

## Justifying the acquisition of land: the promoter's perspective



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- Preparing for the examination/inquiry process
- Evidence
- Key elements of the promoter case
- Dealing with objectors at examination/inquiry

## Preparation (1)

- Keep sight of the strategic case
- Ensure Statement of Reasons encapsulates the case
- Avoid viewing land acquisition in isolation
  - Land requirements may be dictated by scheme design, necessary mitigation, requirements for flexibility
- Establish a negotiation strategy for each or each group of objectors
  - Need to show continued willingness to negotiate (even if likely to fail) and ensure resources available to negotiate in parallel to examination/inquiry

## Preparation (2)

- Ensure “hearing” team (advocate, witnesses) have all necessary information on each objector
  - Who are they?
  - What land do they own and how much is acquired?
  - History of negotiations
  - What is the scheme’s specific need for these powers in respect of their land?
  - Where is the evidence?
- Avoid assumptions about the nature of objectors
  - “businesses” may be individuals and vice versa

## Preparation (3)

- Challenge the need for the land
  - Do we need this interest at all?
  - Can we accept less (rights rather than acquisition, smaller site)?
  - Are is the land requirement driven by an absolute need or by need for flexibility?
  - Could other land be used for the purpose (e.g. construction compounds, mitigation planting)?
- Assess risks
  - How strong is each unresolved objection?
  - Do they carry other risks (e.g. objector attacking scheme fundamentals)?

## Evidence

- Consider presentation of evidence
  - Inquiry process – formalities, and likely to be through series of witnesses
  - Examination – presented through advocate with support from witnesses
  - Do not assume that the “land and property” witness is the right person to defend a CA/CPO objection
- Documents
  - Negotiations tracker with supporting correspondence
  - Annotated land plans (perhaps cross referencing ES, Statement of Reasons etc)

## Key elements of the promoter's case (1)

- The strategic case for the scheme
  - Why this scheme, here, and now
  - How is it supported in policy? Note relevant tests e.g. s 104 PA 2008
  - Leads to the “compelling case”
- Alternatives
  - Note that cannot simply rely on NPS statements of need to address alternatives for CA purposes (*FCC Environment* [2015] Env LR 22)

## Key elements of the promoter's case (2)

- Need for land/rights in question
  - Link to the relevant statutory test
  - Note especially s 122 PA 2008, and be clear which of the three statutory purposes it is fulfilling (*(a) required for the development to which the development consent relates, (b) required to facilitate or is incidental to that development, or (c) is replacement land*)
- Negotiations
  - Try to have the “last word” in a letter which records what has gone before
  - Generic letters are to be avoided – meetings (especially with cross-disciplinary promoter team) are a more powerful narrative
  - Make sure decision-maker knows about the cases you have settled, not just the ones you have not

## DCO examinations

- Compulsory Acquisition Hearings
  - Must be held if required by objector (s 92(2)) – the only right to be heard in the PA 2008
  - More likely that cross examination may be permitted
  - However still ExA led, generally without formal presentation of evidence
- Note also likely overlap with other Issue Specific Hearings (do not compartmentalise)
- Remember an engineer, ecologist, hydrologist etc. may be needed to justify the acquisition in question

## CPO inquiries

- Wide range of different inquiries depending on powers used
- May be CPO alone, but may also be authorising scheme (TWAOs)
- Note a range of different procedural rules apply
- Evidence formally led and cross examined
- Need to ensure coherent approach across experts – CPO objector may be attacking any element of the case

# Thank you for listening

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