



Planning Inspectorate

Report to the Secretary of State for Transport

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an Inspector appointed by the Secretary of State for Transport

Date: 27 November 2024

HIGHWAYS ACT 1980 ACQUISITION OF LAND ACT 1981

**THE KENT COUNTY COUNCIL (A28 STURRY LINK ROAD)
(COMPULSORY PURCHASE) ORDER 2023**

**THE KENT COUNTY COUNCIL (A28 STURRY LINK ROAD)
(SIDE ROADS) ORDER 2023**

Dates of Inquiries: 1-2 October 2024

Ref: DPI/W2275/24/4

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CASE DETAILS

1. The Kent County Council (A28 Sturry Link Road) (Compulsory Purchase) Order 2023 (CPO)

- The CPO is made by Kent County Council (the Highway Authority) under sections 239, 240, and 250 of the Highways Act 1980 and submitted for confirmation to the Secretary of State for Transport.
- The Order proposes to purchase compulsorily the land and new rights described in its Schedule for the following purposes:
 - (a) The construction of a highway from a point on the A28 Sturry Road approximately 100 metres northeast of the access to Water Treatment Works in a northwards direction to a point on the northern boundary of the Ashford to Ramsgate railway line, approximately 395 metres east of Broad Oak railway level crossing, to create a junction and a single carriageway supported on an embankment and a viaduct, with a bus lane, foot/cycleways and surface water drainage;
 - (b) The improvement of the A28 Sturry Road in the vicinity of the junction with the new highway described above;
 - (c) The improvement of Shalloak Road from Broad Oak railway level crossing for a distance of approximately 110 metres in a northwards and eastwards direction;
 - (d) The use by the Highway Authority in connection with the construction and improvement of the highways aforesaid;
 - (e) Access by the Highway Authority over land to the east of Broad Oak Road to construct, inspect and maintain the works.

Summary of Recommendation: I recommend that, subject to modifications, the CPO be confirmed.

2. The Kent County Council (A28 Sturry Link Road) (Side Roads) Order 2023 (SRO)

- The SRO is made by Kent County Council (the Highway Authority) under sections 14 and 125 of the Highways Act 1980 and submitted for confirmation to the Secretary of State for Transport.
- The Order proposes to:
 - (a) improve, divert, raise, lower, or otherwise alter the lengths of highway named in its Schedule and shown on the Order Map by cross hatching (Section 14 (a)(i));
 - (b) stop up each private means of access to premises described in its Schedule and shown on the Order Map by a solid black band (Section 125 (a)); and
 - (c) provide new private means of access to premises at each location shown on the Order Map by thin diagonal hatching (Section 125 (b)).

Summary of Recommendation: I recommend that, subject to modifications, the SRO be confirmed.

1 INTRODUCTION

- 1.1 I was appointed by the Secretary of State to conduct Public Local Inquiries (the Inquiry) in accordance with the Acquisition of Land Act 1981 and the Highways Act 1980 in connection with the above-mentioned Orders.
- 1.2 I issued a Pre-Inquiry Note on 10 September 2024 (Doc 1.12) for distribution to all parties. This set out the administrative and practical arrangements for the Inquiry.
- 1.3 I opened the Inquiry on 1 October 2024 to hear evidence concerning the submission made by Kent County Council (KCC), as the 'Order Making Authority' for confirmation of the above-mentioned Orders, including to hear evidence from remaining objectors. The Inquiry sat for 2 days, closing on 2 October 2024. I carried out unaccompanied site inspections of the Order lands and surrounding areas on 30 September and 2 October 2024.
- 1.4 I conducted the Inquiry under and the Compulsory Purchase (Inquiries Procedure) Rules 2007 and the Highways (Inquiries Procedure) Rules 1994. The current guidance in relation to the CPO is *Guidance on the Compulsory Purchase Process* issued by the Ministry of Housing, Communities & Local Government (2024) ('the CPO guidance').
- 1.5 The Order Making Authority confirmed at the Inquiry that it had complied with all necessary statutory formalities, and it has provided evidence to show that the required notification of the Inquiry had been carried out. This compliance has not been disputed.
- 1.6 There were 2 remaining objections to the CPO outstanding at the close of the Inquiry, and no remaining objections to the SRO. Those objections to the CPO were from Mr and Mrs Horsham (of Perryfield Farm) and from Network Rail. The former attended the Inquiry, with Mr Horsham giving evidence, while the latter did not and did not provide a proof of evidence. Network Rail instead relied on the contents of its letters dated 10 and 26 September 2024, which also included concerns in relation to the SRO. Despite no formal objection having been received from Network Rail in respect to the SRO, I have also addressed those concerns in this report.
- 1.7 This report contains a brief description of the site and surroundings, the gist of the cases presented together with my conclusions and recommendations. Lists of appearances and Inquiry documents are attached, including proofs of evidence.

2 DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 Sturry is a village 2km to the northeast of Canterbury centred upon the A28 which is the principal route between Canterbury and the east Kent coastal area of Thanet. In the centre of the village the A28 traverses a level crossing over the Ashford to Ramsgate railway line. Sturry Railway Station is immediately to the east of the level crossing and the carriages of trains, stopping at the station, regularly extend over the level crossing.

- 2.2 The Order lands are associated with the proposed Sturry Link Road, which aims to reduce traffic through Sturry, ease congestion at the Sturry level crossing and cater for the extra traffic from proposed new housing development. New homes are proposed at Broad Oak/Sturry (including the 'Land at Sturry' development)¹ and also beyond (including at Herne Bay).
- 2.3 A new junction is proposed on the A28 to the west of Sturry (to the west of the house at Perryfield Farm), and to the east of the Water Treatment Works. This junction would service traffic in both directions to and from a new north-south highway incorporating a 250m long continuous bridge structure (viaduct) spanning both arms of the Great Stour and the railway, running to a position north of the railway where housing is proposed under the *Land at Sturry* development but where the land is currently a mixture of arable farming and rough grassland. The Order lands are associated with these works, as well as works to improve and widen an existing highway known as Shalloak Road to the north-east of Broad Oak level crossing. The latter works are proposed in order to facilitate traffic associated with the development of a new east-west road to the north of the railway line (to be built by the *Land at Sturry* developer as part of the wider Relief Road Scheme) which would join via a junction with the north-south Link Road.

3 THE CASE FOR THE ORDER MAKING AUTHORITY

Policy Support

- 3.1 The delivery of the Link Road scheme as part of the wider Relief Road is critical for unlocking growth in the Canterbury area through the Canterbury District Local Plan (July 2017), which identifies in policy T14 (Doc 7.5) that Canterbury City Council will seek to implement a Sturry Relief Road. In supporting text to the policy (at paragraph 5.54), it states:

"New mixed-use development sites have been allocated at Sturry/Broad Oak and Hersden which lie within the A28 corridor. The A28 through Sturry suffers from congestion due to the high levels of traffic and the operation of the level crossing at Sturry. Whilst sustainable modes like walking, cycling and public transport will be provided for by these new sites, it is accepted that the new development will still create additional traffic. Any further significant development in this area will be required to improve and mitigate the effects of this additional traffic by provision of/or proportionate contribution to a Sturry Relief Road that avoids the level crossing with a new road bridge, including a bus lane over the railway line or other associated improvements to the A28 corridor. The City Council will enter into appropriate legal agreements with the relevant site owners/agents to ensure that the Sturry Relief Road is delivered at an appropriate point with fair and proportionate contributions from all relevant developments."

¹ Authorised by planning consent CA/20/02826 on 8 March 2021 – including development of up to 630 houses and associated community infrastructure comprising primary school, community building, public car park and associated amenity space, access, parking and landscaping.

Clear idea of how the Order Making Authority intends to use the Land

- 3.2 The CPO guidance states that if the acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire then it will be difficult to show that the compulsory acquisition is justified in the public interest.
- 3.3 The acquiring authority has a very clear idea of what it intends to do with the CPO land. It has detailed planning consent for the scheme (Doc 11.2), and I heard from Mr Shelton (para 6.11 of his proof of evidence (PoE)) that KCC awarded the Design and Build contract for its construction earlier this year. The acquiring authority is committed to delivering this vital piece of strategic infrastructure for the benefit of both existing and new residents of the local and wider area, with construction anticipated in Spring 2026 (para 4.23 of Mr Shelton's PoE). The *Land at Sturry* development also has planning consent, with detailed consent for the delivery of its east-west section of the Relief Rd (CA/20/02826).
- 3.4 As Mr East explained (in his PoE, para 2.4), the A28 through Sturry suffers from congestion due to the high volumes of traffic and the operation of the Sturry level crossing. The Sturry Relief Road will provide an alternative route away from the level crossing (avoiding Sturry village) and will address existing traffic congestion issues on the A28 corridor as well as supporting the delivery of the wider Local Plan, including the *Land at Sturry* development site and other allocated housing developments. Other transport benefits of the scheme include improving journey quality for cyclists, pedestrians and local traffic, reduced 'rat-running' through Broad Oak village, and providing road space for a dedicated bus lane (PoE, para 3.8).
- 3.5 Mr East explained that the traffic modelling shows that by the 2031 forecast year, without the Sturry Link Road scheme but with the planned developments included in the Local Plan (many of which now have planning consent), there would be significant network congestion with journey times increasing significantly. The Sturry level crossing provides a significant constraint on network capacity which the scheme addresses by reducing traffic over the level crossing (PoE, para 3.23).
- 3.6 The Link Road is a vital part of the overall Relief Road Scheme. As Mr East explained, in the absence of the Sturry Link Road and the widening of Shalloak Road, the development of *Land at Sturry* could still take place and the east-west section of the Relief Road could still be delivered in accordance with the planning consent (Doc 9.1) and associated planning obligation (Doc 9.3). The Relief Road alone without the Link Road Viaduct would not be able to accommodate the future forecast growth resulting from planned housing developments without severe impact on the network (PoE, paras 3.20-3-22).

Funding – sources and availability

- 3.7 The CPO guidance states that the acquiring authority should address the sources of funding and the timing of funding when justifying the CPO.
- 3.8 With regard to sources of funding, the CPO guidance states that substantive information should be provided as to the sources of funding for both acquiring the land and implementing the scheme, and an indication of how any funding shortfalls are to be met.
- 3.9 As to timing, it advises:
"funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period.... following the operative date." (Guidance on the Compulsory Purchase Process; p14)
- In other words, funding should be available for land acquisition before the expiry of the three-year period for powers of acquisition under a confirmed CPO.
- 3.10 The CPO guidance further states that unless an acquiring authority is able to show that necessary resources are likely to be available within a reasonable timescale, it will be difficult to show that compulsory acquisition is justified in the public interest.
- 3.11 As Mr Shelton explained, the necessary resources to deliver the scheme are either already available or will be available within a reasonable timescale. KCC estimates that the delivery of the Link Road and associated elements of the scheme including land acquisition will cost £41.6 million, based on a start date in April 2025. Although a start in April 2026 is now anticipated, as Mr Shelton explained, an inflationary cost increase on the budget should be offset by the increased funding provided by the indexation on Section 106 developer contributions that are yet to come forward (PoE, para 6.6).
- 3.12 The funding for the scheme will come from two sources - SELEP (South-East Local Enterprise Partnership) funding and funding from developers through Section 106 funds.
- 3.13 KCC is already in receipt of the SELEP funding of £5.9 million (Mr Shelton's PoE, para 6.18). The remainder of the funding is to be provided by the Land at Sturry, Land at Broad Oak Farm, Hoplands Farm, Chislet Colliery, Land to the North of Hersden, Land North of Popes Lane, and Herne Bay Golf Club developers under Section 106 planning obligations. Mr Shelton's evidence provides a summary of each of the Section 106 contributions, the status of the development in terms of planning consent and whether it is already being built out, the contribution being made to the Link Road scheme, and whether that contribution has already been received in full, in part or at all (PoE, paras 6.22-6.55).

- 3.14 Indexation of the Section 106 contributions is relevant to the funding position. All of the Section 106 contributions are index-linked from a date specified in each agreement. As Mr Shelton explained (PoE, para 6.56), any risk of increases in the budget estimates due to delay should be offset by the increase in the developer contribution due to the indexation. The indexation is generally based on the difference in the 'Building Cost Information Service (BCIS) General Civil Engineering Cost Index' between the base date, generally the date of signing the Section 106 agreement, and the date that the instalment is paid by the developer.
- 3.15 As at June 2024, £10.6 million of the £41.6 million estimated scheme cost had been received by the Council (Mr Shelton's PoE, para 6.57).
- 3.16 With regard to the timing of funding, not all of the external funding for the scheme is available now but the Council intends to forward fund the scheme whilst the identified Section 106 contributions are awaited in order to ensure that it can be proceed without delay. The project line for the Relief Road within the current KCC 24/25 budget book illustrates the likely anticipated spend by year based on the current delivery programme and timing of the funding contributions (Doc 12.9).
- 3.17 KCC is committed to delivering the Link Road and ensuring that the full Relief Road is achieved. As Mr Shelton explained (PoE, para 6.61), if it emerges that there is a funding shortfall in the years ahead, additional developer contributions from developments identified in the emerging local plan and other grant funding streams will be pursued, if necessary, to meet the overall cost of delivering the construction of the Link Road.

Impediments

- 3.18 The CPO guidance advises that the acquiring authority needs to show that the scheme will be unlikely to be blocked by any physical or legal impediments to implementation.
- 3.19 As Mr Shelton explained, the scheme is unlikely to be blocked by any such impediments.
- 3.20 The Link Road has detailed planning consent and KCC is progressing the discharge of pre-commencement planning conditions. Although there are various approvals and consents still required in order to deliver the Link Road (Mr Shelton's PoE, para 7.7), the Council does not consider that they are likely to present an impediment to delivery. As well as the discharge of planning conditions, the approvals and consents that are still to be secured include track possession agreements with Network Rail, environmental permits from the Environment Agency, a demolition notice for the demolition of the derelict house at Shalloak Road, and a Non-Material Amendment to the Link Road planning consent to reduce the number of spans for the viaduct.
- 3.21 There is a practical interdependence and interaction between the Link Road and the *Land at Sturry* development in terms of delivering the full Relief Road. As already stated, the *Land at Sturry* development has planning
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consent, including detailed consent for the Relief Road. The consent was granted in 2021 but progress has since been delayed because of the emerging guidance from Natural England on Nutrient Neutrality. An acceptable nutrient solution has now been found and in February 2024 Canterbury City Council adopted a new Appropriate Assessment for the Sturry site, which was approved through consultation with Natural England. In 2024, the first reserved matters application was approved and that extends the validity of the planning consent by two years, until February 2026. The developer still has further reserved matters applications to submit for approval and environmental licences to secure, and KCC anticipates that the development will be implemented in late 2025 or early 2026, which is in advance of KCC's intended start date for the Link Road (Mr Shelton's PoE, paras 5.7-5.11, and evidence to the Inquiry).

Efforts to acquire by agreement

- 3.22 The CPO guidance states that the acquiring authority is expected to show that it has taken reasonable steps to acquire all of the land and rights included in the CPO by agreement. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.
- 3.23 KCC has made significant efforts to acquire all of the land by agreement and negotiate and come to terms with objectors. It has secured the withdrawal of objections from South Eastern Power Networks as well as the Environment Agency, Southern Gas Networks and National Grid. It has also already agreed heads of terms and compensation with a commercial landowner, Valencia, which owns the land required for the widening of Shalloak Road (Mr Shelton's PoE, paras 8.7-8.9 and 8.11).
- 3.24 There are two remaining objectors to the CPO - Network Rail and Mr and Mrs Horsham.
- 3.25 With regard to Network Rail, there has been positive and constructive engagement between KCC and Network Rail in the lead up to and during the Inquiry. A letter from Network Rail dated 26 September 2024 said that negotiation with KCC was in an advanced stage and that it did not intend to appear at the Inquiry, give evidence in chief, call any witnesses, or cross examine any witness at the Inquiry. However, to date, Network Rail's objection has not been withdrawn.
- 3.26 In respect to Mr and Mrs Horsham, KCC has engaged with them over a long period of time. Mr Shelton's evidence (PoE para 8.15) is that, since 2017, the Council has worked hard to resolve Mr and Mrs Horsham's concerns and to limit the impact of the CPO and delivery of the Link Road on their land where possible. As Mr Shelton explained, there have been approximately 7 meetings with Mr and Mrs Horsham, the exchange of some 20 letters from KCC to Mr and Mrs Horsham (and a similar number of letters back), and approximately 35 exchanges between KCC and Mr and Mrs Horsham's now dis-instructed agent.

- 3.27 Following discussion with KCC at the commencement of the Inquiry, Mr and Mrs Horsham confirmed that they were content to withdraw their objection to the SRO and that the objection to the CPO persists only in respect of Plot 11. These outcomes of the negotiations were formally put in writing by Mr and Mrs Horsham and submitted to the Inquiry while it was sitting.
- 3.28 The fact that there remains outstanding objections is not through lack of trying on the part of KCC. Reasonable steps have been taken to acquire the land by agreement and meaningful attempts at negotiation have been made in accordance with the CPO guidance.

Public Sector Equality Duty and the Equality Impact Assessment

- 3.29 The CPO guidance gives advice on how the public sector equality duty (PSED) should be taken into account by acquiring authorities in compulsory purchase. It advises that acquiring authorities must have due regard to the effect of any differential or disproportionate impacts of the CPO on groups with protected characteristics. KCC has discharged its duties in respect of section 149 of the Equality Act 2010 in accordance with the CPO guidance. It has produced and updated an Equalities Impact Assessment (Doc 13.1), which has been considered by the Council's senior officers and Members when taking the decisions between 2015 and 2023 for the delivery of the Scheme, including the use of CPO powers (Mr Shelton's PoE, para 13.3).
- 3.30 The PSED also applies to the Secretary of State in respect of the decision as to whether or not to confirm this CPO and SRO. It imposes a procedural requirement to have "due regard" to various specified considerations when taking decisions. The duty does not require a particular substantive result in respect of the CPO/SRO and the impacts of it on those with protected characteristics.
- 3.31 The position that the Secretary of State is invited to take into account when discharging the public sector equality duty is set out in the Equalities Impact Assessment. In summary, that assessment identified long term positive impacts for those with the protected characteristics of age, disability, gender and pregnancy and maternity in terms of improved safety of routes through improved pedestrian crossings, highways and paths, and improved transport connectivity. Temporary negative impacts are identified during the construction phase for broadly the same groups but with mitigation measures intended to be put in place such as ensuring diversions are well-lit. This will result in little or no residual adverse impact.

Human Rights

- 3.32 Consideration of European Convention on Human Rights issues, in this instance Article 1 Protocol 1 (the right to peaceful enjoyment of property) and Article 8 (the right to a private and family life) is reflected in the CPO guidance which states that the purposes for which the compulsory purchase order is made must justify interfering with the human rights of those with

an interest in the land affected. The Courts have considered convention rights in the context of CPOs on a number of occasions and have recognised that the "compelling case in the public interest" test is not materially different to the decision making required in the context of convention rights, on the basis that the compelling case approach necessarily involves weighing the individual's rights against the public interest.

- 3.33 The only residential property impacted in this CPO is Perryfield Farm, Mr and Mrs Horsham's property. All other land required is held for existing or potential commercial, employment or utility company use. The effect of this is that whilst all affected parties have Article 1 Protocol 1 rights, it is only Mr and Mrs Horsham's Article 8 rights which are engaged. KCC has sought to limit land take insofar as it has been possible to do so. The Council's submission is that the public benefits provided by the scheme in securing the transport improvements and the consequential unlocking of significant housing development justifies the interference with individual rights.

Side Roads Order

- 3.34 The SRO seeks to improve Shalloak Road and the A28 Sturry Road. As explained in KCC's Statement of Case (SOC), the SRO provides an improvement of Shalloak Road which will be locally widened to help mitigate the problem of two large vehicles having difficulty passing each other to the north of Broad Oak level crossing, causing 'blocking back'. The improvement made to the A28 Sturry Road is to facilitate the construction of the roundabout on the north side of the road between the Canterbury Wastewater Treatment Works and Perryfield Farm, which would involve the local realignment of the approaches to and exits from the roundabout.
- 3.35 The SRO seeks to stop up two private means of access to premises and to provide new means of access to those premises, specifically Mr and Mrs Horsham's land at Perryfield Farm and access to a field allocated under Policy EMP1 of the Canterbury District Local Plan for 'Future Employment Use Land'. The private means of access to Perryfield Farm is not physically affected but its location is considered to be too close to the exit from the roundabout for safety reasons. A new means of access will be provided as a connection to the roundabout. The access would also serve as the maintenance access to an adjacent drainage basin.
- 3.36 Notwithstanding that both accesses will be stopped up, other reasonably convenient means of access to the premises will be provided and therefore the SRO complies with section 125(3)B of the Highways Act 1980.
- 3.37 It is proposed that the SRO map be modified to remove approximately 3 metres from the southern limit of the 'improved highway' at Shalloak Road. This is to make clear that the improvement does not extend onto the local ramps up to the Broad Oak level crossing that have 'keep clear' marking. KCC also agrees that a typographical error in the Order should be corrected through modification so that Article 2 refers to reference number (and not reference letter).

4 THE CASES FOR THE OBJECTORS AND ORDER MAKING AUTHORITY RESPONSES

Network Rail

Objector's case

- 4.1 Network Rail considers that if the CPO or SRO were confirmed without modification, it would give KCC the power to carry out works and acquire land without securing appropriate protections for Network Rail and its railway undertaking.
- 4.2 Network Rail is particularly concerned about the effects of implementing the Orders on the level of vehicular traffic over the Broad Oak and Sturry level crossings, the former being one of the busiest level crossings in Kent. It is concerned that any increases in vehicular traffic would pose a public risk.

Response

- 4.3 Mr East's evidence (PoE Section 5; Supplementary PoE paras 7-13) explains that the SRO has no impact at all on Network Rail's land and the CPO seeks the acquisition of rights only at plots 20, 21 and 22. This will have a limited impact on the operational railway during construction and no impact during operation following the scheme construction. In respect to the test under Schedule 3, Part 2 of the Acquisition of Land Act 1981, the CPO will not cause any serious detriment to the carrying on of the railway undertaking.
- 4.4 Mr East's evidence (Supplementary PoE, paras 14-19) also explains that the concerns raised by Network Rail regarding the CPO/SRO impact on the Broad Oak level crossing are unfounded. The widening of a short section of Shalloak Road to the north of the Broad Oak level crossing arose from the outcome of a level crossing risk assessment carried out jointly between Network Rail and KCC. This followed concerns over 'blocking back' of traffic over the crossing caused by vehicles slowing down to safely negotiate the narrowness of the road. Proposals for widening Shalloak Road are intended to improve safety at the crossing and mitigate the potential for increased traffic during peak hours because of the Sturry Relief Road. Neither the CPO nor the SRO themselves facilitate additional traffic over the crossing. It is instead the *Land at Sturry* development that will create the main section of the Relief Road that will provide a connection between A291 Sturry Hill and Shalloak Road which will deliver additional dwellings and occupants who will use the transport network (as well as other new residential development in the area). The absence of the Link Road would worsen the situation at Broad Oak level crossing and the Sturry level crossing.
- 4.5 Unrelated to the objection, a minor amendment is proposed by KCC to the CPO schedule to reflect a reduction in plot 22 (a rights plot) from 552 square metres to 550 square metres. This is to seek to align the CPO with Network Rail's own asset information mapping.

Mr and Mrs Horsham

Objectors' case

- 4.6 The gist of the remaining objection, solely relating to Plot 11, is that the proposed land take (of 900 square metres) is excessive and that there are also security concerns.

Response

- 4.7 In essence, KCC's response is that the acquisition of lands and rights is necessary for the Link Road (including the viaduct and the highway embankment) and for its construction and maintenance. However, it has reviewed the matter and has put forward 2 modified schemes which would reduce the land take to various degrees and which would not pose security concerns (detailed in Mr Shelton's Supplementary PoE, paras 15-28).
- 4.8 Both modification options create a new rights plot, 11a, on the eastern edge of plot 11 which would provide a smooth fence line for Mr and Mrs Horsham and reduce the land take by 15 square metres.
- 4.9 Option 1 would further reduce the land take by an additional 148 square metres, and Option 2 by 203 square metres, by reason of the acquisition instead of rights associated with the (low-headroom) land serving the viaduct structure before it crosses the river – as opposed to the comprehensive acquisition of the freehold land itself in plot 11 of the made Order. The difference in the 2 options is essentially where the line is drawn between an area of land acquisition constituting plot 11 and a new rights plot, plot 11b.
- 4.10 Option 1 is KCC's preferred option where it takes title to and fences a strip 4.5m wide from the face of the viaduct abutment to provide sufficient room for the abutment foundations, drainage chambers and room for a maintenance vehicle. That would leave a strip 5.5m wide to the riverbank over which KCC would acquire permanent rights of access for inspection and maintenance of the viaduct, and for the construction of surface water pipes and tail walls, and their inspection, maintenance and renewal.
- 4.11 Option 2 is that KCC takes title to a 2m strip from the face of the abutment to include, essentially, only the land occupied by the abutment foundations. The 2m strip would leave a strip 8m wide to the riverbank over which KCC would need to acquire permanent rights for inspection and maintenance of the viaduct, and for the construction of surface water chambers, pipes and tail walls, and their inspection, maintenance and renewal.
- 4.12 As Mr East explained at the Inquiry, neither option requires any change to the planning permission as they simply relate to the extent of acquisition of land from Mr and Mrs Horsham as compared to rights, and the respective locations of fencing and access gates for each option.
- 4.13 Mr Horsham stated that he was not content to accept either option as neither provides the security that he required. However this is not a

well-founded criticism as both options provide appropriate and secure fencing. With either option the highway would be completely fenced-off from Mr and Mrs Horsham's land. Further, and in any event, the embankment slope will be planted and it would be very difficult for someone to walk down the embankment up to the fence line. Although Mr Horsham would like the embankment to be steeper, Mr East explained the slope has been designed to be stable and safe in the long term.

- 4.14 Mr Horsham himself came up with an option 3 at the Inquiry which sought land to be removed from plot 11 so as to reduce the width of the maintenance/drainage land at the toe of the embankment from approximately 3 metres to approximately 1.5 metres. Both Mr Shelton and Mr East explained that it is simply not possible for the Council to give up this land. The land is required so that there is access between the embankment and the fence line for maintenance and to ensure that the underground drainage pipe can be maintained, in particular because the width has been reduced to 1.5 metres further to the south in plot 11. In all other relevant locations a 3 metre strip has been provided for maintenance. Whereas the Council can accept a reduced width for the length that is already within the scheme design, planning consent and CPO land, it needs wider access at either end of the embankment to ensure that it has the space to bring a machine onto the land to fix any blockages. Also the fact that the drainage pipe will need to curve around at the northern end of plot 11 means that the Council would in particular need sufficient working space to access the curved section. Mr Horsham sought to suggest that maintenance could be achieved with a narrow strip of land. However, he is plainly not an expert in this field. When asked about relevant professional qualifications/experience, he referred to an electrical engineering degree and professional experience rather than any civil or specific highways engineering experience. On this basis the evidence of the experts, Mr Shelton and Mr East, should be preferred. Further, and in any event, such an amendment would make only a modest difference to Mr Horsham's land take due to reducing acquisition by approximately 10 to 20 square metres.
- 4.15 The final matter to be covered in relation to Mr Horsham's evidence is his suggestion that the Council should pull the embankment back towards the A28 and instead put in in place a retaining wall of an unspecified length to the south of the river. This would be a significant engineering and design alteration to the scheme and, as Mr East and Mr Shelton explained, it is not designed, costed, or funded - nor does it have any planning consent. Mr East also pointed to the scheme being environmentally sensitive and their lack of certainty about whether adding additional hard structures would be acceptable in environmental terms. It is plain that this proposal is not practically achievable.
- 4.16 Following negotiations with KCC, Mr and Mrs Horsham have withdrawn their objection as far as it relates to plots 4 and 14, and KCC proposes to modify the Order by deleting plot 4 and by converting plot 14 from a permanent acquisition of land plot to an acquisition of rights plot.

5 INSPECTOR'S CONCLUSIONS

5.1 Having considered all matters carefully and in depth, I am in agreement on all issues with the Order Making Authority for the same reasons it has given in its evidence and submissions. I conclude for those reasons that, in respect to the Orders:

- There is a compelling case in the public interest for the CPO to be made;
- This justifies interfering with the human rights of those with an interest in the land affected;
- The acquiring authority has a clear idea of how it is intending to use the land it seeks to acquire;
- The acquiring authority can show that all necessary resources (including funding) to carry out its plans are likely to be available within a reasonable timescale;
- The scheme is unlikely to be blocked by any impediment to implementation;
- The acquiring authority has taken reasonable steps to acquire all of the land and rights included in the CPO by agreement;
- The Public Sector Equality Duty has been met;
- The Orders will not cause any serious detriment to the carrying on of a railway undertaking, increase vehicular traffic over any level crossing or create a public safety risk; and
- In relation to the stopping up of private access to premises, other reasonably convenient means of access to premises will be provided.

5.2 As regards Plot 11 of the CPO Schedule, Modification Option 1 put forward by KCC would be a justified and proportionate interference with Mr and Mrs Horsham's human rights while delivering the compelling Link Road scheme in the public interest. It would reduce the land take as compared to the made Order, while securing sufficient land at the face of the viaduct abutment for the effective delivery and maintenance of the scheme.

6 RECOMMENDATIONS

6.1 I recommend that *The Kent County Council (A28 Sturry Link Road) (Compulsory Purchase) Order 2023*, modified in accordance with the CPO Order and Schedule – Version 1 (R17v1) (Doc 1.18) and CPO Map - Version 1 (R17v1) (Doc 1.20), be confirmed.

6.2 I recommend that *The Kent County Council (A28 Sturry Link Road) (Side Roads) Order 2023*, modified as follows, be confirmed.

- Modification in accordance with Side Roads Order Plan Drawing No. 008469-PCL-LSI-ZZ-DR-CH-0001 Rev P02 (Doc 1.16 p6) in that Highway B shall be improved from Broad Oak level crossing for a distance of 107m in a northeast direction (modified from 110m); and
- In Article 2 "reference letter" to be modified to "reference number".

Andrew Walker

INSPECTOR

APPENDICES

APPENDIX 1 - APPEARANCES

FOR KENT COUNTY COUNCIL (KCC):

Caroline Daly

Francis Taylor Building

She called

Richard Shelton

KCC Project Manager in the Major Capital Programme Team

Jonathan East

Associate Engineer at Project Centre (Scheme Consultant)

OBJECTOR:

Deryck Horsham

OTHER PARTIES: none

APPENDIX 2 – INQUIRY DOCUMENTS

Core Documents (available at <https://www.kent.gov.uk/roads-and-travel/road-projects/planned-road-projects/sturry-link-road#tab-4>)

Doc 1.0 Core Document Register

The Orders

Doc 1.1 (26.1) The CPO Order and Schedule

Doc 1.2 (26.2) The CPO Order Map

Doc 1.3 (26.3) Not used

Doc 1.4 (26.4) The SRO Order and Schedule

Doc 1.5 (26.5) The SRO Order Map

Doc 1.6 (26.6) Statement of Case

Doc 1.7 Letters of Objection from Network Rail dated 14/12/2023

Doc 1.8 E-mail Notifying objection from UKPN/SEPN dated 28/12/23

Doc 1.9 Letters of Objection from Mr and Mrs Horsham dated 18/12/2023

Doc 1.10.01 Richard Shelton Scheme Proofs of Evidence Summary

Doc 1.10.02 Richard Shelton Scheme Proofs of Evidence Main

Doc 1.11.01 Jonathan East Scheme Proofs of Evidence Summary

Doc 1.11.02 Jonathan East Scheme Proofs of Evidence Main

Doc 1.12 Inspector's Pre-Inquiry Note A28 Sturry Link Road

Doc 1.13 Letter from KCC to Mr and Mrs Horsham

Doc 1.14 Letter from KCC to Mr and Mrs Horsham

Doc 1.15 Richard Shelton Supplementary Proof of Evidence 20-9-24

Doc 1.16 Jonathan East Supplementary Proof 20-9-24 (including Side Roads Order Plan Rev P02 with proposed modification).

Doc.1.17 CPO and SRO Modifications Summary 20-9-24

Doc 1.18 The CPO Order and Schedule – Version 1 (R17v1)

Doc 1.19 The CPO Order and Schedule – Version 2 (R17v2)

Doc 1.20 The CPO Map - Version 1 (R17v1)

Doc 1.21 The CPO Map – Version 2 (R17v2)

Doc 1.22 Statement of Reasons

Doc 1.23 Network Rail Section 16 notification 14-12-2023

Doc 1.24 Network Rail letter to Inspector 10-9-2024

Doc 1.25 Letter from KCC to Mr and Mrs Horsham 25-9-24

Doc 1.26 Mr and Mr's Horsham's Proof of Evidence 12-9-24

Doc 1.27 UKPN/SEPN –Removal of objection 23-9-24

Scheme Plans

Doc 2.1 (26.7) Link Road Scheme Plan

Doc 2.2 (26.8) Viaduct General Arrangement

Doc 2.3 (26.9) Relief Road Scheme Plan

Doc 2.4 (26.10) Developer Scheme Plan–Western section

Doc 2.5 (26.11) Developer Scheme Plan - Middle section

Doc 2.6 (26.12) Developer Scheme Plan – Eastern section

Doc 2.7 (26.13) A28/A291 Junction Scheme Plan

Doc 2.8 (26.14) Valencia Continuity of Access Plan

Design and Access

Doc 3.1 (26.15) Design and Access Statement – June 2021

Doc 3.2 (26.16) Structures Feasibility Report – July 2017

Doc 3.3 (26.17) Briefing Note of Sturry Station Upgrade and Line Resignalling Aspects – April 2021

Doc 3.4 Broad Oak level crossing Report February 2024

Doc 3.5 Sturry level crossing risk assessment February 2024

Traffic Modelling

Doc 4.1 (26.18) Transport Assessment – November 2018

Doc 4.2 (26.19) Transport Assessment Addendum – September 2019

Doc 4.3 (26.20) Supplementary Transport appraisal – May 2021

Doc 4.4 Local Model Validation Report – September 2015

Doc 4.5 Transport Impact Study – August 2017

Public Engagement

Doc 5.1 (26.21) Sturry Link Road Consultation Booklet – Summer 2017

Doc 5.2 (26.22) Sturry Link Road Consultation Report - 2017

Road Safety Audit

Doc 6.1 (26.23) Road Safety Audit Stage 1 Response Report – December 2017

Planning Policy

Doc 7.1 (26.24) National Planning Policy Framework – December 2023

Doc 7.2 (26.25) Framing Kent’s Future 2022-2026

Doc 7.3 (26.26) Kent and Medway Growth Infrastructure Framework 2018 Update

Doc 7.4 (26.27) Local Transport Plan 4 2016 - 2031

Doc 7.5 (26.28) Canterbury District Local Plan – Adopted July 2017

Doc 7.6 (26.29) Local Plan Inspector’s report – June 2017

Doc 7.7 (26.30) Draft Canterbury District Local Plan to 2040 – March 2024

Doc 7.8 NPPF Consultation Draft 2024

Doc 7.9 Local Transport Plan 5 2024 Consultation Draft 2024

Doc 7.10 Not used.

Doc 7.11 Canterbury Riverside Strategy 2023 - 2028

Doc 7.12 Canterbury Corporate Plan 2016 – 2020

SELEP Funding

Doc 8.1 (26.31) SELEP Business Case – June 2016

Doc 8.2 (26.32) SELEP Funding Approval Minutes – April 2023

Doc 8.3 (26.33) SELEP Update Minutes June 2016

Doc 8.4 SELEP Growth Deal and Strategic Economic Plan

Doc 8.5 SELEP Accountability Board Agenda Pack 22.09.23

Doc 8.6 SELEP Summary of Decisions September 2023

Section 106 Agreements

Doc 9.1 (26.34) Land at Sturry/Broad Oak Farm CA/20/02826 Planning Permission – March 2021

Doc 9.2 (26.35) Land at Sturry/Broad Oak Farm CA/20/02826 Masterplan

Doc 9.3 (26.36) Land at Sturry/Broad Oak Farm CA/20/02826 S106 – March 2021

Doc 9.4 (26.37) Land at Broad Oak Farm CA/18/0868 – March 2021

Doc 9.5 (26.38) Hoplands Farm CA/16/00404/OUT – July 2017

Doc 9.6 (26.39) Former Herne Bay Golf Club CA/15/00844 - September 2015

Doc 9.7 (26.40) Former Chislet Colliery, Hersden CA/16/00673/OUT - November 2018

Doc 9.8 (26.41) Land to North of Hersden Layout Plan

Doc 9.9 Land North of Popes Lane letter from Highway Authority 9 November 2023

Doc.9.10 Land North of Popes Lane– Development Framework Plan

Environmental Statement and Related Reports

Doc 10.1 (26.42) Environmental Statement Non-Technical Summary - June 2021

Doc 10.2 (26.43) Environmental Statement Vol 2 Main Text – March 2019

Doc 10.3 (26.44) Environmental Statement Update – June 2021

Doc 10.4 (26.45) Environmental Statement Vol 3 Figures 1.1 – 8.1

Doc 10.5 (26.46) Environmental Statement Vol 3 Figures 8.2 – 8.16

Doc 10.6 (26.47) Environmental Statement Vol 3 Figures 8.17- 11.6a

Doc 10.7 (26.48) Environmental Statement Vol 3 Figures 11.6b- 14.2

Doc 10.8 (26.49) Environmental Statement Vol 3 Figures 14.3- 18.1

Doc 10.9 (26.50) Environmental Statement Vol 4 Appendices Contents

Doc 10.10 (26.51) Environmental Statement Vol 4 – 1.1 Land at Sturry Masterplan

Doc 10.11 (26.52) Environmental Statement Vol 4 - 4.1 Consultation Responses

Doc 10.12 (26.53) Environmental Statement Vol 4 - 5.1 Construction
Environmental Management Plan

Doc 10.13 (26.54) Environmental Statement Vol 4 – 6.1 Design and Access
Statement Part 1

Doc 10.14 (26.55) Environmental Statement Vol 4 – 6.1 Design and Access
Statement Part 2

Doc 10.15 (26.56) Environmental Statement Vol 4 – 8.1 Dust Risk Assessment
Tables

- Doc 10.16 (26.57) Environmental Statement Vol 4 – 8.2 Detailed Modelling Methodology
- Doc 10.17 (26.58) Environmental Statement Vol 4 – 8.3 Detailed Modelling Results
- Doc 10.18 (26.59) Environmental Statement Vol 4 – 8.4 Mitigation of Temporary Effects
- Doc 10.19 (26.60) Environmental Statement Vol 4 – 8.5 Traffic Modelling Summary
- Doc 10.20 (26.61) Environmental Statement Vol 4 – 9.1 Archaeological Desk Based Assessment
- Doc 10.21 (26.62) Environmental Statement Vol 4 – 10.1 Landscape Proposal
- Doc 10.22 (26.63) Environmental Statement Vol 4 – 11.1 Ecology Baseline Report
- Doc 10.23 (26.64) Environmental Statement Vol 4 – 11.2 Habitat Regulations Assessment
- Doc 10.24 (26.65) Environmental Statement Vol 4 – 14.1 Traffic Data for Noise Assessment
- Doc 10.25 (26.66) Environmental Statement Vol 4 – 14.2 Noise Survey Results and Calibration Certificates
- Doc 10.26 (26.67) Environmental Statement Vol 4 – 14.3 Operational Noise Results
- Doc 10.27 (26.68) Environmental Statement Vol 4 – 16.1 Flood Risk and Drainage Strategy Part 1
- Doc 10.28 (26.69) Environmental Statement Vol 4 – 16.1 Flood Risk and Drainage Strategy Part 2
- Doc 10.29 (26.70) Environmental Statement Vol 4 – 16.2 HAWRAT (Highways Agency Water Risk Assessment Tool)
- Doc 10.30 (26.71) Environmental Statement Vol 4 – 17.1 Greenhouse Gases
- Doc 10.31 (26.72) Air Quality Assessment Addendum – February 2020
- Doc 10.32 (26.73) Attenuation Ponds for Saline Treatments Plan - Illustrative
- Doc 10.33 (26.74) Ecology & Nature Conservation Addendum – September 2019
- Doc 10.34.1 Flood Risk Assessment and Drainage Strategy September 2018
- Doc 10.34.2 (26.75) Flood Risk Assessment Addendum – April 2020
- Doc 10.35 (26.76) Preliminary Sources Study and Contamination Assessment Report – November 2016
- Doc 10.36 (26.77) Wetland Habitat Restoration Plan – Illustrative

Planning Permission

Doc 11.1 (26.78) Planning Applications Committee Report – September 2021

Doc 11.2 (26.79) Planning Permission Decision Letter – September 2021

Council Governance

Doc 12.1 (26.80) Environment & Transport Cabinet Committee – September 2015

Doc 12.2 (26.81) Record of Decision – 15/00070

Doc 12.3 (26.82) Environment & Transport Cabinet Committee – June 2017

Doc 12.4 (26.83) Record of Decision – 17/00061

Doc 12.5 (26.84) Environment & Transport Cabinet Committee – May 2018

Doc 12.6 (26.85) Record of Decision – 18/0002723/00066

Doc 12.7 (26.86) Environment & Transport Cabinet Committee – July 2023

Doc 12.8 (26.87) Record of Decision – 23/00066

Doc 12.9 KCC Budget Book 2024-25

Equalities Impact Assessment

Doc 13.1 (26.88) Equalities Impact Assessment – July 2023

CPO and SRO Preparation Guidance

Doc 14.1 (26.89) DCLG Guidance on Compulsory Purchase and The Cichel Down Rules 2019

Doc 14.2 (26.90) DfT Circular 2/97 Notes on the Preparation of Compulsory Purchase Orders

Doc 14.3 (26.91) SI 1994 No. 2145 Acquisition of Land

Doc 14.4 (26.92) DfT Circular 1/97 Notes on the Preparation of Side Roads Orders

Documents received at the Inquiries (or shortly before opening)

Letter from Network Rail (dated 26 September 2024)

Letter received by hand from Mr & Mrs Horsham (dated 1 October 2024) withdrawing objection to the SRO.

Letter received by hand from Mr & Mrs Horsham (dated 1 October 2024) partially withdrawing objection to the CRO – objection withdrawn as far as plots 4, 12, 14, 15 are concerned but not in relation to plot 11.