

## **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

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## **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

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## **NOTES OF FIFTH PRE INQUIRY MEETING**

held on Monday 11 June 2007 at 1:00pm in the Council Chamber, Civic Centre, Solihull

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## **INTRODUCTION**

1 The Inspector welcomed those attending the meeting.

## **THE NATURE OF THE INQUIRY AND THE PURPOSE OF THE PRE INQUIRY MEETING**

2 The inquiry 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.

## **THE NEW DATE FOR THE OPENING OF THE INQUIRY**

3 Following the request made by some parties for the postponement of the date for the opening of the inquiry at the last Pre Inquiry Meeting, the Inspector had reported to the Secretary of State recommending a postponement. The Secretary of State had accepted that recommendation, and fixed as a new date for the opening of the inquiry Tuesday 12 February 2008.

4 The Inspector explained why he had recommended a variation in the date for the inquiry.

5 He did not consider that it was necessary for the Birmingham International Airport Master Plan to be available before the inquiry could commence. Point (iv) of the Secretary of State's Statement of Matters sought information only on the extent to which Appeal A would prejudice the completion of the Master Plan, so it was clear that the Secretary of State envisaged the inquiry taking place

before the Master Plan was concluded. Nor did he consider that the decision of the Highways Agency and others not to make available to the inquiry the details of the BIA surface access report prevented the inquiry proceeding.

- 6 He had recommended postponement on the basis of the lack, at the time of the last PIM, of detailed highway proposals associated with the two appeal developments. He had considered that the late stage at which it seemed likely that these proposals would appear before the planned opening of the inquiry could prejudice the preparation of the cases of the Highways Agency, the Council and various third party objectors.
- 7 The Inspector anticipated that it would be possible for him to hear the inquiry with Mr Ball commencing on the new opening date of 12 February 2008, but, if it proved necessary for another Inspector to take over, the procedural arrangements made at this meeting would still apply. Parties should therefore make their preparations for the inquiry on that basis.
- 8 The inquiry would sit continuously from 12 February to 20 March 2008, between 10:00am and 5:00pm on Tuesdays to Thursdays, and from 10:00am to 2:00pm on Fridays. This would allow only 23 sitting days against the existing estimate for the inquiry of 25 days. Given the anticipated difficulty of finding mutually acceptable sitting days to continue the inquiry after Easter 2008, the need to make the best possible use of the period between 12 February and 20 March was emphasised. If acceptable progress was not made during the early part of the inquiry, it would be necessary to look at earlier starting times in the mornings, later finishing times in the evenings, and the possibility of sitting for a full day on Fridays or sitting on Monday afternoons. None of those actions would be taken without due notice. It was confirmed that the venue for the inquiry would be available for all the projected sitting days.

## **UPDATES ON PROGRESS**

- 9 Mr Phillips reported that planning permission and listed building consent had been given for Walford Hall Farmhouse. This might mean that it would be possible to deal with the issue of the impact of the proposed MSA development on the listed building much more shortly. Specialist evidence might not be necessary. If that were the case, it could be that no special session on listed building matters would be necessary at the inquiry. It was agreed that Mr Phillips and Mr Boyle would speak on this matter outside the PIM, and that the outcome of that discussion would be passed to the Programme Officer. It was agreed that the planning permission, the listed building consent, the report of officers to the Committee which took those decisions and the minute of that Committee meeting would be made core documents.
- 10 Mr Phillips also reported that good progress had been made by Swayfields in discussions with the Airport Company, and that it might be that Swayfields would not need to call a witness on airport matters. Mr Boyle indicated that, at present at least, Shirley Estates intended to call an airport witness, but that situation might change if further progress were made.
- 11 Mr Hill stated that the Airport Company intended to complete the BIA Master Plan this year, and that the target date for publication was "late summer 2007".

It might be that the Airport Company would in the event have a reduced role in the inquiry.

- 12 Mr Boyle confirmed that the Transport Assessment in connection with the Shirley Estates appeal had been produced. He agreed that copies would be made available to third parties appearing at the inquiry. Final discussions with the Highways Agency would take place, and Shirley Estates hoped that it would then be possible to agree a Statement of Common Ground with the Highways Agency.
- 13 Mr Philips said that Swayfields had also specified their highway scheme during the last week. They were still awaiting some information from the Highways Agency, but then anticipated submitting their Transport Assessment within the next two weeks.
- 14 There was discussion at the extent to which Solihull Council had or should have been invited to take part in discussions between the Appellants and the Highways Agency. The Council had a dual interest as both Local Planning Authority and Local Highways Authority. The Inspector took the line that, while shared understanding of the approaches of the parties could be helpful, whether that was achieved by joint meetings and discussions was a matter for the parties themselves to determine.
- 15 It was confirmed that the core documents would be made available for consultation by parties to the inquiry shortly after this PIM. The inquiry library had not yet been set up, but access to the core documents could be arranged through the Programme Officer, telephone number 01788 562864, mobile number 07723 009166, email address [jdkemp@ntlworld.com](mailto:jdkemp@ntlworld.com). The inquiry web site would also shortly go live, and details would be supplied to parties as soon as it was operational.

## **DEADLINES FOR THE DELIVERY OF DOCUMENTS**

- 16 The Inspector was pleased to hear that what sounded to him like significant progress had been made in relation to the detailed highway proposals of each of the Appellants. He had come to the PIM with the idea of exploring with the parties whether it was possible for him to specify a deadline by which final highway proposals should be received. He was not certain whether, strictly speaking, he had the power to set such a deadline, or whether it would be possible to specify what was required with sufficient precision to make it meaningful, but he had intended to ask for views on those matters. In the event, he wondered whether it was now necessary to pursue such an idea.
- 17 Ms Sharif argued that it would be very helpful to set deadlines for the receipt of all necessary highway and environmental information in order to avoid further delay to the inquiry and to provide a fair opportunity for all parties to take account of the information on these matters. She considered it open to the Inspector to set such deadlines as part of his remit to secure that the inquiry is conducted efficiently and expeditiously. It should be possible for the parties to agree a form of words to encapsulate the outstanding information on these matters, and then for a deadline to be set to ensure that the information was available at an acceptable time.

18 After some discussion, it was agreed that it would be helpful to all for a deadline to be set for the receipt of all necessary highway and environmental information in connection with the case. This should be set as a final deadline, but should not be seen as preventing the necessary information being provided more quickly if it was available. The only reservation expressed by Mr Phillips was that this should not prevent refinements to the information provided if, for example, relevant new material became available.

19 On that basis, it was agreed between the parties and endorsed by the Inspector that the final deadline for receipt of highway and environmental information would be 28 September 2007. It was underlined that prompt submission of information available at an earlier date would assist the undertaking of detailed technical assessments on such matters as any need for relaxations of standards in connection with highway proposals.

20 Other deadlines set by the Inspector for the receipt of documents were:

- Statements of Common Ground – 16 November 2007
- Draft conditions – 16 November 2007
- Obligations offered by the Appellants – 16 November 2007
- Written representations – 30 November 2007
- Proofs of evidence – 15 January 2008. The Inspector made the point that, given the extent of the delay to the start date of the inquiry, he saw no reason why summary proofs should not be delivered at the same time as full proofs in accordance with the requirements of the Inquiries Procedure Rules.
- Rebuttal or response proofs – 5 February 2008.

21 The Inspector again underlined that only summary proofs would be read at the inquiry, and cases should not be prepared on the basis that witnesses would be able to range freely between their full and summary proofs. He would follow his normal practice of taking rebuttal proofs as read, given that there would not be sufficient time to prepare summaries of those proofs.

#### **NOTE OF FOURTH PIM AND ANY MATTER ARISING NOT COVERED ON THE AGENDA**

22 There was no issue raised under this head.

#### **TIMETABLING OF LISTED BUILDING EVIDENCE**

23 It was agreed that this matter would be best considered when the proofs of evidence dealing with listed building matters had been received.

#### **TIMING OF HEARING OF ANY COSTS APPLICATION**

24 Any such application would be heard immediately after closing submissions, but before the inquiry was formally closed. Because notice had already been given

of certain costs applications by the Council in relation to issues which had arisen in the proceedings to date, the Inspector mentioned that, should a different Inspector ultimately hear the inquiry, it would probably be possible for him to hear the costs applications relating to actions taken to date should that be considered appropriate. Given that the case was one in relation to which the Secretary of State had retained jurisdiction, decisions on applications for costs would also be determined by the Secretary of State, who would be able to deal with this on the basis of a report from the Inspector most closely involved in the proceedings concerned. It was agreed that this issue could be revisited at the appropriate time.

## **ANY OTHER BUSINESS**

25 The Inspector confirmed that his intention in relation to the order of presentation of cases remained as set out in paragraph 6 of the note of the third PIM, namely that, after introductory announcements by the Inspector, short opening statements of perhaps 20 minutes would be invited on behalf of Swayfields (SWA), 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 SWA
- 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.

Cross examination of each witness would take place after the evidence in chief of that witness.

The closing submissions of HA, BIA, SMBC, SEL and SWA would be heard at the end of the inquiry in that order. The closing submissions of other parties should normally be made at the conclusion of their case (though the Inspector would be ready to consider a request from any other party to make a reserved closing).

26 The Inspector mentioned that, on 26 March 2007, the Council had sent two letters to the Planning Inspectorate seeking Regulation 19 directions in connection with the environmental information supplied by each of the Appellants. He was aware that there had been correspondence between the parties in relation to those letters, but he had not seen any formal response to the Council from the Planning Inspectorate. He asked whether the Council were still awaiting a response, and whether in fact the matters raised in the letters were still regarded as live issues. Ms Sharif confirmed that replies from the Planning Inspectorate were still awaited, and that the issues raised in the letters were still considered to be live issues by the Council. The Inspector promised to pursue responses from the Planning Inspectorate to the two letters.

27 Mr Sullivan asked whether any further Environmental Impact Assessment would be required as a result of the detailed highway information which was emerging for the two schemes. In particular, he mentioned that the Swayfields scheme (of which he had recently received detailed plans) appeared to widen the motorway, a form of development which automatically required an Environmental Impact Assessment. He was concerned that any such assessment carried out should be properly publicised, with due time allowed for representations in response. The Inspector stated that he had not yet seen the detailed highway proposals, and was therefore not in a position to comment on the implications of them. He underlined, however, the importance of the issue being checked by those putting forward proposals which might require further environmental information. It would be extremely unfortunate if some procedural objection could be taken to the progressing of the inquiry on its revised opening date.

The meeting closed at 2:50pm.

*Michael Ellison*

INSPECTOR

12 June 2007