

## **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 a 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 a MSA

Council: Solihull Metropolitan Borough Council

---

## **NOTES OF SIXTH PRE INQUIRY MEETING**

Held on Monday 17 December 2007 at 1:00pm in the Council Chamber, Civic Centre, Solihull

---

## **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, which would open at 10:00am on Tuesday 12 February 2008, 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.

## **UPDATE ON APPEARANCES**

3. It was confirmed that Birmingham International Airport would not be appearing at the inquiry. BIA would rest on two statements of common ground (SCGs). The first was made with the Highways Agency and the National Exhibition Centre concerning options for improving motorway access from the M42. It was dated 19 March 2007. The second was made with Swayfields Ltd, and dealt with aviation issues, in particular aerodrome safeguarding and public safety. It was dated 14 November 2007.
4. It was also confirmed that Welcome Break did not now intend to appear at the inquiry, but would rely on written representations. The Inspector agreed that their written representations should be received by 15

January 2008, and that any specific evidence in response should be produced by 5 February 2008.

5. The Highways Agency were represented at this PIM by Mr Richard Kimblin of Counsel, but would be represented at the inquiry by Mr Peter Goatley.

#### **UPDATE ON WITNESSES TO BE CALLED**

6. Swayfields would be calling four witnesses, rather than the five or six previously notified. Solihull MBC would be calling three witnesses on Appeal B, and probably the same number on Appeal A. The Highways Agency would now be calling three witnesses rather than four. Hockley Heath Parish Council would be calling one witness rather than two. Other parties' intentions remained unchanged.

#### **REVIEW OF PROGRESS**

7. It was confirmed that Core Documents in connection with the inquiry were on deposit and available for consultation by the public. Arrangements to consult the documents should be made by contacting David Wigfield of Solihull MBC on either 0121 7048082 or by email via [dwigfield@solihull.gov.uk](mailto:dwigfield@solihull.gov.uk).
8. The Airport Master Plan had now been published, with a plan period to 2030. A new Airport Surface Access Strategy had also been published, with a plan period to 2012. Copies of both documents would be made Core Documents for the inquiry. The Airport Master Plan could also be accessed at <http://www.bhx.co.uk/Planning/351.pdf>
9. In relation to discussions between each of the Appellants and the Highways Agency, Mr Kimblin indicated that a SCG had been produced for each appeal. The position so far as the Highways Agency is concerned as regards Appeal B was as set out in the relevant SCG. In the case of Appeal A, however, since the SCG was produced, Swayfields had submitted revised proposals. The Highways Agency had responded to these by way of a letter from Neil Hansen to Brian Plumb of Boreham Consulting Engineers Ltd dated 14 December 2007, a copy of which had been sent to the Programme Officer. In it, the Highways Agency made the point that it would not be possible to pass detailed comment on the revised scheme in the time available before proofs of evidence were due to be delivered for the inquiry. It was agreed that the Programme Officer would copy this letter to all the Rule 6 parties, and also place a copy with the deposited Core Documents.
10. The point made in the letter was underlined by Mr Kimblin at the PIM. It would not be possible or appropriate for the Highways Agency to make a hasty assessment of the necessary departures required by any revised scheme. The Highways Agency evidence at the inquiry would deal with the scheme on which the SCG for Appeal A was based. To do anything other than that would prejudice the preparation of the Highways Agency case. Mr Kimblin was also concerned at possible prejudice to the position

of third parties arising from the late refinements proposed in relation to the scheme for Appeal A.

11. Ms Sharif suggested that, if the concerns of the Highways Agency were well founded, there could be consequences for the timetable of the inquiry. The Council had not yet seen the revised Swayfield proposals, and it was unreasonable for a party to be seeking to change the scheme less than a month before the due date for delivery of proofs of evidence. If revised proposals resulted in any adjournment or delay to the inquiry, it would be quite wrong for any part of the cost of that delay to fall on the public purse.
12. Mr Phillips stated that the revised proposals arose from a useful and constructive meeting between Swayfields and the Highways Agency held on 23 November 2007. That meeting, and the information provided at it, had been awaited for some considerable time. In fact, there still remained outstanding material which Swayfields were awaiting from the Highways Agency. The revised proposals amounted to no more than refinements, reducing the width of the central reservation, and thereby allowing adjustments to the widths of the carriageways and the provision of a hard strip. All this could be done within the existing overall width of the motorway. The revised plans had been posted to the parties on 13 December 2007. Solihull MBC was not the highway authority for the motorway. There would be no additional land take and no impact on ecology arising from the revised proposals.
13. None of the Rule 6 parties had received the copies of the revised proposals sent to them on 13 December by the time of the Sixth PIM.
14. Ms Sharif made the point that revised proposals affecting the motorway might have implications for roads in respect of which the Council was the highway authority.
15. The Inspector asked whether it might be helpful if Mr Ball chaired a round table discussion at which the outstanding issues could be identified and addressed so far as possible. As a first step, however, Swayfields and the Highways Agency agreed to meet during an adjournment of the PIM, with a representative of the Council and one representative of the third parties present as observers, to see whether a way forward on the revised scheme and the outstanding matters could be secured. This was agreed, and such a meeting took place before the close of the PIM (see paragraphs 31 and 32 below).
16. It was agreed that no environmental information was now outstanding.
17. It was agreed that SCGs and draft SCGs could be made inquiry documents at this time, so that they could be taken into account by all parties in the preparation of their evidence. The same line was agreed for the proposed Section 106 obligations (when available) and for the draft conditions which had been produced. In addition, the Inspectors agreed to provide, as quickly as possible, initial comments on the draft conditions, which could be circulated by the Programme Officer to the Rule 6 parties.

18. The Inspector reported that some 158 written representations had been received by the due date of 30 November 2007. These would be copied to each of the Rule 6 parties by the Programme Officer. Copies would also be deposited with the Core Documents.
19. It was reported that the inquiry would have to adjourn no later than 4:30pm on 13 March 2008 to allow another meeting to take place in the Council Chamber. Otherwise, the venue would be available on all the planned sitting days. It would be possible for parties to leave papers in the inquiry venue overnight and at weekends during the inquiry.

#### **PROOFS OF EVIDENCE – FORMAT AND ARRANGEMENTS FOR RECEIPT**

20. It was agreed by the main parties that there was sense in separating the evidence in relation to the two appeals. Each witness would in effect have two proofs. It was also agreed, however, that third parties need not follow this format if it would cause them problems to do so.
21. The question had been raised whether it would be helpful and secure a saving in inquiry time for there to be a joint case from the two Appellants on need. Following discussion, however, it was agreed that this issue should be pursued by each of the Appellants in their own way, to the extent that it was considered to be necessary. Mr Phillips made the point that the Secretary of State had made a clear decision following the earlier inquiry on the issue of need, subject only to any material change in circumstances.
22. The required format for proofs of evidence was as set out in the advice note issued by the Programme Officer following the third PIM. Further copies of that note were available from the Programme Officer if necessary.
23. Delivery of proofs (including response proofs) should be to the Programme Officer at 36 Campbell Street, Rugby, Warwickshire, CV21 2HY or electronically to [jdkemp@ntlworld.com](mailto:jdkemp@ntlworld.com). Documents sent electronically should be followed up with hard copies. ***Parties are urged to supply 13 hard copies of each proof for distribution purposes; if the requisite number of hard copies are not supplied this will delay the proofs reaching the parties.***
24. 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 FIFTH PIM AND ANY MATTER ARISING NOT COVERED ON THE AGENDA**

25. There was no issue raised under this head.

## **VIEWS ON LIKELY LENGTH OF INQUIRY**

26. There was no suggestion that the inquiry would be likely to run beyond the currently estimated allocation of time. The Inspector indicated his willingness to start earlier in the day or to extend sittings to Mondays or to full days on Fridays if that proved to be both necessary and possible. The general feeling was that the allocated time would prove to be sufficient so long as no complication arose as a result of amended highway proposals in connection with Appeal A.

## **TIMETABLING OF LISTED BUILDING EVIDENCE**

27. It now seemed that listed building evidence could be dealt with quite shortly by all the main parties. It was agreed that the Programme Officer would liaise with the parties over the timetabling of this evidence when the relevant proofs of evidence had been received.

## **TOWARDS A FIRST DRAFT PROGRAMME**

28. The Programme Officer had in fact produced a first draft programme, but the Inspector asked the parties not to use it for firm planning of resource allocation and availability at this time. It was simply an illustration of the likely sequence of events, without any reliable assessment of the possible time which would be taken by each event. It would be refined when proofs of evidence and estimates of cross examination times had been received.

## **TIMING OF ANY COSTS APPLICATIONS**

29. Any such application would be heard immediately after closing submissions, but before the inquiry was formally closed. It now seemed virtually certain that the Inspector would be able to hear the planned inquiry, and therefore no special arrangement would need to be made to hear any costs applications relating to the conduct of pre-inquiry matters.

## **ANY OTHER BUSINESS**

30. Mr Goodall mentioned that a revision of the Regional Spatial Strategy for the West Midlands was planned to be submitted to the Secretary of State early in the New Year. The Inspector indicated, however, that, in accordance with PPS12 and the companion document to PPS1, little weight would be attached to the provisions of an emerging document at such an early stage of its evolution. It was not unusual for decisions on planning matters to be taken while policy documents were under review.
31. The PIM adjourned at 2:40pm to allow discussions to take place between Swayfields and the Highways Agency with representatives of Solihull MBC and the third parties in attendance.
32. On resumption at 3:10pm, Mr Kimblin indicated that promises had been made about carrying forward the discussions between Swayfields and the

Highways Agency, but he said that his reservations about responding to the revised proposals remained. Mr Phillips said that the Highways Agency now knew what was required, and had indicated that they would respond as soon as possible. Both Counsel considered that it was not necessary to provide further detailed information to the PIM, and that it would not be necessary for a round table discussion to be chaired by the Assistant Inspector as suggested at paragraph 15 above.

33. The meeting closed at 3:15pm.

*Michael Ellison*

INSPECTOR