

**A5 – M1 LINK (DUNSTABLE NORTHERN BYPASS)
PUBLIC INQUIRY**

PROOF OF EVIDENCE

**JOHN PRIEST
REPRESENTING**

**ST ALBANS DIOCESAN
BOARD OF FINANCE AND
OLD LAND SECURITIES
(Obj/8)**

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Our Ref: JCPOP1-010
Your Ref:

17th January 2012

Dear Inspector,

DEPARTMENT OF TRANSPORT
THE A5 TRUNK ROAD (A5-M1 LINK DUNSTABLE NORTHERN BYPASS)
ORDER 20--
THE DRAFT TRUNK ROAD (A5 - M1 LINK DUNSTABLE NORTHERN BYPASS)
ORDER) COMPULSORY PURCHASE ORDERS No 1 & No 2 (HA No.) 20--
and related Side Roads and Detrunking Orders

**REPRESENTATIONS ON BEHALF OF THE ST ALBANS DIOCESAN BOARD OF
FINANCE & OLD ROAD SECURITIES PLC TO THE ABOVE PROPOSED
ORDERS**

1. The Interests of the Objectors

1.1 These representations are made on behalf of The St Albans Diocesan Board of Finance (SADBF) of 41 Holywell Hill, St Albans, Herts, AL1 1HE and Old Road Securities PLC. (ORS) of The Gables, Westfield Road, Oakley Bedford, MK43 7SU.

1.2 SADBF is the freehold owner of 131 acres (53) hectares) of tenanted agricultural land on the north side of Houghton Regis affected by the proposed Link Road. Parts of SADBF's land are proposed to be acquired for the Link Road Scheme partly for the construction of the road itself and also additional land is proposed to be acquired for ecological mitigation and drainage works and the provision of paths and access roadways.

1.3 SADBF's land is diocesan glebe land and forms part of an area of land on the north and east sides of Houghton Regis largely at present in agricultural use but which forms part of the Houghton Regis Development Area identified for residential and employment development with related facilities. ORS acts for SADBF in making arrangements to enable the development of SADBF's land.

2. General basis of objections

2.1 The Link Road Scheme has been under consideration by Department of Transport and the local authorities in one form or another since 1988 (Proof of Ms K. Green, Para 5.2). The Link Road is not a requirement for development of SADBf's land. Nevertheless in principle SADBf and ORS support the provision of the Link Road scheme proposed by the draft Scheme. However, as stated in our objection letter of 26th February 2010, SADBf and ORS object to the manner in which if the Orders were made as proposed by Highways Agency as such Orders would have material and unnecessarily adverse effects upon SADBf's land interest prejudicing the development of the land which is a major part of the Houghton Regis Development Scheme.

2.2 At the time of the previous submissions which we made on behalf of SADBf & ORS on 8th June 2010, the Link Road and the proposed development had to be considered as independent schemes. The road, if approved, was proposed to be delivered independently of the Development Scheme with the road works starting in 2012. The Development Scheme could have proceeded independently of the Link Road and almost certainly, having regard to the early stage in the Local Development Framework process then reached would not have commenced until after the anticipated date of commencement of the road. Now to large extent the delivery of the Link Road is likely to be dependent upon external funding:

- (i) £5.00m from Central Bedfordshire Council under a Section 278 Agreement dated 18th April 2011 (Inquiry Document DD155); and
- (ii) £45.00m (less possible land compensation allowances) under a Section 278 Agreement dated 16th September 2011 (DD156) agreed to be made by Friends Life and Lands Improvement Holdings the payment of the bulk of those moneys being conditional upon the grant of planning consent satisfactory to Friends Life & LIH for development of the Houghton Regis Development Area.

2.3 The evidence of Highways Agency is that, if the Orders are made, advance works would start in 2014 and the Link Road carriageway completed in 2016 (Proof of Mr A M Goodwin, Para 3.2). If provision of the Link Road is dependent upon the above contributions as the moneys proposed to be contributed by Friends Life and LIH are dependent upon the grant of Satisfactory Planning Consent for which the Agreement DD156 provides an application is to be submitted by the end of 2012 time is very short for such a major scheme to be carried through the planning process.

2.4 SADBf and ORS are not party to any agreement or arrangement for the provision of road funding. However it is clear that the delivery of the Link Road in the foreseeable future is dependent upon a viable development scheme being achieved. Therefore it is essential, to an even greater degree than was apparent at the time of our June 2010 submissions that the road scheme is effected in a way which recognises and is properly related to the adjacent development. When Highways Agency's team no doubt reviewed their evidence prepared in 2010, in course of preparation of their current evidence from the general tenor of the 2011 statements and proofs no particular regard appears to have been given to the connection between the development and the Link Road. There is reference to the funding contributions mentioned above in Ms Karen Green's Statement of Case and Overview Proof of Evidence Paragraph 3.32-3.35 but no reference to enabling development in Ms Green's evidence of the objectives of Highways Agency. Paragraph 5.38(r) refers to supporting local and regional development plans. In the events which have occurred since 2010, the status of regional development plans is uncertain and the Joint Luton & South Bedfordshire LDF was abandoned before the Core Strategy stage had made any meaningful process. No new local policies have yet emerged in place of the joint LDF. Having regard to the requirement in the 16th September 2011 S.278 Agreement for a planning application for the development to

be submitted for the site by the end of 2012 the development scheme is only likely to emerge without going through conventional LDF Core Strategy and Sites Allocations stages if the stated intention of Highways Agency to commence construction of the Link Road in 2014 is to be met

2.5 It is therefore disappointing that, knowing of the submissions made in 2010 and the fresh imperative given to them by the link between the Development Scheme, the Link Road Highways Agency's team new evidence seems to essentially simply reiterate the responses previously given and not in any material way address the issues raised.

2.6 Having considered the Statement of Case and supporting evidence of Highways Agency SADB and ORS remain very concerned that the Link Road Scheme will most probably have a substantial adverse effect upon the Development Scheme contrary to an expressed objective of the Link Road Scheme.

3. The Houghton Regis Development Scheme

3.1 Land north of Houghton Regis has been identified as being an appropriate location for substantial development through a number of policy stages. Growth of Luton/Dunstable/Houghton Regis is very constrained by the South Bedfordshire Green Belt. The locational advantages of land to the north of Houghton Regis were recognised in the Bedfordshire Structure Plan Deposit Draft in 2002 which identified the area for strategic release from the Green Belt. That Plan was overtaken by the introduction of regional planning which delayed the scheme but, following three years of growth area studies, consultations and a public inquiry the Milton Keynes South Midlands Sub Regional Planning Strategy adopted in 2005 concluded that land north of Houghton Regis should fall within an area of search for green belt release. Consultation by the local authorities on a new Core Strategy began in 2006 resulting in April 2009 the Houghton Regis Development Area being identified in the Joint Planning Committees Preferred Options Document as a location for growth and suggesting an allocation of 7,000 houses and new employment with supporting social and community infrastructure. The scheme was seen as having regeneration benefits in providing new job opportunities, enhanced education facilities, better social and community infrastructure and assistance with the provision of needed infrastructure. It is hoped the Development Scheme will help with lifting the image of the Houghton Regis area and become be an engine for growth. The Joint Local Development Framework collapsed in disarray.

3.2 Whilst the provision of the A5-M1 Link Road will be good for the local community as well as providing wider transport benefits SADB and ORS are concerned that the implementation of the Link Road proposals in the manner provided in the draft Orders will hinder the delivery of the equally valid benefits of the development of land on the north side of Houghton Regis.

4. Failure of Highways Agency to fulfil their stated objectives

4.1 We were not supplied with a copy of the Department for Transport brief to Highways Agency for the Link Road Scheme in 2010. We have not been able to establish the background against which Highways Agency's Link Road Scheme has been formulated. Their evidence (as the Proof of Ms Green Para 5.38) is that their objectives in formulating the Link Road Scheme and which they claim will be fulfilled include that the road scheme:

Economy

(m) Should aim to support local development plans, economic growth and employment

Accessibility

(n) Should minimise the impact of the severance of local thoroughfares for non-motorised users and seek to implement opportunities to enhance non-motorised user access to and use of the Public Right of Way Network affected by the scheme

Integration

*(r) Should support local and regional development plans and local policy:
Interfaces*

(s) Shall take into account any development in the local area that could affect traffic flows on the new link road and the surrounding road network.

4.2 Ms Green concludes her review of the stated objectives:

5.39 The Highways Agency is satisfied that the Published Scheme provides the most appropriate solution for satisfying these objectives. Appraisals of the Published Scheme are explained in the specialist Proofs of Evidence.

5.40 It is the Highways Agency's case that they can demonstrate that the benefits associated with the Published Scheme far outweigh any disbenefits."

4.3 SADB and ORS however draw the Inspector's attention to a fundamental failure of the Highways Agency in formulating the Link Road Scheme namely that they have had little or no regard to the Houghton Regis Development Scheme in formulating their proposals. This was illustrated by the tenor of their letter dated 10th May 2010:

"I note the aspiration for development of the SADB land is yet to be realised with the draft Local Development Framework still being consulted upon and no planning application has been submitted"

4.4 As considered in these submissions it will be an unfortunate consequence of the Link Road Scheme if approved and implemented as the Line Orders and Highways Agency's evidence suggests, rather than supporting emerging local development will hinder the effective delivery of an important development scheme has also now become an important source of funding for the Link Road as set out above. In effect the failure of the Highways Agency in their evidence to allow for the Development Scheme does not recognise the fundamental relationship which has now arisen between the Development Scheme and the Link Road. That relationship may be pecuniary but, if the Development Scheme is less viable as a result of that failure of Highways Agency to recognise and allow reasonably for the Development Scheme, the prospect of very substantial private funding will be adversely affected and thus the delivery of the Link Road, will be prejudiced

4.5 The key objection of the Diocesan Board and ORS to the Link Road Scheme as proposed is the extent of land proposed to be annexed via the compulsory purchase procedure when some other arrangement could be agreed which would be more practicable and appropriate which would enable the delivery of the Link Road but also ensure the delivery of the Development Scheme would not be hindered by the Link Road Scheme. Old Road Securities and ourselves successfully made

arrangements of that kind in collaboration with Bedford Borough Council for residential and employment purposes at Wootton in relation to the A421 Bedford M1 Junction 13 Scheme which enabled objections to be withdrawn before the conclusion of the Inquiry. The road is now open to traffic and development of the allocated sites should commence shortly.

4.6 There are particular aspects of the extent of the land proposed to be acquired under the draft Orders for the Link Road Scheme which, if the land was authorised to be acquired, would hinder development of the SADBf Land. SADBf and ORS have to also be concerned that similar concerns also appear to apply to land not in the ownership of SADBf which may, if the orders were to be made as the drafts, hinder the delivery of the entire Houghton Regis Development Scheme. These matters will be considered in more detail below.

5. Particular concerns of SADBf & ORS

5.1 No objection is made to the compulsory acquisition of the land required for the construction of the Link Road itself, embankments and other parts of the actual road. However in consideration of the Link Road scheme ORS have identified a number of issues related to the extent of the land proposed by the draft Orders to be acquired by the Secretary of State incidental to the provision of the Link Road which are the subject of more detailed objections in expansion of the general objection set out above.

5.2 Sundon Road – obstruction of development access

(1) SADBf and ORS rely upon Highways Agency's representation set out on the second page of their letter dated 10th May 2010 that the small increase in level of Sundon Road will not prevent difficulties in the installation of the junction required to serve development. However it is not accepted only essential land will be taken for the Link Road Scheme. The land taken is in excess of the land actually required for the roadworks themselves with the result the development land owned by SADBf may be isolated from the new section of Sundon Road when constructed by land outside highway limits but which as a result of compulsory purchase would be in the control of HA. This applies to Plot 1/1 belonging to SADBf which is claimed to be "required" for the construction of a ditch feeding to Ouzel Brook and to ensure maintenance access is available. The result is to take away from SADBf control of land it requires to deliver its own road and drainage works. The Compulsory Purchase Order should be modified so that the Secretary of State may only acquire a right to enter upon Plot 1/1 for the purpose of providing widening and deepening of the roadside ditch. Maintenance of the ditch does not require specific rights over land of SADBf. The drainage would be safeguarded by the powers and sanctions of highways authorities under Section 100 Highways Act 1980.

(2) Although SADBf is not directly affected as landowner the same objection to unnecessary and/or excessive compulsory purchase of land rather than acquisition of rights in relation to Plot 1/3G on the opposite side of Sundon Road. This will prejudice SADBf by hindering the provision of a spine road linking the development areas on the south side and the north side of Sundon Road.

5.3 Ouzel Brook – inappropriate and unnecessary compulsory purchase of the watercourse and adjacent land

(1) Parts of the bed and land on the banks of the brook are proposed to be compulsorily acquired comprising Plots 3/1L and 3/1D in the ownership of SADBf. Also rights are proposed to be acquired from SADBf over Plot 3/1F which appears to be approximately 10 metres in width with the stated intent of cleansing widening

deepening and maintaining 110 linear metres of the bed of Ouzel Brook Highways Agency's response in their letter dated 10th May 2010 to our objection to the compulsory purchase of the brook was to suggest that as SADBf would retain ownership up to the centre line of the brook they would continue to have access to the brook. However this would prevent SADBf in the course of development of its land (probably as part of the comprehensive drainage scheme including neighbouring land):

(a) constructing structures, headwalls control structures spillway aprons, bank reinforcement, attenuation works and the like in the brook or widening or deepening it or raising the northern bank to contain it.

(b) providing bridges linking to the bridleway providing access from the development area to the path network and wider countryside

(c) incorporating the brook and land lying on the north side of the brook in the comprehensive ecological scheme which will be required to be implemented related to the Development Scheme

(2) It is therefore proposed:

(a) the Order be modified so the Secretary of State may only require rights rather than outright acquisition of the northern half of the brook and banks in similar terms to those proposed in the draft Order for Plot 3/1F; and

(b) The extent of Plot 3/1F over which the Secretary of State will acquire rights is reduced to three metres in depth measured from the southern bank of the brook.

5.3 Loss of ownership of paths

(1) If HA compulsorily acquire land over which public rights of way are or will run (eg Plots 3/1D and 3/1H) SADBf's ability to upgrade the paths to serve the development or divert them or to integrate the land into the Development Scheme will be constrained.

(2) Highways Agency have stated the sites of new paths would be returned to the landowners following dedication as public rights of way after which the landowner might seek to divert the paths in the ordinary way. However if the Orders were made as drafted in relation to the path located on Plot 3/1D SADBf could only do so on the south side of the brook as the land on the north side of the brook would be in the ownership of (or at risk of purchase by) the Secretary of State. Indeed the land in Plot 3/1D on which Footpath 44 would be located would apparently appear to be an exception to any general intention of Highways Agency to return land annexed for the provision of paths. The strip proposed to be acquired for Footpath 44 is not be intended to be returned as stated in Highways Agency's letter dated 10th May 2010 "*...it is the Highways Agency's intention to take all land between the brook and the A5/M1 Link into their ownership no access from the north of this plot would be required by SADBf*". This would not only prevent relocation but also prevent links from the development area across the brook onto the path save:

- (i) beyond the western end of SADBf's land by the farm roadway (plot 3/3D). That access roadway would not be in the control of SADBf so could not be upgraded or dedicated as part of the maintenance scheme for the development of SADBf's land without involvement of the Agency or third party landowner to whom the Agency might return ownership of the track; or

- (ii) at the eastern end somewhere on Plot 3.1H if and when Plot 3/1H is returned

(3) HA may state that it is their intention to return control of the land on which other paths are to be located to the landowner once paths have been created incidental to the Link Road works. However the effect is before entry may be taken the land over which the public right of way is proposed to be located cannot be integrated in the Development Scheme as it is under risk of compulsory purchase whereupon it would be vested in the Secretary of State for an unknown period after which it might be returned to the landowner. After a road is opened it usually takes a long time to finalise land take and other matters especially where compensation issues have also to be determined. That would not be a sufficiently firm basis on which a planning application could be formulated and development arrangements made. If the Orders are made the effect is to isolate probably for several years, parcels of land on which integrated development could be carried out under the Development Scheme. For example acquisition of Plot 3/1H would deprive landowners of any rights to further divert or construct works over or under the land compulsorily acquired the ownership whereof had or might become vested in HA.

5.4 Excessive Environmental Mitigation Areas (particularly Plots 3/1E and 3/1I)

(1) We refer again to the intention of Highways Agency stated in their letter dated 10th May 2010 to annex ownership of and permanently retain ownership of all land belonging to SADBH lying between the centre line of Ouzel Brook and the cutting in which the new road will be constructed. This area of land principally comprises Plots 3/1E and 3/1G but also includes 3/1D (FP 44 corridor) and 3/1I (northern half of the bed of the brook).

(2) The Link Road will run in a cutting on the north side of the area of land so the state of the corridor between Ouzel Brook and the line of the Link Road is of relatively limited importance in integrating the Link Road into the landscape – see Proof of Mr Thomas Jonson Para 5.4.1:

“Since the A5 - M1 Link Road between Ch 2850 and Ch 3550 would be operating in deep cut the impact on the landscape would be assessed as low for this section of the Scheme

(3) The compulsory purchase of the corridor of land lying between Ouzel Brook and the Link Road is suggested in the Agency’s letter dated 10th May 2010 as being justified because:

“The land on the north side of the brook is important locally as one of the few semi natural habitats (as described in detail on the Environmental Statement (ES)”.

(4) The letter then goes on to make an assertion that:

“Its protection is therefore an important part of integrating the (Link Road) scheme into the environment ...Avoiding impact to this area was therefore an important objective of the Scheme’s development in offering protection to it”

(5) This is then characterised as:

“... this is an important feature in offsetting the impact of the (Link Road Scheme “Retaining and enhancing this wildlife corridor is part of the (Link Road) Scheme overall”

These assertions confuse "essential mitigation" required as a result of the Link Road scheme for which suitable rights would need to be acquired and offering protection for what is claimed in the letter to be a semi natural habitat. No regard is had to the likely use of this land (Plots 3/1E and 3/1I) as part of the scheme for development including the adjacent SADB land.

(6) Ms Stephanie Peay in Para 2.12 of her Proof appears to give little credence to the Development Scheme characterising it as:

"There is a possibility of extensive urban development between Dunstable and the Published Scheme which would significantly change the land use south of the Published Scheme...." but concludes "for the purpose of the assessment existing uses were assumed to continue with no net gain or loss of semi natural habitats."

This appears to be a fundamental flaw in Ms Peay's evidence now the Development Scheme and the Published Scheme are closely intertwined by £45.00m from owners of significant parts of the Development Area conditional upon the grant of Planning Consent satisfactory to them for the development.

(7) The intended use as described in Para 3.18 of Ms Peay's proof is:

"On the south side of the (Link Road) Scheme between the new road and the Ouzel Brook area there would be an area currently in arable production that would be cut off from the field. At the west end it would be integrated with Ouzel Brook scrub by new planting. On a central part it would be seeded as species rich grassland. The aim would be to re-create grassland next to Ouzel Brook. There are species characteristic of unimproved grassland still remaining in the valley where they have not been shaded out by growth of scrub" (our underlining)

(8) In Para 4.13 Ms Peay refers to a loss of grassland :

"the overall loss of grassland to the Scheme would be 7ha all improved grassland from the horse paddocks at Grove Farm..... No areas of species rich grassland would be lost to the Scheme. There would be a net increase in the area of grassland". (our underlining)

(9) In Para 3.19 of her Proof Ms Peay makes reference to creation of

"...a new wetland area which would connect the attenuation pond no.3 to the Ouzel Brook. The need to bring the outfall to the stream at an oblique angle gives the opportunity to open out what would otherwise be a steep deep ditch into the existing stream valley. This would improve the value of the drainage outfall as an area of new habitat". (our underlining)

(10) These objectives of Highways Agency, taking up what is seen as an opportunity to improve the ecological quality of an area adjacent to the Link Road by providing an area of new habitat may be worthy in themselves. However the evidence does not indicate the land is being acquired as "essential mitigation" for the Link Road Scheme but rather as using the means of compulsory purchase incidental to the Link Road Scheme as providing a method of delivering environmental improvements. That would not be a proper use of compulsory powers appropriately related to the delivery of the road. It would not as Ms Peay seeks to suggest in Para 5.10 of her Proof "essential to the Published Scheme".

(11) If the land was not taken between the new road and the Ouzel Brook Ms Peay accepts (Para 5.10)

"whilst there would probably be enough habitat elsewhere in the Scheme to step back from a Large Adverse Effect the residual effect would reasonably be assessed as Moderate Adverse if the full provision of habitat creation within the Scheme is not carried out"

(12) The land proposed to be acquired could be retained by SADBf and enhanced as an area of natural amenity land with public access by the means of incorporation in the landscape and open space provision incidental to the Houghton Regis Development Scheme/ That would also be likely to secure the maintenance of the land in that state over a far longer period than the term of 15 years adopted by Highways Agency. Following normal practice the local planning authority would as a condition of the development consent or an obligation incidental to the consent the delivery of the facility in accordance with an agreed scheme within a specific timetable. The local authority would also require the developer to make funded arrangements to ensure long term maintenance (generally considered as arrangements sufficiently strong and with funding to ensure proper maintenance "in perpetuity"). Ms Peay does not deny this but now suggests in Paragraph 5.11 of her 2011 Proof that such arrangements as part of the Development Scheme are somehow objectionable it would be "double counting" to treat any landscaping and habitat enhancement related to the road, if the plots were acquired for the Published Scheme. This argument cannot be sustained:

- (i) An objective of SADBf is to use the land for public access and amenity and there is no suggestion that is incompatible with the planting proposed by Ms Peay. There are a number of areas of high quality chalk habitat of varying sizes on the periphery of Dunstable and Luton managed by local authorities and conservation organisations to which there is virtually unfettered public access for amenity and recreation. Mrs Peay does not show there is anything so special about this area proposed for environmental mitigation for the Link Road that it has to be controlled by the Highways Agency and thus not capable of being made available for proper and compatible public use as part of the development scheme.
- (ii) Ms Peay assumes (without evidence) the land will be required for ecological mitigation for the Development Scheme. Maybe that will be the case but it has yet to be established. However if double counting of the kind suggested by Ms Peay might apply to the plots that simply emphasizes why the plots should not be compulsorily acquired for the road scheme. The plots use for the development scheme should properly take priority any such objective related to the road scheme. On the one hand the development area cannot be enlarged to find additional land for open space and mitigation as it is constrained by the urban area, the M1 motorway and the Link Road. The effect, if the land is compulsorily acquired, will be that it cannot be incorporated in the development area to which it will functionally be closely related. On the other hand there are very extensive areas of land, which Highways Agency might utilize to meet their mitigation objectives.

(13) SADBf was prepared to collaborate with Highways Agency to ensure the land might if needed have a dual role in providing mitigation had it been necessary for the road and also landscape mitigation for the development scheme. The land is likely to be more appropriately required than landscape mitigation of the Link Road and most probably public amenity use as open space incidental to the Development Scheme.

(14) The Inspector is therefore requested to consider and recommend that the exclusion of this area from the Link Road scheme save for:

(a) the provision of attenuation pond 3: and

(b) the acquisition of rights rather than outright acquisition to the extent necessary for the upgrading and maintenance of Ouzel Brook to provide for drainage of the Link Road and diverted watercourses and the attenuation pond and

(c) land required for dedication to provide Path 44 where necessary such acquisition to on the basis of quick dedication followed by immediate return of ownership of the path land to the landowners. If an agreement with Highways Agency was negotiated this arrangement would not be needed as the provision of land for the path could be secured in the agreement by SADBf undertaking to dedicate the path itself as necessary failing which the Agency could under the Orders acquire the land compulsorily.

5.5 Plot 3/2D (Land belonging to Aldred Family)

This area lying to the west of FP 5 described as arable/scrub land 3793 sq metres is included in the Orders but a large part if not all of it does not appear to be proposed to utilised for road works, drainage or landscaping/ecological mitigation (see Environmental Masterplan Sheet 3 in Ms Peay's appendices). This land to which ready access could be obtained would appear equally suitable for provision of species rich grassland if such were established to be required as part of the mitigation works for the Link Road Scheme. The section of the brook also included in this plot (albeit only the northern half of the watercourse) would perhaps better serve the objective of improved flows as it is downstream of an attenuation pond outfall.

6. Conclusions

St Albans Diocesan Board of Finance and Old Road Securities PLC maintain their objections to the proposed Orders. They request that the Inspector recommends that the draft Orders are modified to exclude land and/or to limit the Secretary of State's powers under the orders to acquisition of rights rather than acquisition of land on the basis proposed above.

Yours faithfully

Williams & Co.