG confirmed that, in his experience, discussion of conditions did not indicate an Inspector's predisposition to recommend that an appeal should be allowed, and that objectors could take part in such discussions without in any way reducing the weight attached to their objections.

Obligations

24. Both Appellants were preparing Section 106 agreements to discuss with SMBC. These would be submitted in due course, either as executed agreements or as unilateral undertakings.

DEADLINES

25. The Inspector stressed that the timetable under discussion was intended to fix deadlines rather than to propose "target dates". Submission of material in advance of deadlines would be helpful where the material was ready and available. Material required by the Inquiries Procedure Rules to be submitted to the Secretary of State could be sent directly to the Programme Officer.
26. Following discussion, the timetable set out below was fixed:
- written representations to be received by 17 April 2007
 - SCGs to be received by 1 May 2007
 - draft conditions to be received by 1 May 2007
 - obligations offered by the Appellants to be submitted by 1 May 2007
 - proofs of evidence to be received by 15 May 2007
 - rebuttal proofs to be received by 5 June 2007.
27. SCGs, conditions and obligations were scheduled to be received two weeks before the receipt of proofs in order to allow their provisions to be taken into account in the proofs of evidence.
28. The possibility of requiring all anticipated legal submissions to be produced by 5 June 2007 in skeleton argument form was discussed. On balance, it was decided to rely instead on the normal courtesies observed at the Bar. The Inspector confirmed that he would ensure that adequate time would be available for parties to respond properly to any unanticipated legal submission.

PRESENTATION OF CASES AND EVIDENCE

29. The Inspector asked the Appellants to ensure that copies of their main plans were displayed in the inquiry room from the start of the inquiry. This would not be difficult in this case, since both appeals related to outline applications. SMBC had previously agreed to provide display boards in the inquiry room.
30. The Inspector asked that openings should be produced in writing if possible.

31. A summary would be required of any proof of evidence which exceeded 1,500 words.
32. The decision on what was read by the witness at the inquiry rested with the Inspector under Rule 13(5) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, and advocates were asked to prepare for the inquiry on the basis that only the summary would be read. Apart from hearing the full qualifications of witnesses, it was not the Inspector's practice to allow parts of the full proof to be read unless he considered the summary to be inadequate. Any typographical corrections necessary to the full proof should, however, be mentioned, and cross examination would take place on the full proof.
33. Summary proofs should be provided by the same deadline as full proofs, but the Inspector would not be unduly concerned if a summary proof arrived a little later. It was important, however, that a summary was a genuine summary of the full proof lodged. It should not deal with any additional matter not covered in the full proof.
34. Advocates were asked to underline to their witnesses that direct questions in cross examination should be answered directly. Any necessary qualification of the answer could then be made by the witness, and the Inspector would ensure that an opportunity would be available for the witness to do this.
35. A written copy should be provided of any legal submission made, and a full copy would be required of any authority to which reference was made.
36. Points raised only in written representations could be dealt with in the proofs of relevant witnesses or could be dealt with in an overall written submission from a party needing to respond. If dealt with in a written submission, the witness responsible for preparing each point of the response should be identified, so that the Inspectors would be able to raise any question either of them might have on the point with the relevant witness as that witness gave his or her evidence.
37. A written copy of any reserved closing should be provided if at all possible.

HOUSEKEEPING MATTERS

38. The Inspector asked whether there was a general opinion that 25 sitting days represented a reasonable estimate of the likely length of the inquiry. He was concerned that, if the inquiry ran for more than 25 days, it would be difficult to find a mutually convenient time for the inquiry to continue given the number of parties involved and the

pressures on the time of those representing them. It was agreed that it was difficult to make a more informed estimate while the extent of the impact of issues of airport safety, airport access and traffic implications was still so unclear.

39. It was agreed that, should any party come to a view that 25 sitting days would be insufficient to conclude the inquiry, that view should be registered with the Programme Officer forthwith.
40. The inquiry was to be held in the Council Chamber at the Civic Centre. The venue would be needed for other purposes from time to time during the inquiry. Those occasions would be kept to a minimum. When the venue was needed for other purposes, however, inquiry material would need to be moved to one side or removed. SMBC could not provide secure storage for inquiry material, though the Inspectors' papers could be moved to their retiring room.

SITE VISITS

41. The Inspector had made an unaccompanied site visit to the general areas which would be affected by the appeal developments on the morning of the PIM. Mr Ball was, of course, already familiar with the areas. The Inspectors would make an accompanied site visit towards the end of or following the inquiry. It was explained that such an accompanied site visit would not be an occasion on which further evidence could be given. All evidence should be presented at the inquiry. The accompanied site visit would offer an opportunity for parties to point out sites and features which had been referred to in the evidence which had been presented at the inquiry.
42. Mr Hill mentioned the increasing restrictions which applied to visits to airports. The Inspector recognised these, and indicated that he would plan to visit only strictly necessary areas in the vicinity of the airport.

ANY OTHER BUSINESS

43. Mr Crean mentioned that a Supplementary Environmental Statement in connection with Appeal B had been distributed on 22 November 2006. The Inspectors confirmed that they had received their copies of this document.
44. Mr Crean also indicated that he would be calling a witness to deal with the issue of whether the revised proposal for Walford Hall Farmhouse is consistent with the advice contained in PPG15.
45. Mr Phillips asked for copies of the correspondence referred to in paragraphs 19 and 20 of an opinion prepared by Mr Crean which had been made available to the parties and to the Inspectors. The opinion

concerned the position of English Heritage in relation to attendance at the inquiry. Mr Crean promised to make that correspondence generally available.

46. Mr Crean asked whether it would be possible to agree to hear evidence dealing with airport safety (including risk assessments) in camera. He was concerned that evidence dealing with statistical probabilities could be reported out of context, and that possible scenarios discussed in the evidence could give rise to ideas which would not otherwise have arisen. He considered that there would be no tactical advantage for his clients in the evidence being given in camera. The issue would be neutral as between the parties.
47. Mr Goatley referred to the provisions of Section 321 of the Town and Country Planning Act 1990, which set out the circumstances in which application should be made to the Secretary of State for evidence of a particular description to be heard with only a restricted range of persons present at the inquiry.
48. It was agreed that this was a matter which it would be proper for Mr Crean's clients to address by raising it with the Secretary of State in writing under Section 321 of the Act. The Inspector considered that this could usefully be done in advance of the opening of the inquiry.

A POSSIBLE FOURTH PRE INQUIRY MEETING

49. The Inspector asked whether any party considered that it would be necessary to hold a further PIM. Following discussion, it was agreed that any party who considered that a further PIM would be necessary or desirable should advise the Programme Officer to that effect by 9 February 2007. The Inspector would then indicate by 16 February 2007 whether he would hold a further PIM. If such a meeting were convened, the Programme Officer would seek to fix it for early March. Against the possibility that such a meeting would be convened, the Programme Officer would seek to identify a mutually convenient date for it as a matter of urgency following this PIM, so that the possible date could be protected in the diaries of those concerned. *(The afternoon of Monday, 19 March, was subsequently established to be the best fit for the maximum number of parties.)*
50. The PIM was concluded at 4.00pm.

Michael Ellison

Inspector

30 November 2006

APPENDIX A

APPEALS BY BLUE BOAR MOTORWAYS LTD/EXORS OF SIR JOHN GOOCH and SHIRLEY ESTATES (DEVELOPMENT) LTD

INFORMATION REGARDING APPEARANCES AND WITNESSES AS AT 27 NOVEMBER 2006

1. Appellant (Appeal A) Mr Richard Phillips QC and Mr Ian Ponter of Counsel, instructed by Mr David Goodman of Hammonds, 2 Park Lane, Leeds LS3 1ES. Calling 5 or 6 witnesses.
2. Appellant (Appeal B) Mr Anthony Crean QC, instructed by Davis Planning Partnership, 17a Post House Wynd, Darlington, Co Durham, DL3 7LP. Calling 5 witnesses.
3. SMBC Mr Martin Kingston QC and Ms Nadia Sharif of Counsel, instructed by Mr Brian Muskett, Solicitor to Solihull MBC. Calling 4 or 5 witnesses.
4. HA Mr Peter Goatley of Counsel, Instructed by the Treasury Solicitor, One Kemble Street, London, WC2B 4TS. Calling 4 witnesses.
5. BIA Represented at PIM by Mr Stephen Hill, Head of Planning and Transportation, Birmingham International Airport, Diamond House, Birmingham B26 3QJ. Calling up to 3 witnesses.
6. Welcome Break Group Ltd Represented at PIM by Mr N Jenkins of Hepher Dixon Ltd, 23 Furtzon Lake, Shirwell Crescent, Furtzon, Milton Keynes, MK4 1GA. Still possible appearance or written representation. Maximum 1 witness.
7. SAMSAG Represented at PIM by Ms M Throup, Bardon Lodge, Bardon Drive, Solihull, B90 3DA. Calling 4 witnesses.
8. Hockley Heath Parish Council Represented at PIM by Mr P Horridge. Calling 1 witness.
9. CPRE (not represented at third PIM) Mr Mark Sullivan. Calling 2 witnesses