



Report to the Secretary of State for Transport

by John Wilde C.Eng M.I.C.E.

an Inspector appointed by the Secretary of State for Transport

Date: 29 July 2013

HIGHWAYS ACT 1980

ACQUISITION OF LAND ACT 1981

**THE METROPOLITAN BOROUGH OF SOLIHULL A45 COVENTRY ROAD
BICKENHILL (CLASSIFIED ROAD)(SIDE ROADS) ORDER 2013**

**THE METROPOLITAN BOROUGH OF SOLIHULL A45 (BRIDGE WIDENING
NEAR CHURCH LANE BICKENHILL) COMPULSORY PURCHASE ORDER 2012**

Inquiry held on 2/3 July 2013

File Ref: DPI/Q4625/13/13

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CASE DETAILS

- **The Metropolitan Borough of Solihull A45 (bridge widening near Church Lane Bickenhill) Compulsory Purchase Order 2012** (CPO), made under sections 239, 240, and 250 of the Highways Act 1980 (as amended) (HA), and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 would be confirmed under section 8 of Schedule 1 of the HA and section 13A of the Acquisition of Land Act 1981 (as amended)(ALA). This Order was first published on 7 September 2012 and there were 2 known objections outstanding to it at the commencement of the associated Local Inquiry. This Order would authorise the Metropolitan Borough of Solihull (MBS) to purchase compulsorily land and new rights over land for the purposes described in the Order.
- **The Metropolitan Borough of Solihull A45 Coventry Road Bickenhill (classified road) (side roads) Order 2013** (SRO), made under sections 14 and 125 of the HA, would be confirmed under section 8 of Schedule 1 of the HA. This Order was first published on 7 September 2012 and there were 2 known objections outstanding to it at the commencement of the associated Local Inquiry. This Order would authorise the Metropolitan Borough of Solihull to stop up a private means of access to premises and provide a new private means of access to premises in accordance with the details set out in the schedules to the Order.

Summary of Recommendation: I recommend that the Orders are confirmed.

PREAMBLE

The Inquiry

1. I held concurrent Local Inquiries at St Peters Church Hall, Church Lane, Bickenhill, on 2 and 3 July 2013 for the purpose of hearing representations and objections concerning applications made by MBS for confirmation of the above mentioned orders. At the opening of the Inquiry the applicant confirmed compliance with all statutory formalities for the publication of the Order and the notification of the Inquiry. I carried out an unaccompanied site visit on 1 July 2013 and an accompanied site visit on 2 July 2013.
2. I was appointed to conduct the Inquiries in accordance with paragraph 7 of Schedule 1 of the Highways Act 1980 and Section 13(2) of the Acquisition of Land Act 1981. The concurrent Inquiries are, for convenience, referred to in this report as the Inquiry.
3. The purpose of the proposed Scheme is to improve the section of A45 highway between Junction 6 of the M42 and the Clock Island Junction of the A45. This would involve the replacement of the aging A45 west bound carriageway bridge with a new wider bridge which in turn would improve the west bound approach of the A45 to the Clock Lane Junction, which is the access to Birmingham Airport. The proposed Scheme would also result in the stopping up of a private means of access to an area of land known as Wyckhams Close. An alternative means of access to this land is included within the SRO.
4. The purpose of the proposed CPO is to enable MBS to acquire the rights and titles to land in order to construct the Scheme. The SRO is required to stop up the existing access to Wyckhams Close off the A45 and provide an alternative access off Church Lane.

Responses

5. Following the closure of the first objection period there were three outstanding statutory objections. These were from Network Rail, Messrs Patrick James, Desmond Noel and John Thomas Kelly and Mrs Sally Anne Kelly (the Kelly Family), and Mrs Joan Ellis. The objection from Network Rail was withdrawn prior to the commencement of the Inquiry.
6. During the first hour of the Inquiry several local residents expressed concern that they had not been given notice of the Inquiry, or indeed of the proposed Scheme. This was contested by the Council. However, to ensure openness and fairness it was agreed that the Council would hold a presentation/consultation session for local residents likely to be directly affected by the proposed Scheme on the evening of 2 July, and that subsequently any local residents could present objections to the Inquiry on Wednesday 3 July. Residents were informed of the evening presentation/consultation by a letter drop at lunch time on the 2 July. I also asked for comprehensive details of the Council's notification of both the Orders and the Inquiry and will address these in my conclusions.

Scope of the report

7. This report contains a brief description of the site and its surroundings, the gist of the evidence presented and my conclusions and recommendations. Lists of Inquiry appearances and documents are attached as appendices.

DESCRIPTION OF THE ORDER LAND AND ITS SURROUNDINGS

8. The Order Land, comprising some 15.3 hectares is located in Bickenhill, Solihull, on the south side of the A45 between Junction 6 of the M42 and the Clock Lane Junction of the A45. The area has a mix of uses including highway carriageway and verge land, accommodation land, agricultural and grazing land and railway land. An area of land known as Wyckhams Close would be the most directly affected privately owned area. This is a roughly triangular area of about 9 hectares bounded by the M42, the A45 and the railway. The area is not, as the name might suggest, a housing estate, but contains a large detached dwelling house, a lodge dwelling house, poultry sheds and generally unused agricultural land. The structures are in a dilapidated condition. Wyckhams Close is currently accessed directly from the A45. If the Orders were to be confirmed this access would be replaced by a new one from Church Lane, and it is the suitability of this access that forms the basis of the Kelly Family's objection.

THE CASE FOR THE METROPOLITAN BOROUGH OF SOLIHULL

The material points are:

9. The present bridge dates from 1837-38 and is now considered life expired, presenting a significant safety risk to road and rail users alike. Besides structural weaknesses the parapet to the bridge is of simple brick construction and offers limited protection should a motor vehicle impact on it, which places great risk for (i) the driver and passengers of the vehicle, (ii) other road users and (iii) the railway line under the bridge. The historic construction of the bridge does not lend itself to upgrading. Complete replacement is the Council's preferred solution which addresses its key objectives for the route and would ensure that the economic impacts of works are minimised during construction, whilst maximising the economic benefits long term.
10. The Scheme has four main objectives.
- 1) The replacement of the life-expired bridge, which will rectify all the safety issues associated with the existing bridge.
 - 2) Improve safety with the provision of the additional carriageway.
 - 3) Support the economy — the strategically important economic assets served directly by the bridge are estimated to generate in excess of £2.5bn of GDP, supporting over 80,000 jobs. By removing the need for emergency restrictions, resolving structural defects and minimising the impact of construction works, the economy will be supported and high productivity maintained; and
 - 4) Reduce congestion — by providing a modern structure, the capacity constraints of the current bridge are removed. This is important in the light of its location at the heart of an area of economic and employment growth, with the key developments over the medium term being airport expansion, business expansion in adjacent commercial areas (including a casino and

retail development at the NEC), the anticipated arrival of a new station on the High Speed 2 line and a runway extension at the airport proposed for completion in 2014.

11. The route is heavily trafficked at present and this is only likely to grow over the foreseeable future. The A45 carries well in excess of 50,000 vehicles per day (2 way flow) with westbound counts showing average daily flows of 28,000-30,000 vehicles, and significant peaks in excess of this when major events are held at the NEC¹. Providing the preferred replacement bridge is the best way to future proof the highway network, supporting economic activity and private sector led growth². The existing width of the three carriageway lanes across the bridge is 9.34 metres whilst the minimum width required for a three lane carriageway road way built to modern specifications³ is 11 metres⁴. Weaving calculations based on the formula at paragraph 2.71 of TD22⁵ show that the existing three lane A45 will have insufficient capacity to cope with peak hour demand traffic flows of over 5,500 vehicles per hour with minor weaving flow of over 1,100 vehicles, and widening the A45 westbound to four lanes is justified⁶. The proposed widening of the A45 will also alleviate traffic capacity problems by the provision of an additional lane, and reduce the requirements for traffic streams to merge and diverge, by segregating the M42 south to Birmingham Airport traffic stream⁷.
12. Furthermore the Weaving Section between the M42 Junction 6 and the Clock Junction is only 280m. This is sub-standard when compared to minimum distances for either rural all-purpose roads or urban roads, which are 1,000m and 420m respectively. This heavily trafficked very short weaving distance leads to a reduced traffic capacity and is likely to lead to stop/start traffic and consequently, a poor accident record⁸. Recorded accident data shows that five accidents have occurred on this section of road in the last three years resulting in 12 slight injuries. The causes of the accidents can generally be summarised as driver inattention and error through the merge/diverge sections with congestion, roadworks and poor weather being contributory factors⁹.
13. The Council has been in discussion with Network Rail about the Scheme for several years. The Scheme benefits Network Rail in providing a safe replacement bridge which will be designed to span four tracks in place of the current double track. This fits in with Network Rail's long term strategy to widen the Rugby to Birmingham railway route and they advise that this specific section of line would be the last valuable part of the rail corridor to attain four tracks¹⁰.
14. The Council have met with agents acting for the Kelly Family but have not been able to reach agreement regarding an alternative access to their land (Wyckhams

¹ POE Lawlor para 7.2.11

² POE Lawlor sections 5/6

³ Design Manual for Roads and Bridges, Volume 6, Section 1, TD 27/05

⁴ POE Lawlor paras 7.2.1 – 7.2.5

⁵ TD22/06 – Layout of Grade Separated Junctions

⁶ POE Border para 4.2

⁷ POE Border para 4.5.1

⁸ POE Border para 4.3.1

⁹ POE Border para 4.4

¹⁰ POE Lawlor para 7.1

- Close). The existing access is located between the end of the westbound slip road from Junction 6 of the M42 onto the A45 and the railway bridge. There is a splayed entrance leading off from the carriageway to the gated entrance of Wyckhams Close.
15. The existing position of the access to Wyckhams Close is significantly sub-standard when compared against advice contained within TD22¹¹. It would be reasonable to conclude that if anything other than a very small traffic flow originated from Wyckhams Close, then these additional merging and diverging flows, which would mix slower moving vehicles into the major strategic and longer distance traffic streams, would give rise to further reductions in safety and would be very disruptive to the major strategic and longer distance flows on the A45¹².
16. The existing access to Wyckhams Close is directly off the A45 and located at a point where there are high numbers of weaving movements as drivers manoeuvre into the correct lane for their destination (the Airport or remaining on the A45). At present, these involve, in particular, drivers approaching from the M42 Junction 6 slip road having to look over their shoulder a number of times to merge with traffic from the M42 roundabout itself, then to merge with traffic on the A45 who are travelling to the Airport or the Clock Roundabout for the International Station etc¹³. The Council consider that this access would not be safe with the proposed increase in the number and width of lanes along the frontage of the Kelly Family's land and without sufficient merge/diverge arrangements to allow slow-moving traffic to enter and leave the site safely¹⁴.
17. The existing access is also unsafe in that vehicles enter and exit it at slow speeds. TD41/95 reviews the traffic and safety implications of direct accesses and in paragraph 1.1 stresses the need for only the minimum number of well engineered connections in safe positions. Paragraph 2.2 states that *direct vehicular access on to trunk roads shall be avoided as far as practicable, where feasible, access should be to a local road*¹⁵. Increasing the usage of the access into the site following any development introduces an additional hazard which could result in more frequent accidents, potentially of increased severity. There is also a forecast of an increase in growth of traffic along the A45 over the next few years and this is the reason for increasing the number of lanes at this location¹⁶.
18. Taking into account the implications for traffic and road safety, a direct access to Wyckhams Close within the substandard highly trafficked weaving section is not justified. It would be unreasonably disruptive and likely to cause a danger to longer distance traffic on the A45. It can therefore be concluded that the stopping up of the direct access to Wyckhams Close is justified¹⁷.

¹¹ POE Border para 4.3.3

¹² POE Border para 4.3.5/4.4.2

¹³ POE Lawlor para 7.2.11

¹⁴ POE Lawlor para 7.2.11/7.2.12

¹⁵ POE Border para 4.5.3

¹⁶ POE Lawlor paras 7.2.11 – 7.2.14

¹⁷ POE Border paras 4.5.3/4.5.4

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19. The current use of the entrance to Wyckhams Close is limited to (i) incidental traffic generated by the owners themselves given that the buildings and land are not being used residentially or commercially and (ii) maintenance vehicles belonging to Gridcom Limited who have not objected to the Compulsory Purchase Order. The Council has been in discussion with Gridcom Limited and they are content with the alternative provision for access.
20. The alternative proposed access would be by way of an additional, separate road within the proposed new bridge over the railway. At the eastern end of the bridge, the Council would build a suitable highway to the existing access road at a point adjacent to the existing entrance. At the western side of the bridge, the new road will continue to a junction with the existing adopted highway, Church Lane. Church Lane continues through the village of Bickenhill where it reaches Catherine De Barnes Lane. The Council will adopt the entire length of the new access to the point where it joins the existing access at the current entrance to Wyckhams Close.
21. The alternative access is suitable for the current level of traffic using the existing entrance to Wyckhams Close¹⁸, and the alternative route along Church Lane has low vehicle use with around 100 vehicles per day, none of which are HGVs¹⁹. It is acknowledged that Church Lane is a low standard rural lane which is typically 3.7m-4.0m wide but in places narrows to 3.5m for the 600m length through Bickenhill. It is however considered to be suitable for the currently permitted and envisaged use of the site²⁰.
22. It is also acknowledged that on closing the existing access to Wyckhams Close there will be in most cases additional journey time and length to access the land, depending on origin and destination. When arriving from the west there would be no additional journey length. When arriving from the north, south and east there would be an additional journey length of 2.3km. From Catherine-de-Barnes and Solihull there would be a reduced journey length of 1.4km. When leaving the site there would be an additional journey length to the Clock Junction Roundabout of 1.1km²¹.
23. The existing site has two dwellings within its boundaries which are vacant at present and there has only been occasional use over the last decade. The Lodge had outline planning permission for its demolition and replacement with a new detached dwelling and garage. The established use on the site is for two dwellings within Class C3 of the Town and Country Planning (Use Classes) Order²².
24. The site is located within the West Midlands Green Belt where there is a strong presumption against new development. This part of the West Midlands Green Belt is known as the Meriden Gap, an area of open countryside which separates Coventry from Birmingham²³. The proposed Scheme is not EIA development and

¹⁸ POE Lawlor para 7.2.7

¹⁹ POE Lawlor para 7.2.8

²⁰ POE Border para 4.8

²¹ POE Border paras 4.6.1 – 4.6.4

²² POE Lawlor para 7.2.13

²³ POE Osborne para 3.3

- no environmental impact assessment and consequential environmental statement are required. Section 55(2)(b) of the Town and Country Planning Act 1990 makes clear that the proposed Scheme does not constitute development and there will be no significant adverse effects on the environment. It follows that the works to be undertaken within the boundaries of the existing road do not require planning permission. In terms of the land outside but adjoining the boundary of the existing highway, the works amount to permitted development for which planning permission has been granted by virtue of Class A of Part 13 of Schedule 2 to the Town and Country Planning Act (General Permitted Development) Order 1995 (as amended)²⁴.
25. In terms of supporting the economy the Scheme will improve the overall communications along the A45 and M42 for residents, commercial organisations, traders and visitors by giving faster and safer routes from the NEC and Birmingham Airport to Birmingham, Solihull and the national motorway network. The Scheme is in accordance with national, regional and local planning policies which identify the need to upgrade infrastructure and improve communications. By providing a modern structure, the capacity constraints of the current bridge are removed²⁵.
26. Professional Engineers from various agencies and consultants have had meetings at which they have looked at a number of road layout options from Junction 6 of the M42 to the Clock Roundabout. These agencies and consultants include the Council, Warwickshire County Council, Birmingham Airport, the Highways Agency and Ove Arup and Partners. The Highways Agency has provided a letter which supports the stopping up of this access due to its potential affect on the M42²⁶.
27. A number of options (including informal proposals by the Kelly Family) under criteria including traffic capacity and congestion, road safety and practicability have been considered. The options were assessed and scored against the criteria and the preferred option was for a segregated free running lane from the M42 westbound into the Airport. All traffic from the M42 northbound for the A45 westbound and Clock Roundabout and Birmingham International Station will be directed to the existing signals on the M42 Junction 6 roundabout. The current lanes at these signals will be expanded from 3 lanes to 4 lanes. There will therefore be no access to the frontage of Wyckhams Close except via the M42 westbound off slip. If an access into Wyckhams Close was permitted then it would encourage drivers to cross into the segregated lane from either the A45 or the traffic lane from the M42 Junction 6 roundabout²⁷.
28. The objection by Mrs Ellis is on several counts. They are (i) the diminution of value of her property, (ii) the loss of quality of life whilst the Scheme works are under way and thereafter due to the closer proximity of the A45 to her home and (iii) the loss of privacy and security for herself and family whilst the works are underway due to the presence of contractors.

²⁴ POE Osborne paras 3.6 – 3.9

²⁵ POE Lawlor para 7.2.16

²⁶ POE Lawlor 7.2.22

²⁷ POE Lawlor paras 7.2.19/20

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29. Mrs Ellis is a joint owner of Bridge House, Church Lane, Bickenhill which is the closest dwelling to the Scheme. The property is approximately 69 metres from the A45. Once the Scheme has been completed the new A45 road will be approximately 63 metres from her property. Whilst the Scheme is under construction the nearest parcel of land required for accommodation purposes and temporary diversion will be approximately 11 metres from her property.
30. Mrs Ellis states that she does not consider that compensation would be a sufficient remedy for her loss and would prefer that the Scheme did not go ahead at all. Nevertheless, Mrs Ellis does not object to the principles of the Scheme and the Council submits that her objections could be dealt with by The Upper Tribunal (Lands Chamber)²⁸.
31. The Council's Highways Groups' request to make the Orders and deal with the Stopping Up Order was reported to the Council's Cabinet on 15 March 2012. In the light of the report, the Cabinet concluded that there was a compelling case in the public interest for the use of compulsory purchase powers to acquire the land and rights and resolved accordingly. In balancing the rights of the individuals affected and the interests of the public, and especially in the light of the significant benefits arising from the Scheme, the Cabinet considered that the Orders should be made²⁹.
32. The cost of the works required to deliver the Scheme are currently estimated to be around £12,134,000 and are to be funded from the sources detailed in the Council's Statement of Case³⁰. Birmingham Airport is funding works either side of the bridge as part of their planning consent for their runway extension. The Council concludes that there are no material constraints to the Scheme coming forward if the Compulsory Purchase Order is confirmed³¹.

THE CASE FOR THE OBJECTORS

PJ Kelly, DN Kelly, JT Kelly and SA Kelly (the Kelly Family)

The material points were:

33. A Highway Authority has the ability under Section 124 of the Highways Act 1980, to make an Order to close an existing access if they consider it is likely to cause danger to, or interfere unreasonably with, traffic on the highway. The Order cannot be confirmed unless no access is reasonably required (not the case here) from the highway in question or unless another reasonably convenient means of access to the premises is available or will be provided. The alternative proposed by MBS is NOT reasonably convenient:
- It means an additional travelling distance of 2.5km for each and every vehicle movement from Wyckhams Close;
 - For an average of 20 two-way vehicle movements per day; this equates to 18,250km per annum;

²⁸ POE Lawlor paras 7.3.1 – 7.3.5

²⁹ POE Lawlor paras 9.7 – 9.9

³⁰ Birmingham Airport £1.6M, SoS for Transport £8.534M, Centro £2.0M

³¹ POE Lawlor section 13

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- It is not suitable for the nature of the vehicles accessing Wyckhams Close under its extant permitted uses;
 - Church Lane is only 3.2-3.6m wide with high hedges in places creating blind bends and thus wholly unsuitable for the additional traffic that would be created, especially considering the nature of the farm traffic that would be introduced under the extant permission.
34. The existing access, which has been a right of access for the Wyckhams Close site for a considerable length of time, has no merge and diverge tapers to speak of. Notwithstanding this, it is understood that the current access has operated without incident. As a counter to the proposals by MBS that Wyckhams Close access should be closed and replaced by an unsuitable arrangement, IPaD³² on behalf of the Kelly Family, proposed a substantial improvement on the existing access. The proposed access included DMRB design standard merge & diverge tapers that would improve the safety of the junction considerably.
35. The contention by MBS that this section of the A45 is a safety problem is refuted. A review of accident data provided on the independent on-line resource 'Crashmap' indicates the following:
- There have been only 3 incidents in the last 8 years westbound between the two slips, on either side of the existing access all of which were categorised as being of 'slight' severity;
 - Only one of these accidents was a weaving incident, but was in the outer lanes, not related to the Wyckhams Close access;
 - The others comprised a shunt on the slip road from the motorway, and a young driver losing control with no other vehicles involved.
36. The original report by IPaD only highlighted that the existing entrance did not have merge and diverge slips, and suggested that the entrance would be made inherently safer by incorporating such. This would enable traffic entering Wyckhams Close to slow down less abruptly and diverge into the entrance safely. Conversely, traffic leaving the site would be able to accelerate to better match the speed of traffic.
37. The original report commented that the entrance has existed for some considerable time; probably many decades. It has done so without any reported difficulties, but in recognition that the Council wishes to increase the number of lanes on the A45 westbound by one lane, the improvement was suggested as mitigation of the Council being the instigator of the change in circumstances.
38. It is clear that Wyckhams Close has an existing and longstanding right of access to the A45 in its current location. It is the Council that wishes to change the current circumstances by adding a lane to the A45 westbound, and that the revised access that MBS wishes to impose on Wyckhams Close is neither reasonable **nor** convenient. Furthermore, the Council's contention that the A45 westbound at this location is a safety problem is not founded by evidence from recorded accident data. The entrance could be made safer by the
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³² Infrastructure Planning and Design Ltd

introduction of merge & diverge slips, and the Council is being dogmatic in its insistence that the entrance suddenly becomes unacceptable following their bridge widening scheme being implemented³³.

39. Despite being in discussion with the Council for several years it was only confirmed on 1 May 2013 that the proposed Scheme had changed in that the Council have now 'moved the goalposts' and now propose a dedicated access lane from the M42 to the airport running along the frontage of Wyckhams Close. The effect of this is to physically prevent access to Wyckhams Close from the A45. It would therefore seem that retaining the access onto the A45 will be very difficult if not impossible and focus should therefore be concentrated on the proposed alternative access³⁴.
40. The observable evidence provided by a 1 week automated classified traffic count on Church Lane demonstrates that this route is not utilised by vehicles any larger than a 2 axle rigid goods vehicle. The evidence shows that movements of larger agricultural vehicles along the route are very light and along its eastern extremities are limited to movements to/ from existing field access points. The existing extant permission for the Wyckhams Close site will generate a significant increase of additional heavy agricultural and delivery movements above existing observable levels along this route to include 3-axle long goods vehicles³⁵. There could be up to 42 trips per day generated by the extant permission (21 inbound, 21 outbound) including 8 trips by HGVs³⁶. Uses that do not require planning permission such as car boot sales could also be held on the land³⁷.
41. As stated above, Church Lane is an extremely narrow route with high-sided verges that limit forward visibility on a number of bends, which make the route inappropriate for use by heavy vehicles³⁸. There is insufficient road width to accommodate two way passing heavy vehicles and a number of telegraph poles that would complicate widening. Forward visibility is also inhibited by the tight radii of the bends along Church Lane. To enable sufficient access into and out of the site by heavy vehicles, widening of the carriageway along the entire length of Church Lane up to 5m is required³⁹.
42. Furthermore, the latest scheme proposed by the Council shows only a 3.5m wide access carriageway across the proposed bridge into Wyckhams Close in place of the two way access originally proposed. This 3.5m section would extend for 150m and would be completely unsuitable⁴⁰.
43. The Council state that the area around Wyckhams Close is a focus for economic development and growth yet seem content to effectively sterilise a strategically important 15 hectare potential development site for all time. The Kelly Family

³³ POE provided by First City Consultancy on behalf of the Kelly Family

³⁴ Letter from First City received 24 June 2013

³⁵ POE provided by First City Consultancy on behalf of the Kelly Family

³⁶ POE First City app 3

³⁷ Closing submissions by First City on behalf of the Kelly Family

³⁸ POE provided by First City Consultancy on behalf of the Kelly Family

³⁹ POE First City app 3

⁴⁰ Letter from First City received 24 June 2013

are commercial developers and are motivated to maximise the development potential of the land⁴¹.

Mrs Joan Ellis

The material points were:

44. There will be an immense amount of disturbance while the works are in progress as well as a security and safety risk from the comings and goings of the numerous workmen and vehicles. My quality of life will decrease while the works are carried out due to noise, air pollution and vibration. The works are likely to be over the Christmas and Easter periods which are important family times. When the works are complete the A45 will be significantly closer to my property and there will be increased noise, smell and air pollution. There will also be increased vibration which will have an effect on my property both structurally and in value.

Mr Woodcock representing residents of Church Lane

45. We accept that the proposed works are essential for the safety of users of the A45. However, no reasonable assessment of the village lane has been carried out in terms of assessing its use by riders and pedestrians. The lane is in poor condition, has no lighting, substandard widths and bends and is well used by pedestrians and children walking to catch the school bus. The Council say that it will only take a light amount of traffic but the Kelly Family's figures indicate a 28% increase. Wyckham Close could be developed and this proposal could make it easier to do so.

REBUTTAL BY SOLIHULL METROPOLITAN BOROUGH COUNCIL TO FIRST CITY'S PROOF OF EVIDENCE AND THEIR LETTER OF 21 JUNE 2013.

46. First City's proof of evidence quotes a blanket value for the additional access distance to Wyckhams Close of 2.5km. This is incorrect and misleading. The distances vary depending on origin and destination and the correct distances for each journey are given in the Council's proof of evidence. While it is self-evident that *any* additional journey distance is to a degree inconvenient, First City have not submitted any evidence as to why the additional journey distances are *unreasonably* inconvenient. Given that this equates to three to five minutes journey time it is hard to understand why First City considers this to be unreasonable. The annual additional mileage required to be covered by the Kelly Family in accessing Wyckhams Close can be the basis for the calculation of a compensation payment⁴².
47. Church Lane is typically 3.7m to 4.0m wide, but does narrow to 3.5m for a 400m section. Narrowing to 3.2m as stated in First City's proof of evidence is not indicated on the objectors own survey drawing⁴³, which indicates the narrowest section as being 3.5m. There are also existing informal passing areas in at least three locations. Any larger vehicles wishing to access Wyckhams Close would be so infrequent as to be unlikely to meet each other. A road of this width is typical

⁴¹ Closing submissions by First City on behalf of the Kelly Family

⁴² Border Rebuttal to First City (Kelly Family) proof paras 2.1/2.2

⁴³ IPD-11-226-102

for access to rural properties, and it is therefore not considered to be *unreasonably* inconvenient⁴⁴.

48. The three accidents referred to by First City are in addition to the ones identified in the Council's evidence in that the First City ones are from April 2006 to July 2009 and the ones referred to by the Council are from December 2009 to December 2012. During this whole period the existing Wyckhams Close access was virtually unused so it is not surprising that there are no accidents directly attributable to the access⁴⁵.
49. The planning application by Birmingham Airport for a runway extension originally included for capacity improvements at Junction 6 of the M42. Recent discussions between the Airport and the Highways Agency have led to the original capacity improvements being regarded as impractical as they would have created unacceptable traffic queues on the M42. The proposals have therefore been modified and now include a dedicated lane which it is accepted does not allow access to Wyckhams Close other than from the M42. The principle reasons for closing the access into Wyckhams Close remain the same however, they are to improve safety, support the economy and reduce congestion⁴⁶.
50. The latest design shows the width of the proposed access road to Wyckhams Close across the bridge to be 3.5m wide. The original consultation plan indicated that there would be access both ways along the proposed access road. It was not meant to indicate that two vehicles would be able to pass along the length of the access. The existing drive is only 3.1m wide (except at the gate where it is wider) and at the present time traffic can only pass at a short passing bay.
51. Details of the proposed access bridge and accommodation works can be discussed with the agents of the Kelly Family and various options including building a passing bay, priority signage and also a widening on highway land on the bend on the western side of the bridge to allow traffic to pass on each side of the bridge can be considered. Until very recently however the agents have not accepted the principle of the closure of the existing access and the alternative route⁴⁷.

THE REPORT CONTINUES ON THE NEXT PAGE

⁴⁴ Border Rebuttal to First City (Kelly Family) proof para 2.3

⁴⁵ Border Rebuttal to First City (Kelly Family) proof para 4.0

⁴⁶ Lawlor Rebuttal to First City (Kelly Family) proof para 2.0

⁴⁷ Lawlor Rebuttal to First City (Kelly Family) proof para 2.1

CONCLUSIONS

52. Bearing in mind the submissions that I have reported, I have reached the following conclusions, references being given in square brackets [] to earlier paragraphs where appropriate.
53. Whilst the CPO Order and the SRO Order are separate Orders and must be considered on their own merits against the relevant tests, they are nonetheless interdependent. Given the differences between the Council and the Kelly Family regarding the alternative access, it would be inappropriate for the SRO to be confirmed without the necessary CPO and vice versa.

THE COMPULSORY PURCHASE ORDER (CPO)

54. ODPM Circular 06/2004 confirms that a compulsory purchase order should only be made where there is a compelling case in the public interest and the purposes for which the compulsory purchase order is being made sufficiently justify interfering with the Human Rights of those with an interest in the land affected. Factors to be taken into account in determining whether there is a compelling case in the public interest include whether: all the land affected by the order is required; the necessary resources to acquire the land and implement the Scheme for which the land is required are likely to be available within a reasonable timescale; the Scheme is unlikely to be blocked by any impediments to implementation; and, whether efforts have been made to secure the required land rights and titles by negotiation.

The Public Interest

Need for the Scheme

55. The section of highway between Junction 6 of the M42 and the Clock Junction is heavily trafficked and the existing bridge is life expired and does not lend itself to upgrading [10]. The lane width is substandard [11] and the parapet offers limited protection to motorists [9]. The proposed Scheme would upgrade this section of road and has been designed to cater for the present needs of Birmingham Airport [10] and the future needs of Network Rail [13]. The Highways Agency supports the Scheme [26] and as well as improving safety the Scheme would also support the economy of the area and reduce congestion [10]. The objectors in general accept that the proposed Scheme is necessary [45] and I have been given no evidence that would lead me to an alternative view.
56. I note that a number of design options have been looked at [26] by a number of organisations and that the current Scheme with the dedicated lane for airport traffic is seen as the best option in terms of capacity [49], and I have been given no evidence which would lead me to question this.
57. As regards the issue of human rights, I note that there are no objections in principle to the CPO. If there is a compelling case for the CPO in the public interest, then there would be compliance with the relevant parts of the Human Rights Act.

Land requirements

58. No party disputes that the titles and rights sought by the CPO are necessary for the implementation of the approved Scheme. Whilst I am satisfied that the

Council has actively sought to acquire the land interests necessary for the implementation of the Scheme through negotiation, those belonging to Wyckhams Close have not been secured. Due to the time and funding constraints placed upon the Council it therefore felt that it had no alternative other than to exercise its compulsory purchase powers⁴⁸. I consider that it is necessary to acquire the titles and rights sought by the Order and it is likely that, notwithstanding the relatively lengthy lead in time (see below), without the CPO the approved Scheme would be delayed. The CPO is therefore necessary to achieve certainty in the progression of the Scheme.

Availability of the necessary resources

59. The Scheme has been designed in conjunction with the Highways Agency and the Airport and funding has been arranged [32]. During the Inquiry it was made clear that a closure of the adjacent railway line would be required to carry out the works and that the earliest that this could be arranged would be Christmas 2014.

Potential impediments to implementation

60. The issue of planning permission has been considered and it has been determined that the works to be undertaken within the boundaries of the existing road do not require planning permission, and the works to be undertaken on land outside of but adjoining the existing road amount to permitted development [24].
61. The objection of Mrs Ellis was to the generality of the proposed Scheme and I will deal with her objection here. During the site visit it was confirmed that any extra traffic generated by the Scheme would not pass directly in front of her property. I accept that she would be likely to suffer some disturbance during the construction works and that the proposed bridge, when completed, would be about 6m nearer to her property. It would nonetheless still be about 63m away and I consider it unlikely that Mrs Ellis will experience a significant increase in noise, smell or air pollution [29]. These factors do not in my view outweigh the benefits of the Scheme that have been outlined.
62. I commented previously that several local residents expressed concern regarding the notice given by the Council of the Inquiry. However, as requested, the Council supplied me with the details of their notification and consultation process. All the residents of Church Lane, Pitt Lane and St Peters Lane were notified of the Scheme by virtue of a letter dated 11 July 2011. The Orders were advertised in the Solihull News and placed on the Council's website. Known objectors to the Scheme were then individually notified of the Inquiry and also notices were posted at various locations including the parish council notice board. Following the concerns expressed at the start of the Inquiry the Council notified all residents of Church Lane by letter drop around lunchtime on 2 July. This resulted in a number of residents attending the extra meeting organised for that evening. Their concerns and objections were then transmitted to the Inquiry on the morning of 3 July. In light of this I am satisfied that fairness and openness have not been prejudiced.

⁴⁸ Council Statement of Case para 7.2.1

Conclusion on the CPO

63. I conclude that the reduced congestion, and the safety and economic benefits that would result from the proposed Scheme demonstrate the compelling case in the public interest for the CPO to be confirmed.

THE SIDE ROADS ORDER (SRO)

64. If I am to recommend that this SRO be confirmed, I need to be satisfied in the following respects:

- In relation to the stopping up of highways, that another reasonably convenient route is available or will be provided before the highway is stopped up⁴⁹.
- In relation to the stopping up of private access to premises, that: no means of access to the premises is reasonably required; or, that another reasonably convenient means of access to the premises is available or will be provided in pursuance of an order made by virtue of section 125(1)(b) or otherwise⁵⁰.

65. The alternative access to Wyckhams Close proposed by the Council would be via Church Lane and across a new accommodation bridge into the west of Wyckhams Close. The Kelly Family consider this to be not reasonably convenient on a number of counts [33], and I will deal with each in turn.

Extra distance incurred

66. The alternative route would involve an extra travelling distance. This was estimated by the Kelly Family as being 2.5km for every trip [33]. The Council point to the fact that any extra distances are dependant on the origin and destination and that the maximum extra journey length would be when arriving from the north south and east. This would be 2.3km. When arriving from the west there would be no extra journey length and when arriving from Catherine-de-Barnes or Solihull there would be a reduced journey length [22]. The Council have estimated that this extra distance would take between three and five minutes and do not consider this to be unreasonable. They also point out that the additional mileage can be the basis for the calculation of a compensation payment [46].

67. In terms of distance, I accept that the alternative route would not be as convenient as the existing access directly off the A45. However, taking into consideration the relatively short extra distances and times I consider that the alternative access would be reasonably convenient.

Suitability of alternative route

68. The Kelly Family also consider that the alternative route is not reasonably convenient due to the nature of Church Lane. The concern regarding the nature

⁴⁹ Section 14(6) of the Highways Act 1980

⁵⁰ Section 125(3) of the Highways Act 1980

of the lane was also reflected by some residents of the lane [45]. The lane is a rural no through road that serves the properties either side (including the church and church hall) as well as fields in agricultural and equestrian use. The lane is to my mind typical of its type. It has narrow sections and forward visibility is limited in various places. These factors can however serve to actually keep speeds down, as drivers react to these conditions.

69. Evidence produced by the Kelly Family indicated that with its extant permission Wyckhams Close could produce up to 42 trips per day. Of these eight would be likely to be HGVs, some of which could be larger than vehicles that currently use the lane. [40]. These would however be maximum figures and even if they were realised, over an eight hour working day, they would only amount to about 5 extra trips per hour. Some reversing movements may at times become necessary, but such occurrences are not unusual in rural lanes and Church Lane has several informal areas [47] where passing could, and in fact does, occur.
70. Overall, in terms of its alignment and width I consider the lane to be a reasonably convenient alternative route which could, notwithstanding the presence of pedestrians, safely absorb the maximum extra trips likely to be generated by Wyckhams Close under its extant planning permission.
71. The Kelly Family also consider that the linking section across the bridge to be provided from their land to the tie-in with Church Lane would be too narrow and less than the width originally shown on a previous drawing [42]. In response the Council have pointed out that the previous consultation plan indicated that there would be access both ways along the proposed access road but that two vehicles would not necessarily be able to pass. They also point to the fact that the existing driveway, beyond the actual access point off the A45, is only about 3.1m wide [50], and that details relating to widening, passing bays and signage can be the subject of further discussion [51].
72. In principle, taking into account the relatively low trip generation and the width of the existing access I consider 3.5m to be a reasonable width for the proposed access. The plan that forms part of the SRO indicates that 'turnaround facilities' are to be provided as part of a further detailed design stage. This, added to the Council's indication that further improvements could be incorporated into any final design leads me to the conclusion that the proposed linking section would be reasonably convenient.
73. The Kelly Family also pointed during the Inquiry to activities, such as car boot sales, that could be carried out on their land without the benefit of planning permission, and for which the proposed alternative route would be unsuitable. There has been no record of any of these occurring in the past however, and I was given no evidence to show that such activities form any realistic part of the family's plans for the land in the future. It would therefore be inappropriate to give such possibilities any great weight in my determination of this appeal.
74. Any future planning applications for Wyckhams Close will have to be taken on their own merits in light of the situation prevailing at that time. In relation to the Kelly Family's concerns that the proposed alternative route would effectively sterilise their land [43], it has to be borne in mind that the site is in the Green Belt and the existing access is considered by the Council to be sub-standard.

These are both factors that would be taken into account in any consideration of a planning application in the present situation.

75. Overall, I consider that the SRO complies with the statutory tests and that it is necessary for the implementation of the approved Scheme. It should therefore be confirmed.

RECOMMENDATIONS

76. I recommend that The Metropolitan Borough of Solihull A45 (bridge widening near Church Lane Bickenhill) Compulsory Purchase Order 2012 be confirmed.
77. I also recommend that The Metropolitan Borough of Solihull A45 Coventry Road Bickenhill (classified road) (side roads) Order 2013 be confirmed.

John Wilde

Inspector

APPENDIX 1 - APPEARANCES**FOR THE METROPOLITAN BOROUGH OF SOLIHULL:**

Miss R Stockley of Counsel	Instructed by Phillip Lloyd Williams, Director of Governance and Solicitor to the Council
She called	
Mr Derek Lawlor BSc (Hons) MICE C Eng	All of the Metropolitan Borough of Solihull
Mr John Border MA CEng FICE MCIHT MAPM	
Mr Lawrence Osborne	
PG Dip TP MRTPI	

OBJECTORS

Mr Christopher Bywater Dip Arb FRICS ACI Arb	Managing Director of First City on behalf of the Kelly Family
He called	
Mr Richard Pettitt CEng CWEM FICE FIHT	Of Infrastructure Planning and Design Ltd

Mrs M Phillips
Mrs Joan Ellis
Mr J Woodcock on behalf of local residents

APPENDIX 2 – DOCUMENTS

Inspector's Dossier from National Transport Casework Team

Attendance lists

THOSE PROVIDED BY THE APPLICANT

Proof of Evidence of Derek Lawlor

Proof of Evidence of John Border

Proof of Evidence of Lawrence Osborne

Rebuttal to First City by John Border

Rebuttal to First City by Derek Lawlor

THOSE PROVIDED BY THE OBJECTORS

Proof of Evidence on behalf of the Kelly Family

Letter dated 21 June 2013 from First City on behalf of the Kelly Family

Letter dated 7 June 2013 from Joan Ellis

THOSE HANDED IN DURING THE INQUIRY

- 1 Trip generation information supplied by Richard Pettitt
- 2 Letter dated 6 July 2011 to Bickenhill Parish Council advising of the proposed Scheme with attached plan
- 3 Letter dated 11 July 2011 advising residents of Church Lane, Pitt Lane and St Peters Lane of the proposed Scheme with attached plan
- 4 Letter dated 24 July 2011 from Ms Tocher acknowledging the letter and plan
- 5 Reply to Ms Tocher dated 2 August
- 6 Copy of email dated 21 June 2013 to Bickenhill Parish Council advising them of the Public Inquiry
- 7 Copy of locations where Notices of the Public Inquiry were posted
- 8 Copy of Birmingham Airport's scheme layout options
- 9 List of attendees to Council's extra information/consultation session held on 2 July 2013
- 10 Closing statement of Christopher Bywater on behalf of the Kelly Family

PLANS

A Proposed Scheme General Arrangement drawing

B Copy of plan in appendix 1 of POE of John Lawlor