

APPEAL A

Appeal by Swayfields

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 FOURTH PRE INQUIRY MEETING

held on Monday 19 March 2007 at 2.00pm in the Council Chamber, Civic Centre, Solihull

INTRODUCTION

1. For those who had not been present at the third Pre Inquiry Meeting, the Inspector, Michael Ellison, MA (Oxon), introduced himself, the Assistant Inspector, Colin Ball, Dip Arch, Dip Arch Cons, RIBA, FRSA, and the Programme Officer, Ian Kemp. Mr Kemp's contact details were confirmed as 36 Campbell Street, Rugby, Warwickshire, CV1 2HY; his telephone number is 01788 562864; mobile 07723 009166; and email address dkemp@ntlworld.com.

THE NATURE OF THE INQUIRY AND THE PURPOSES OF THE PIM

2. The inquiry, which was due to open on 12 June 2007, would be a conjoined inquiry, dealing with the reopened inquiry into the Blue Boar Motorways Ltd proposal (now being progressed by Swayfields) at Catherine de Barnes and the appeal of Shirley Estates (Development) Ltd against the non determination by Solihull MBC of an application for outline planning permission for a MSA at Box Trees Farm, adjacent to junction 4 of the M42. The PIM had been called solely to deal with procedural matters in connection with the inquiry. Its purpose did not include hearing any argument about the merits of the cases.

APPEARANCES

3. 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. Mr Boyle of Counsel

would now be appearing for Shirley Estates. Mr Fookes of Counsel would be appearing for Welcome Break (though it was still possible that their case might be dealt with by way of written representations). Mr Giles of Counsel would be appearing for Hockley Heath Parish Council.

4. Reference was made to the fact that written confirmation had been produced that Swayfields had been authorised to pursue the appeal of Blue Boar Motorways Ltd and the Executors of Sir John Gooch. The Appellant in Appeal A would therefore be referred to as Swayfields at the inquiry, and their documents would bear the prefix SWA.
5. Mr Sullivan produced a news item indicating that the holding company which owned Blue Boar had been acquired by an Israeli company, Delek Real Estate. He asked whether this affected the authority to Swayfields to conduct Appeal A. It was explained that the acquisition of the shares in the company would not affect existing commitments of the company. Mr Ponter suggested that, if Mr Sullivan had any more detailed questions to raise on the issue, he should address them to the Swayfields team in writing.

PROGRESS ON ONGOING ISSUES

Document Guidance

6. As promised at the third PIM, detailed guidance on the submission of documents to the inquiry had been issued by the Programme Officer. The Inspector asked whether there was any query about the contents of that guidance. No issue was raised.

Core Document List

7. A Core Document List had been agreed, but some documents which had been included on the list had not been produced as required by 12 March 2007. It was agreed that outstanding documents would be provided by 23 March 2007 at the latest, following which the list would be published on the inquiry website. Documents not produced by 23 March would be removed from the list, which would mean that copies of them would need to be produced to accompany each proof in which reference was made to them.
8. The following parties agreed to provide copies of the outstanding documents (in some cases this is not the party who originally asked for the document concerned to appear on the Core Documents List)
 - Ministerial statement on policy for MSAs – the Inspector said he had a copy available, which he would pass to the Programme Officer.
 - CAP 168 – Shirley Estates.

- Third Party Risk near Airports – Shirley Estates.
 - BIA-BHX11B – Shirley Estates.
 - BIA-BHX 11A – Shirley Estates.
 - Any necessary additional library copies of the Environmental Statements – Swayfields and Shirley Estates as appropriate – Programme Officer to identify those Statements of which an additional copy is required.
 - Transport Assessments submitted in support of planning applications for the Blythe Valley Business Park Extension and the Class B1 development at The Green – SMBC.
 - Shirley Estates Transportation Statement 2001 – Shirley Estates.
9. Mr Boyle referred to the recent Circular 02/2007, which had replaced Circular 04/2001, and the associated new guidance on agreements under Section 278 of the Highways Act 1980. The Inspector agreed that these could usefully be added to the Core Documents. To save time, he would make his own copies available to the Programme Officer.

The Airport Master Plan

10. Mr S Hill, Head of Planning and Transportation at BIA, indicated that the Master Plan was still expected to be finalised during 2007, but it would be dependent on the decision of the Coventry Airport inquiry, which was still awaited. Mr Kingston suggested that, without access to the Master Plan, the inquiry would not perform a useful function.

The Surface Access Report

11. Mr Goatley read a joint statement of the commissioning bodies, the HA, the NEC and BIA regarding the surface access report. It indicated 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 would therefore have no impact on the MSA proposals. A copy of the joint statement read by Mr Goatley is attached as Appendix B. It was not the intention of the commissioning bodies to make the report available to the inquiry.

Discussions with the Highways Agency

12. Before the third PIM, the HA had written to both Appellants setting out the information which would be required by the HA to assess their proposals in full. At that time, some information had been provided in response by SWA, and dates for a series of meetings had been agreed to secure progress on consideration of the issues. Some meetings had taken place, and a further meeting was scheduled for 16 April 2007. Mr Ponter anticipated that this would lead to an agreed position before proofs had to be finalised. Mr Goatley was less confident that an agreed position would necessarily be reached.

13. As regards Shirley Estates, Mr Boyle indicated that SEL were following a similar process. They would also anticipate reaching an agreed position ahead of exchange of proofs. There was a scheduled meeting with the HA on 28 March, but it was important that Shirley Estates received information they had requested from the HA in advance of that meeting. Mr Goatley indicated that he was less hopeful about agreement being reached with Shirley Estates. The HA had not yet received a Traffic Assessment or a design from Shirley Estates. Some of the information Shirley Estates had requested was simply not available given the experimental nature of the current Active Traffic Management Scheme. The appeal was their appeal, and they must provide a design proposal. It was already very late for the HA and the local highway authority to be expected to respond to a design proposal in formulating their detailed cases.
14. Mr Goodall made the point that it was also very late for the third parties to be able to respond effectively, particularly when their cases were being dealt with by volunteers, and when, in coordinating representation to save time at the inquiry, they had a requirement to go back to different voluntary groups to seek their endorsement of a common position.

Statements of Common Ground

15. Mr Kingston indicated that a second draft Statement of Common Ground (SCG) had been sent by SWA to SMBC. The Council appreciated the effort, and were keen to achieve as much agreement as possible through SCGs. The existing draft contained many gaps, however, and there was some way to go before it could be regarded as completed.
16. Mr Boyle said that Shirley Estates were also keen to secure as much agreement as possible in SCGs with the Council and with the HA, but they were some distance from having completed documents.

Conditions

17. Mr Kingston said that it had not been possible to make progress on conditions. Further information was needed on matters related to the Environmental Statements, and that could not be finalised until there was clarity about what was proposed in relation particularly to highways matters.

Obligations

18. Mr Kingston said there was no progress on this since the last PIM so far as the Local Planning Authority was concerned. It was understood that both Appellants were preparing Section 106 agreements to discuss with

SMBC. Swayfields had produced two undertakings, but it was understood that they were to be amended. Mr Ponter confirmed that further work was to be done on this subject over the next few weeks.

Availability of the Inquiry Venue

19. The Inspector said that he understood that the Council Chamber would not be available to the inquiry on Tuesday 10 July. The Council would be meeting on that day. Tuesday 10 July would therefore be a non sitting day. That week the inquiry would sit on Wednesday to Friday only.

Application for Evidence to be Heard *in camera*

20. Mr Boyle stated that it had been decided not to make any application for part of the evidence of Shirley Estates to be heard *in camera*.

TIMETABLING OF LISTED BUILDING EVIDENCE

21. The Inspector mentioned that it had been decided by the Planning Inspectorate that it would not be necessary for Mr Ball to attend the whole of the inquiry. He would attend for the openings and closings of the main parties, but otherwise would attend only on days when the listed building evidence was being given or was the subject of cross examination. Mr Ellison suggested that this could be achieved in one of two ways. Either each witness's listed building evidence could be given in its ordinary place in the proceedings, and Mr Ball would attend on each of those days; or the listed building evidence and cross examination from all parties could be concentrated on a particular fixed time slot, and Mr Ball would attend for that period. There would then be no reference to listed building matters outside that session of the inquiry, openings and closings. The second alternative was preferred by Mr Ball and by the Inspector, but both alternatives were available for discussion.
22. Swayfields, Shirley Estates, SMBC and the CPRE all expressed acceptance of the approach of treating the listed building issue as a separate topic, and dealing with it in one session of the inquiry. It was agreed therefore that this approach would be followed, and an appropriate timetable would be put forward by the Programme Officer in consultation with the Inspectors when it was clear how much time would be needed to deal with the evidence and cross examination on this issue.
23. Mr Ponter queried the extent to which listed building issues would be before the inquiry. The original Inspector had stated unequivocally at the first PIM (paragraph 41 of the notes) that the impact of the proposed MSA in Appeal A on the setting of Walford Hall Farmhouse

would not be an issue to be revisited. After discussion, Mr Ball confirmed that the matter on which the Secretary of State had asked to be informed was whether the revised proposal for Walford Hall Farmhouse is consistent with the advice given in PPG15. This potentially raised issues about the proposed use and any conversion works, but it did not raise any issue regarding the setting of Walford Hall Farmhouse, which would be unchanged from that considered at the previous inquiry.

24. In response to a question from Mr Goodall, the Inspector confirmed that it was his understanding that English Heritage would not be attending the inquiry, but would rest on their written representations.

DEADLINES AND POSSIBLE DELAYING OF THE INQUIRY

25. At the third PIM, the timetable set out below had been fixed for various actions necessary before the inquiry opened:

- 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.

26. 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.

27. In the light of the information provided by parties at this meeting, Mr Kingston suggested that it was not realistic to continue on the basis that the inquiry could open as planned on 12 June 2007. The Airport Master Plan had not been produced, and it was clear that it would not be produced until after the decision on the Coventry Airport inquiry was published and had been considered by BIA. The surface access issue had not been satisfactorily resolved. The HA state that (along with BIA and the NEC) they are satisfied that surface access to the Airport would have no impact on either of the MSA proposals, but it was not satisfactory for that statement simply to be made by the HA. The parties needed to understand the basis on which that conclusion had been reached. Detailed highway proposals would only become known at best after 28 March (Shirley Estates) and after 16 April (Swayfields). This provided very little time for SMBC to respond to the highway issues, particularly when they would need to consider, evaluate and possibly take technical advice on what was proposed, and then might need to take instructions from elected Members of the Council. The point was made that the Council needed to respond to two appeals in this case, not just a single appeal.

28. The position would be even worse for the third parties. Those who were intending to respond to the appeals by written representations had a deadline of the day following Swayfields meeting with the HA. They could not possibly know, let alone consider, the outcome of those discussions before being required to finalise their written representations.
29. It would serve nobody's purpose for a decision ultimately to be taken which could be open to challenge by a party who had not had a proper opportunity to prepare an adequate case.
30. For the HA, Mr Goatley supported SMBC's position. The HA would have considerable difficulty in formulating their case without full and clear knowledge of the highway proposals of the Appellants and the Traffic Assessment of Shirley Estates' proposals. Those items were not yet available to the HA. Mr Goatley could see no alternative to delaying the start of the inquiry.
31. Mr Boyle said that he had come to the PIM anticipating that the inquiry would proceed as planned on 12 June 2007, but, in the light of the position of the HA, he was not now convinced that a start on that date could be achieved. His clients required information from the HA before they could finalise the proposals they needed to put to the HA.
32. Mr Fookes referred to paragraph 18 of the Secretary of State's decision letter of 6 March 2001 concerning Appeal A. He said that it was still the case that the Secretary of State could not be satisfied that auxiliary lanes would be constructed and that any decision reached as a result of any additional Highways Act procedures would not require amendment to the proposed development. A final decision on Appeal A would require not only a completed agreement under Section 278 of the Highways Act 1980, but also the completion of any additional procedures required to authorise the construction of auxiliary lanes. These matters still remained outstanding, and should be resolved before the inquiry commenced.
33. Mr Giles suggested that the third parties could not realistically finalise their cases until they saw the detailed and final proposals of the Appellants.
34. Mr Sullivan said that the CPRE would face difficulty in meeting the timetable set and in being ready to proceed on 12 June 2007. He, Mr Goodall and Councillor Cresswell expressed concern that the third parties would not be able to take part in discussions between each of the Appellants and the HA in order to understand the different highway proposals. That was a view shared by Mr Deanshaw. Although he wanted the inquiry to proceed as quickly as possible in order to remove

uncertainty, he considered that third parties should be able to have access to meetings between the HA and the Appellants, and that the HA should be compelled to produce the surface access report to assist the inquiry's understanding of the highway issues.

35. The procedure for seeking the issue of a witness summons was explained.
36. Mr Sullivan also stated that additional environmental information considered by the HA in relation to other schemes in the area should be available to the inquiry. Mr Goater suggested that any request for such information should be put in writing to the HA as quickly as possible. It would then be considered on its merits. The Inspector said that he would deal with the inquiry on the basis of the cases put to it by the parties so long as they were relevant to the issues before this inquiry.
37. On behalf of Swayfields, Mr Ponter indicated that his clients saw no reason why the existing timetable for the inquiry should be changed. Good progress had been made regarding surface access and safety zones at the BIA. Supplementary environmental information had been produced during 2006. Discussions were progressing with the HA. The appeal had been outstanding for many years. Swayfields could meet the agreed timetable, and the appeal should proceed as planned. It was not the case that the Secretary of State had envisaged that it would be necessary for the Airport Master Plan to be concluded before the inquiry could commence. The relevant item in the Secretary of State's Statement of Matters referred to the extent to which the proposal (Appeal A) would prejudice the completion of the Master Plan for the BIA. There was no need for anyone to look behind the HA's and BIA's judgement on the implications of the proposals for surface access to the airport. Inability to do so concerned only the weight to be given to that conclusion.
38. The Inspector made the point that, the date for the inquiry having been fixed by the Secretary of State under Rule 10(1) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, that date could only be varied by the Secretary of State under Rule 10(4). It would therefore be necessary for him to report to the Secretary of State on the representations which had been made seeking a delay in the opening of the inquiry. He would do this as quickly as possible, and request the earliest possible decision on the matter, given the time available before the deadlines for action set at the third PIM started to arrive. The Inspector made the point that nobody should cease to prepare for an inquiry start on 12 June 2007 whilst this issue was under consideration.

ANY OTHER BUSINESS

39. There was none.

40. The PIM was concluded at 4.22 pm.

Michael Ellison

Inspector
20 March 2007

APPENDIX A

APPEALS BY SWAYFIELDS and SHIRLEY ESTATES (DEVELOPMENT) LTD

INFORMATION REGARDING APPEARANCES AND WITNESSES AS AT 19 MARCH 2007

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 Christopher Boyle of Counsel, instructed by Davis Planning Partnership, 17a Post House Wynd, Darlington, Co Durham, DL3 7LP. Calling 4 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 Mr Robert Fookes of Counsel instructed by Mr. N. Jenkins of Savilles incorporating Hephher Dixon . 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 Mr Roger Giles of Counsel instructed by Stansgate Planning Consultants . Calling 1 or possibly 2 witnesses.
9. CPRE Mr Mark Sullivan. Calling 2 witnesses

APPENDIX B

Joint Statement of the Highways Agency, Birmingham International Airport Limited and the National Exhibition Centre regarding Options for Improving Motorway Access from the M42.

Good access to and from the motorway network is essential for the efficient operation of Birmingham International Airport (BIA) and the National Exhibition Centre (NEC). With this in mind, the two organisations, together with the Highways Agency, commissioned Arup (who had previously carried out work for Birmingham International Airport Limited on surface access issues, in preparation of the Draft Master Plan) to consider options for the long term viability of Junction 6, in terms of access to/from the M42. A report on this work was completed, by Arup, in January 2007. In addition, Advantage West Midlands, Birmingham City Council and Solihull Metropolitan Borough Council provided technical information to the work undertaken by Arup and attended presentations on the options identified by Arup.

Although a number of options for improving motorway access from the M42 were considered, including the construction of additional junctions, the most effective solution identified was to significantly improve Junction 6, to create additional capacity and improve the effectiveness of the existing design. This means that the proposed future strategy for surface access via the M42 to/from BIA and the NEC will not impact on the location of either of the proposed Motorway Service Areas (MSAs), subject to the Public Inquiry. However, it should be noted that, within their current planning permissions, BIA and the NEC could generate additional traffic movements. This will continue to be monitored and investigated, as appropriate.

Highways Agency

Birmingham International Airport Limited

National Exhibition Centre