

IN THE MATTER OF THE HIGHWAYS ACT 1980 AND THE ACQUISITION OF LAND ACT 1981

BEFORE Inspector Aidan McCOOEY BA MSc MRTPI, an Inspector appointed by the Welsh Ministers

Thursday 19 March 2020

THE PUBLIC LOCAL INQUIRY INTO

THE LONDON TO FISHGUARD TRUNK ROAD (A40) (LLANDEWI VELFREY TO PEMBLEWIN IMPROVEMENT) SCHEME AND ASSOCIATED SIDE ROADS & COMPULSORY PURCHASE ORDERS

CLOSING SUBMISSIONS OF THE WELSH GOVERNMENT

References

1. The Welsh Government maintains its opening submissions in support of the Scheme, by which term I mean the Scheme as set in the draft Orders subject to their modification and amendment. PID.005
2. The evidence for the Scheme is soundly based and it fully justifies the claim that the Scheme will bring identified and important benefits. It should proceed.
3. The evidence submitted by the Welsh Government should be accepted as a reasoned justification for the draft Orders.
 - a. The evidence was comprehensive and detailed. That evidence demonstrates that an acceptable solution is deliverable. The thoroughness of the consideration of the issues by the expert witnesses who gave evidence gives confidence that their conclusions are correct and justified.
 - b. Clear and balanced expert evidence was provided on the key issue of mitigation to reduce or avoid impacts. That evidence whether it was in respect of the protection of species or the provision of replacement woodland has been carefully thought through in providing for the Inquiry a careful balance of the various economic, traffic, engineering ecological and environmental factors within a solution which properly weights different interests.

- c. The case put forward has in effect been accepted and has been permitted to stand; with only a single moment of cross-examination of one of the witnesses for the Welsh Government.

The Case for the Promoters

- 4. The plans to improve this section of the A40 have been within policy and, as the Scheme has developed, it has remained part of policy both at general, strategic and local level for very many years. Mr Dixon gave that justification in detail.

- 5. I highlighted in opening that the Welsh Government declared the climate emergency on 29 April 2019. The Welsh Government’s position has been clear that that event has not resulted in a change of its policy in relation to the building of roads in general or the support or promotion of this Scheme in particular.

- 6. The timeline of those events identifies the history of the announcements made by the Welsh Government including the express statement of Mr Skates on 25 June 2019 after the Ministerial decision on 4 June 2019 on the M4 makes that clear:
 - “I know that other schemes have been highlighted recently and a fear that they will be lost as a consequence of this being seen as having set a precedent That is simply not the case: all of those programmes will go ahead.”

- 7. In passing, the Welsh Government does reiterate its commitment to meet its commitments and highlights the raft of policies which it has also made to addressing the issues of the climate emergency for example, Prosperity for All: A Low Carbon Wales, the recent Bus Services Bill and its substantial investment into more silent cleaner and greener transport in Wales as evidenced by the spending commitments made within the 2020-21 budget to support the transition to low emission vehicles with a view to having a zero-emission bus and taxi/private hire fleet by 2028. You also heard from Mr Davies identifying the development of the scheme for more local buses with local authorities as well as the initiatives of £500,000 investment in electric vehicle charging infrastructure.

PID.010

ibid. p3

4.01.24

PID.020

4.03.09

para 5.10

Table 4

8. That said, whether the policy of the Welsh Government should be different is not a matter for the Inquiry.
9. I want to take the opportunity to address a couple of specific points in the evidence which has been presented. The Inquiry is well aware from the evidence of Mr Mark Dixon that the Welsh Government is under an array of interdependent and simultaneous legal obligations. These include the Well-being of Future Generations (Wales) Act 2015 and the Active Travel (Wales) 2013.
10. Mr Dixon set out the intention of the Welsh Government to take the opportunity of this Scheme to optimise the benefits of the detrunking of the existing A40. The proposals which remain at this stage at a relatively high level are to make improvements for the local environment and community. Mr Dixon was invited to demonstrate the extent to which the Welsh Government was committed to this.
11. The level of commitment has been clarified by the issue of the Contract Notice in respect of this improvement scheme on 16 March 2020 and now available on Sell2Wales, the public body procurement website, giving details of the package of measures which are under consideration.

PID.018

“The scheme will also include a package of Active Travel and De-trunking works to the old A40 carriageway in Llandewi Velfrey. ... This element ... will include narrowing carriageways to facilitate the provision of dedicated Active Travel routes; construction of formal crossing points across the de-trunked A40; reduction of speed limits along the de-trunked A40 to improve safety; community engagement and associated works to enhance the local communities of Llandewi Velfrey”
12. The Welsh Government recognises that these matters naturally do not fall within the strict constraints of the Inquiry under the Highways Act 1980 or the Acquisition of Land Act 1981: they would be undertaken after the intended formal de-trunking has occurred.
13. The Inquiry will bear in mind that these aspects of what it regards as the Project beyond the Scheme give a thumbnail sketch of quite how the community can

benefit from the residual infrastructure of the de-trunking. It will also note that these proposals also have the support of Pembrokeshire County Council.

14. Mr Thiele's evidence as to the economics of the Scheme in fact provides a good basis for holding that the calculation of the monetisable elements constituting the benefit-cost ratio, BCR, is not the sole evidence which can or should be relied upon by the Inquiry in determining accurately the issue of value for money of the Scheme. 1.2.2

- a. Whilst the resultant figure of the BCR calculation is low, it is a conservative calculation which ignores many highly valuable non-monetisable benefits which are economic in nature which arise under the Scheme since they are not permitted by the WebTAG guidance to be taken into account (see 7.87).
- b. The 2 sensitivity tests carried out by Mr Thiele with different sorts of junctions demonstrates that the resulting total is susceptible to considerable inflation. (7.76-73)
- c. The methodology does not take into account, in its calculation of green house gas emissions, any future limitation as a result of a ban of diesel-powered cars or the increase in the numbers of electric cars.
- d. The methodology employed is that of a macroscopic rather than a microsimulation model; this latter kind of traffic model, such as the PEARS (Programme for the Economic Assessment of Road Schemes) software and permitted for use in Scotland but not in Wales and not without the permission of the Department of Transport usually provides particular granularity of result. It also is able to capture benefits of the proposed WS2+1 scheme when addressing issues such as that of platooning and the benefits of overtaking (para 7.77-81).
- e. The methodology does not capture the economic benefit of the fast movement of the freight itself in the BCR calculation (para 7.86)
- f. Since the modelling depends upon average rather than seasonal figures, the extent of the benefit of the driver frustration in times of high stress, volume, frustration and platooning may well be under-represented in the economic assessment (para 7.82-5);

15. Mr Thiele's evidence has also addressed the question of whether the levels of freight traffic coming through Llandewi Velfrey have changed particularly since the removal of the tolls at the Cleddau Bridge. The tolls were removed on 1 April last year. The conclusions are that the numbers are down by just over 1% in 2019 but that is well within the range of fluctuations over the last 10 years. PID.020
16. Mr Thiele has also provided considerable assistance in accounting for the historic changes in scheme costs and a narrative on the steps being taken within this Scheme to mitigate against the risk of cost overrun. Since September 2018, additional surveys including topographical surveys, ground investigation and environmental surveys have been undertaken in order to provide additional information to prospective tenders and therefore to enable such tenderers to have a better understanding of the likely risks associated with the project. This information also provides greater confidence to the Welsh Government that armed with such information, prospective tenderers are more likely to be able to deliver for the values stated in their submissions. Further safeguards for the Welsh Government are the right under the Public Contracts Regulations 2015 to reject any bid as being abnormally low if it submits a cost that is 80% or less below the average of all tendered prices. Further points include the use of a target cost contract which incentivises the contractor to spend under the target cost. A final point is that the Welsh Government has opted to place a cap upon their liability for any overspend. PID.019
17. The evidence of John Davies confirmed the compliance of the Scheme with Planning Policy Wales (Edition 10), with government policy and in considerable detail the justification of the Scheme with the Welsh Government's obligations in respect of climate change and sustainable development. Particular emphasis is placed upon the fact that 97.4% of the greenhouse gas emissions over the life of the Scheme derive from the vehicles using it during operation. The Inquiry will of course remember both in considering the issues of sustainability and the BCR calculation, that the result of the calculation is conservative – no allowance within calculations can be made for the introduction of electric cars and the banning of diesel and petrol cars in 2035. 1.6.4

18. David Hiller has taken additional care to improve the accuracy of the data and conclusions which can be drawn from the information given in the Environmental Statement on the impact of noise in the local community.
- a. The inquiry must pay particular regard to the level of need within Llandewi Velfrey owing to its designation as a Noise Action Planning Priority Area (App. F Fig. 14.1B, App. B paras 14.3.3 and 14.3.10-11);
 - b. Those properties the subject of major and moderate adverse impact by noise at the opening and long term moments have been identified (App. F1 to 4)
 - c. The context of the noise issues by those taking issue with it are within the very small or nearly imperceptible range.
19. The need for and the extent of the mitigation strategy for reducing the impact of the Scheme has been painstakingly addressed in the evidence of Mr Andrew Sumner and Mr Pete Wells. The Inquiry will note the raising of the impact of the scheme upon ancient woodland in Ffynnon Wood and Blaenpentroydin. It will be remembered that some note should be taken of the submission that some of the land is in fact restored ancient woodland rather than untouched areas. Credit should be given too for the strategies being adopted to safeguard valuable seedbeds within the soil of such areas through its re-location to new and often connected mitigation plots. The Inquiry has the detailed calculations of the plots of woodland involved (Sumner Errata Table 1). PID.007
PID.013
20. The baseline circumstances have been properly captured and then tested by seeking to improve the Scheme with care in order to meet the concerns of the statutory body Natural Resources Wales. The features of the Scheme have been set out in the updated Register of Environmental Actions and Commitments (REAC) and the Environment Management Plan. R0018
21. In addition to the support of the local authority and the local community council, represented in person by Mr Keith Thomas (R0083), as well as the Fire Service, the promoters also bring to the attention of the Inquiry the support of the Haven Waterway Enterprise Zone Board.

22. Mr Thomas drew the Inquiry's attention to the fact that this Scheme has been at least 40 years in the making since 1980 when the A40 was described as being generally of low standard. The issues with the road in 1995 were with regard to the volume of vehicles, particularly the heavy ones and the speed at which they travel.

23. Bearing in mind the points made by objectors, it is worthwhile highlighting how he puts it:

“We have senior school children not allowed by their parents to use the school buses supplied on any journey that involves them crossing the A40, they take their life in their hands. For residents of the village, a bypass is not about cutting journey times and Pembrokeshire needs the tourists to come and good access to our ports for its prosperity. Its about our safety, well-being and quality of life.”

24. Whilst the Inquiry will be familiar with the local expressions of support for the Scheme, this couple of sentences capture well the sentiments of the very many letters of support of those who live in the village and for whom this development is overdue. The longer that the present situation continues naturally also extends the risk period to those who use or whose children or elderly parents use the footway and/or try to cross the road.

25. Identifying individual letters of support in this case appears unacceptable since there are so many giving profound and reasoned accounts. Additional factors which may not have emerged so clearly otherwise from evidence include: []

- a. The very great difficulty of local residents in cars seeking to access the A40 from their own homes;
- b. The thundering noise at night time of freight traffic;
- c. The environmental waste and community disconnect arising because individuals cannot stroll to the shop, walk to the bus stop or cross the road;
- d. The worry that the project will be delayed thereby extending the period of risk of fatalities in the village.

26. The up-to-date figures of support and objection for the Scheme are relevant, particularly during this time of Covid-19. PID.022

27. Many supporters of the Scheme have in their letters sent to the Inquiry highlighted in compelling terms the profound reasons for this Scheme to be given the go-ahead. The community has also provided to the Inquiry a petition which does deserve consideration. R00107

28. In summary at the time of closing this inquiry, the position on support is as follows:

- a. 61 unique correspondence letters and emails (up 6 from the opening) PID.022
- b. five unique correspondence letters or emails have been received that clearly express that the respondents do not object to the Scheme,

29. As to objections:

- a. 36 unique objections to the Scheme have been received, of which 20 have been classed as being from statutory objectors (no change since evidence submission);
- b. 25 (of the original 36) objections have since been withdrawn by the respective consultees leaving 11 objectors. The number of those withdrawing their objections has increased to 17 since the evidence was submitted.
- c. Three of these objectors, of which four persons were named as placing the objection, have now expressed their support for the Scheme, now providing a total of four expressions of support (which are included within the 62 stated above).
- d. There are currently 11 objectors of whom 3 are statutory (Miss Sandra Rowlands, Mrs Peett and Mr Smith) and 8 non-statutory (Mr Jenkins, Mr Wheeler, Mr Webb, Mr Cullingford, Woodland Trust, Ms Sally Amooore, Moira Rowlands).

30. The Petition in support of the Scheme also needs to be given due weight. Whilst there are 167 names on the petition expressing support, seeking to take reasonable care to minimise clear double-counting by reference to names and

addresses, there appear to be some 115 different individuals. The effect of the levels of support set out in paragraph 29 above and the petition means that there is a reasonable basis to assert as a conservative figure that the Inquiry has 192 indications of support.

31. The inquiry has been provided also with a pair of plans showing without names the locations or distribution of those in favour and those against the scheme. The spatial distribution is perhaps not surprising in light of the evidence and it confirms the wholehearted message of support from those within the village that the present situation cannot continue and that the scheme should be permitted to go forward to the next stage. PID.022

32. The engineering design achieves the correct balance to meet the objectives and to address the physical and connection issues posed by the environment. The Inquiry also now has the Road Safety Exceptions Report. The solution proposed is a sensitive solution. The land-take has been justified in respect of all acquisitions. PID.015

33. The impacts of construction have been considered in detail as set out in the Construction and Buildability Report dated 31 October 2018. 4.04.09

34. The Welsh Government's case is that environmental considerations and requirements have been satisfied. The inquiry has seen evidence of compliance with the environmental legislation, the Environmental Statement, and the Assessment of Implications on European Sites process (including the updated assessment and its provision to the Natural Resources Wales). The Inquiry also has the evidence of the consultation with CADW (Sumner Errata para 2.1)

35. The Welsh Government also submits that all statutory procedures and processes have been followed. This has been done by way of provision of the dossier of statutory procedures of the draft Orders.

Modifications

36. There are currently 17 modifications. Every increase or reduction of land interest compared with the published Scheme is agreed in writing with the land owner as Folder

required except for the 6 which relate to the holdings of Miss Sandra Rowlands. In respect of the Side Roads Order, reliance is placed on all the evidence and on the round table session last week. Reasonable alternative means of access have been identified and are provided.

Objections to the Scheme

37. Before turning to individual objectors, some recurrent themes can be deal with.

In general, the Welsh Government relies on the written rebuttals to all those who did not attend. There were 3 objectors who attended in person (one since withdrawn) but bearing in mind the coronavirus position and the guidance from the Planning Inspectorate consideration of written submissions must be given due weight. It also may well be that the points being made are fundamental differences of approach.

38. Specific issues regarding land acquisition from individual plots was dealt with at the round table session. The requirement was there made clear and all land essential.

39. Recurrent themes were:

- a. Climate change and green house gas emissions which were addressed in detail by the rebuttal evidence of Mr John Davies;
- b. Value for money which has already been addressed by Mr Thiele;
- c. Need which has been substantially addressed by Mr Thiele, the Community Council and the vast array of individual supporters of the Scheme.

40. The objection of Pembrokeshire Friends of the Earth was given by Ms Bettina Becker in person. This followed up the statement given. The promoter highlights the following.

- a. The historical position of Pembrokeshire FoE is that they supported the Welsh Government's WS2+1 scheme which created the Robeston Wathen bypass. This scheme is certainly comparable.
- b. FoE expressly recognise the force of feeling within the locality for the removal of traffic from the village.

- c. FoE recognise that those within the village have reason to complain about the effect of the traffic. Ms Becker’s position appeared to be that those effects could be managed within the village: this failed to take into account the volume of the traffic. It remains a matter for the Inquiry as to whether that recognition was in fact given.
- d. Care needs to be taken in considering the various submissions since to a significant extent they offend against the *Bushell* principle by criticising the policies which were held by the Welsh Government rather than their content and their application to the particular problem before them.

The objection of Mr and Mrs Peett (R0024)

41. The principal points of Mr Peett’s oral evidence addressed the need and the design of the scheme (particularly the extent of street-lighting, the location of speed limits), the legality of the scheme (in light of the Heathrow decision and the declaration of climate emergency), the value for public money, the control of cost, the visual and sound impact of the scheme upon his boutique bed and breakfast business (particularly bearing in mind the WHO figure of 55dB), how the issue of excessive noise could be controlled; and the problem of field access to the A478 in the light of the junction with Trefangor Side Road. Mr and Mrs Peett request double glazed windows for the whole of the south elevation of their house and a berm with a tall hedge on top to offset any increased noise.

42. Whilst many of the points were addressed in cross-examination and others have been the subject of submissions already, the issue of noise which was described by Mr Peett as “the most important issue” was covered in detail both in cross-examination and by Dr Hiller. The level of the noise at the address was addressed in detail. Dr Hiller explained that the average daily level of noise during the period of construction should be between 42 and 54dB bearing in mind the location, the topography and the distance from the site. He also gave detailed justification of how it was that there was to be only a negligible increase in the level of noise during the first year of the operation of the Scheme. It would appear that this objection is not well-supported and that mitigation may not be absolutely necessary. That said, the current intention on the basis of the Environmental Management Plan is for there to be a Pembrokeshire hedgebank and headlight

PID.013

screen parallel to the north side of the carriageway an appropriate distance back from the road. The extent of that bank is currently anticipated to be along the side of the second field from the roundabout. The Welsh Government recognises that the bank itself, the design of which is yet to be finalised, will bring acoustic benefits to Mr and Mrs Peett and the hedging may provide some level of screening.

43. I understand that the site visit demonstrated that the visual impact of the Scheme upon their address is extremely limited: this would appear not of any significance.

44. The junction with the Side Road on the A487 is within a proposed 30mph limit. The splay of the junction has been reviewed following the raising of particular concerns in respect of the rise just to the north of the proposed junction. Further surveying is necessary to determine what is required to occur. Contact with Mr and Mrs Peett's representative, Lloyd James, has resulted in him confirming in writing that it would be acceptable for the proposed junction to be shifted north to the point where the field access is located with the field access being from the Side Road. Work is underway to prepare a possible modification to address this.

The objection of Mr Jeff Jenkins (R0016)

45. Mr Jenkins' non-statutory objection relates principally to the potential impact of the Scheme upon his business by allegedly ridding him of passing trade. He was unable to attend in person and invited his submissions to be considered in his absence. The Welsh Government by correspondence and a rebuttal statement, has indicated that, in a similar manner as has occurred with the fuel station in Robeston Wathen, a sign advertising Local Services would be displayed where required. Whilst it is accepted that direct access and direct visibility are to be removed, there may well remain considerable local and regional passing trade.

The objection of Sandra Rowlands (R0019)

46. Ms Rowlands of Glenfield Farm has submitted written correspondence (10 September and 17 September 2019), by her agent Mr Graham Evans (13 November 2019 and 20 January 2020) and then by a further letter (18 March 2020). Considerable attempts have been taken to resolve each of the 7 issues.

Reference is made to the two rebuttal statements and the present position is set out in the second statement of rebuttal.

The objection of Mr and Mrs Smith (R0028)

47. The issue initially taken by them with regard to their land has been resolved but they continue to take issue with value for money, loss of trade to the service station and climate change.

The objection of Margaret Rhian Thomas (R0026)

48. This was the subject of brief evidence and a rebuttal statement. The issues have been addressed and resolved. The objection has been withdrawn.

Other written objectors

49. Many of the remaining written objections made similar points as those set out above. The principle of the Scheme was in issue for the following, most of whom lived some distance from West Wales and who relied upon arguments of value for money, priority, climate change and greenhouse gas emissions. The written replies sent to them are relied upon together with the detailed and unchallenged evidence of Mr Davies. Mr Webb (R0005), Mr Thomas Wheeler (R0015) whose written objection was almost identical to that of FoE was answered, James Cullingford (R0058) and Moira Rowlands (R0060).

50. The Woodland Trust (R0053) raised issues as to the two portions of woodland the concerns of which were addressed within the evidence of Mr Sumner addressing the mitigation measures in place adopted with the assistance of Natural Resources Wales.

51. The objection of Sally Amore (R0069) principally concerned noise and this was directly addressed by the evidence of Dr Hiller.

Alternatives

52. Two alternatives were before the Inquiry which were the subject of detailed consideration by the Welsh Government by way of a brochure and the number of

objectors to the alternative. The alternatives no longer are an issue for the Inquiry since they were withdrawn by Mr Peett on behalf of him and his wife.

Conclusion

53. The Welsh Government asks for a recommendation that the draft Line Order, Side Roads Order and Compulsory Purchase Order be recommended for approval with modifications as proposed (subject to agreement where appropriate). This outcome it is submitted is clearly supported by the evidence and all relevant statutory tests have been satisfied.

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