

NOTE OF PRE-EXAMINATION MEETING ON 22 SEPTEMBER 2016

THE FALKIRK COUNCIL (LAND SOUTH OF MAIN STREET, SHIELDHILL) COMPULSORY PURCHASE ORDER 2014.

DPEA reference CPO-240-1: DPEA case officer: Ms Fiona Manson

Reporter: Frances M McChlery

Meeting Venue: Conference Room, Offices of the DPEA, 4 The Courtyard, Callendar Business Park, Callendar Road, FALKIRK, FK1 1XR.

Persons present

For Falkirk Council

Mr Craig Whelton, Partner, Burness Paull LLP
Mr Alex Muir, solicitor, Falkirk Council

For the Objectors

Ms Karen Hamilton, Partner, Brodies LLP
Mrs Wendy Barr
Mr Garry Barr

Observing; Mrs Leona Ferguson

Introduction.

1. The pre examination meeting concerned the proposed compulsory purchase order entitled The Falkirk Council (Land South of Main Street, Shieldhill) Compulsory Purchase Order 2014. The order has been made by Falkirk Council using their powers under the Land Reform (Scotland) Act 2003 to establish and maintain a core paths network in their area. Objections have been made to the order which have not been withdrawn. These include objections from Mrs Wendy Barr and Mr Henry James (known as Garry) Barr, who are owners of the area of land proposed to be acquired and who are accordingly statutory objectors. Other persons have also raised objections to the order.

2. Frances M McChlery, a reporter with the Scottish Government Planning and Environmental Appeals Division (DPEA) has been appointed by the Scottish Ministers to hold a public inquiry into the order and the objections to it and report to them.

3. The reporter had called the pre-examination meeting to discuss the arrangements and procedures to be followed in the public inquiry.

Legal framework for the proceedings

4. The proceedings will be governed by the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and the Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998, and SODD Circular 17/98, in particular Annex A. This being said, following more up to date good practice for public

inquiries, some aspects of the matters which require to be examined can be considered using written submissions procedure, or hearing sessions, as part of the inquiry process.

Reporter's analysis of the issues which she will require to include in her report to ministers

5. A public inquiry had been previously arranged for this matter and then cancelled, so that statements of case and documents had previously been submitted. The matter had then been sisted for a second compulsory purchase order to be served. The parties had also prepared updated outline statements of case in preparation for this meeting. From this material the reporter has concluded that she will require information on the matters listed below.

Preliminary legal questions relating to the validity of the Order and the scope of the inquiry.

6. The order under consideration was only served on Mrs Wendy Barr, but she is not the only person with an interest in the land. Following the sist the Council has served a second compulsory purchase order on Mr Henry James Barr in respect of his interest. This second order is called The Falkirk Council (Land South of Main Street, Shieldhill) (Number 2) Compulsory Purchase Order 2015. Other than the service on a different person, the two compulsory orders are identical in scope and purpose. Mr and Mrs Barr have both made objections to the second order. The reporter has been instructed by the Scottish Government to consider the objections to the second order as part of her inquiry on the first order and to report to Ministers on the merits of this objection also.

7. The objectors to the first order intend to maintain their objection to the legal validity of the first order, arguing that it does not fulfil the requisite legal requirements for a compulsory purchase order. The council considers that this matter has been settled and that this argument should not be further considered as part of the inquiry.

The order

8. From the council's outline statement of case, in summary, the reporter anticipates that the matters to be considered relating to the order should include the council's overall justification for the compulsory acquisition order; the council's core path plan and its history; public benefit, etc.; the council's proposals for the land including the proposed bridge; the extent of the land required; the funding structure for the implementation of the proposals; public support for the council's proposals; any relevant national policy; and local policy on core paths; any other local policy which the council considers relevant, and any responses to the matters raised in objections.

The objection

9. Summarising from the objectors' statement of case, the reporter anticipates that the matters relating to the objection should cover the objections by Mr and Mrs Barr generally; general principles including the need for the order; the effect on the Barrs

personally were the order to be confirmed and the project to proceed; the extent of the land sought to be acquired; issues with the councils' proposals for the land and the promotions process; permitted development rights; and other wider amenity issues; anti-social behaviour; the Barr's alternative uses for the land proposed to be acquired and the effect on development potential; the council's proposed servitude right of access and legal mechanisms to secure it; the likelihood or otherwise of implementation of the council's plans for the acquired land; and the better alternative route for a core path near Burnside Farm.

Other objectors

10. The reporter will have regard to any other points raised by other objectors (including the late Mrs G McNaughton).

Matters likely to fall outwith the scope of the inquiry:

11. Various matters will fall outwith the scope of the inquiry and Ministers' considerations, such as any negotiations between the parties, the level of compensation, and severance and injurious affection, as least as these concepts are used in compensation questions. This said, it will be open to the objectors to argue that the order will adversely affect their landholdings through severance or other adverse effects sufficiently badly so as to outweigh any public benefit which may flow from the scheme.

12. The council may intend to carry out accommodation works as part of their proposals, which are usually works or other proposals undertaken to moderate the effect of the scheme. The reporter can have regard to any such accommodation works proposed by the council in her report, but it should be understood that Ministers will not have power to modify the scheme as it is proposed, and it is up to the council to decide what works they intend to include in their scheme.

The reporter's conclusions and directions as to further procedure

13. Having considered the comments from the parties the reporter has decided on the following approaches to the matters to be considered.

Written submissions

Written submissions: matter 1 - 'The validity of the order'

14. On the information currently available to her the reporter considers that she is not at present able to take a view on whether issues relating to the validity of the order should be included in her report. Taking account of the fact that the objectors have not had an opportunity to make detailed and updated representations on this point since the making of the second order, she is not at present prepared to omit consideration of this issue from her report to Ministers.

15. It would be convenient to all concerned to have the objectors' attack on the validity of the order fully canvassed at an early stage, if possible in good time in

advance of the inquiry sessions. The reporter considers this can best be done by an early exchange of written submissions on this issue.

16. The Objectors will provide their submissions on this matter first, by **18 October 2016**. The council is to respond by **1 November 2016** to complete the exchange. All submissions should be accompanied by copies of any legal authorities cited.

Written submissions: matter 2 - 'The council's proposals'.

17. The reporter considers that it would be expedient to have the council give details of their proposal for the land in the form of a comprehensive written submission, with the applicant making comments.

18. This matter should include information as to the council's proposals for the land and all related matters, including:

- The development of the project proposals,
- the preferred design,
- any engineering considerations,
- cost, funding, and financial programming of the project,
- internal and external consultations,
- planning permission (or equivalent),
- natural heritage implications,
- flooding,
- environmental consents (e.g. the Water Environment (Controlled Activities) (Scotland) Regulations 2011, or similar, and

any other aspects the council considers Ministers should be aware of on this topic.

19. The council is to provide a written submission no later than **1 November 2016**. The objectors are to provide their comments by **15 November 2016** (14 days later) which will complete the exchange.

Written submissions: matter 3 – 'Policy considerations'

20. The reporter considers that it would be expedient to have the views of parties in written submissions as to which policy statements, national or local, should be taken into account by Ministers in considering whether the order should be confirmed.

21. On reflection, the reporter considers that any planning policy matters relating to the objectors' development proposals for their land should form part of the matters considered in the public inquiry sessions, and should not be included in these submissions.

22. These submissions will take the form of parallel exchanges. Both parties are to provide written submissions by **25 October 2016**. Comments on other parties' submissions are to be lodged and exchanged by **8 November 2016**.

Core inventory of documents

23. The council has offered to prepare a list of core documents. If possible this should be agreed between the council and the objectors. The inventory of core

documents is to be finalised by the council by **11 October 2016** to enable the list to be used in the full statements of case. The council will be responsible for the production of one paper set of the core documents for the reporter and the public, but otherwise all parties will be responsible for compiling their own sets of core documents. Extracts of the relevant sections only of large documents will be acceptable, so long as these are agreed.

Full statements of case

24. Full and comprehensive statements of case giving fair prior notice of all elements of the parties' respective cases, and including the names and qualifications of any witnesses and the matters they will speak to, and a list of the documents which will be referred to in evidence, are to be submitted to the DPEA and exchanged by 5 pm on **Tuesday 18th October 2016**.

Public inquiry session

25. The public inquiry sessions will include all matters not dealt with in written submissions. The inquiry will now take place on **Tuesday 13 December 2016, commencing at 10.00am**

26. Subject to the information yet to be submitted the reporter estimates that the inquiry may be able to be completed in one day, but that some further time on a second day may be required. Parties are asked to plan accordingly.

27. The timescales for the lodging and exchange between parties of documents, etc. for the public inquiry sessions are as follows:-

Documents: 15 November 2016 (by 5 pm)

Precognitions: 29 November 2016 (by 5 pm)

Precognitions in rebuttal, if required: 6 December 2016 (by 5 pm)

28. Precognitions should be no longer than 2000 words. It is important to note that precognitions should not incorporate any documents in the form of appendices or illustrations – all such material should be lodged on the due date as documents.

29. In the inquiry the council will be asked to present their case first, followed by the objectors.

30. Detailed arrangements for the lodging of final submissions, which will be in writing will be fixed at the close of the inquiry. The reporter envisages parallel exchanges of submissions, to be concluded by 23 December 2016. The first exchange will be completed by Monday 19 December 2016, with comments in response by Friday 23 December 2016. This will be confirmed in due course.

Site visit

31. The reporter has visited the site, but will also carry out a further accompanied site visit after the inquiry has closed, the details of which will be agreed at an appropriate time.

Venue for inquiry

32. The venue for the inquiry will be announced in due course.

Other matters

Interested persons.

33. The reporter will have regard to all third party representations which have been made to date. The DPEA has written to all such persons to inquire whether they wish to participate in the inquiry, but none of these persons have indicated that they intend to do so.

34. Mr Angus MacDonald MSP has indicated an interest in participating, but it is currently unclear to what extent he wishes to do so. The DPEA will clarify this and advise parties.

The alternative site for the council's proposals

35. The objectors have argued that another path beside Burnside Farm would be a better alternative location for the council's proposals. They have produced a plan which identifies the land in question, and provided some information as to their understanding as to ownership and other interests in this land. The persons who own the land appear to be Mr James Taylor and Miss Anne Taylor, who have previously made representations. The DPEA has written to them to ask them whether they wish to take part in the inquiry, or to make further representations. A copy of the note of the pre-examination meeting will be sent to them for their information. If they decide to participate in the public inquiry the other parties will be informed, and all documents will require to be copied to them.

Publication of documents etc

36. All inquiry documents will be published on the DPEA website. The council will be asked to make all inquiry documents available to the public and have advised that this should be at the council's planning offices at Development Services, Abbotsford House, David's Loan, Falkirk FK2 7YZ. One paper copy of all materials will be required for the use of the public at the inquiry venue, so all parties should provide one hard copy of all documents and precognitions, to be sent to the council for public consultation and this purpose. The council is asked to bring this set to the venue for the inquiry.

Electronic working

37. The DPEA supports the use of electronic information wherever possible. All communications will take place via email, unless anybody advises the DPEA that this is inconvenient for them, when alternative arrangements will be made. All documents and precognitions may be lodged and exchanged via email. This being said, one paper copy of all documents, precognitions, and submissions will be

required for the public reference as mentioned above, and the reporter wishes to have one set of paper copies of all documents for her use.

DPEA contact details

38. Anyone wishing to contact the DPEA about the case should contact the case officer, Ms Fiona Manson, at

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Frances M McChlery

Reporter

29 September 2016