



# **Compulsory Purchase Update & Southampton to London Pipeline Replacement Project (Esso)**

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# Major Projects in the South East



A27 Arundel Bypass



Rampion 2 Offshore Wind Farm Extension



Aquind Interconnector



Gatwick Northern Runway



The London Resort



Cleve Hill Solar Park

# **Southampton to London Pipeline Replacement – Overview**

- **Esso are replacing 90km of underground fuel pipe between Boorley Green and the West London Terminal at Heathrow;**
- **The existing pipeline was installed in 1972 to carry aviation fuel. There is an additional heavy fuel oil pipeline adjacent and a gas line;**
- **There is also an additional spur to Gatwick Airport which branches off at Alton**
- **Due to the length of the pipeline Esso required a Development Consent Order (DCO). A DCO is required for NSIP's and is overseen by the Planning Inspectorate on behalf of the relevant SoS;**
- **Once granted the DCO provides the applicant (Esso) with planning permission and all other permissions (including CPO) to construct, operate and maintain the scheme;**
- **Esso secured their DCO in October 2020**
- **They are currently carrying out vegetation clearance and establishing main works compounds**
- **Main works are due to commence in Summer 2022 and are due to last for approximately 12-15 months**

# Esso's Approach to Landowners

- **Esso appointed Fisher German (their retained property agent) to undertake negotiations with affected landowners;**
- **Many of these landowners are existing 'neighbours of Esso. Generally relationships are positive**
- **Esso engaged early with the public and landowners on a broad range of corridors in Autumn 2018 before announcing its preferred route in February 2019.**
- **Landowner's agents were introduced via local NFU offices and Key Terms for an Option/Easement were issued**
- **Key Terms were consistent in their approach and financials across the board**
- **There were some minor 'tweaks' but generally the terms were rigid**

# Payment Structure

- **6.3 metre easement width**
- **Easement payment of £45/linear metre = £30,000/acre (approx)**
- **Incentive payment of £5/linear metre**
- **Additional Construction Area Payment (outside of 30m working width) = £0.50/sq metre/annum**
- **Compound Payment = £1.25/sq metre/annum**

# Positives & Room for Improvement (Personal View)

## Positives

- Proactive approach
- Visible and 'on the ground'
- Neighbourly relations
- Consistent approach
- Good success in signing up Key Terms (circa 55% prior to DCO and 75% by end of examination)

## Negatives

- One size fits all (but does it?)
- Initial terms bound all of the Grantor's Title (including gardens/houses);
- No appreciation of potential construction impacts/long term value effect ("we're Esso, it'll all be fine")
- Lack of application to more complex interfaces:
  - School playing fields
  - MOD Estate
  - Railway Crossings
  - Prison Access Road
  - Public Open Space

# **CPO Updates – Housing & Planning Act 2016**

**Gives all acquiring authorities (including Network Rail, Utilities, Code Operators) the same powers of entry onto land to carry out surveys prior to the main CPO being made;**

**Standard warrant provisions and 14 day notice period**

**Increased the GVD vesting date to a minimum of 3 months from the serving of the Notice of Making (previously 28 days)**

**Regulated the Notice to Treat/Notice to Enter possession dates to 3 months (consistent with GVD). Previously a minimum of 14 days**

**Changed Advance Payment Regime:**

- (i) The AA have 28 days to determine if they have sufficient information to estimate the compensation**
- (ii) Make the payment no later than a further 28 days (i.e. no later than 2 months from the original request)**
- (iii) Sadly no change to statutory interest rate (0.5% below base rate)**

# S172 – Sawkill v Highways England





# **S172 – Sawkill v Highways England**

- **Mr Sawkill was a tenant to the NT on land directly opposite Stonehenge. Land within his tenancy was required for the tunnel section**
- **HE needed to conduct surveys to understand how groundwater moved through the chalk aquifer within which the tunnel would be placed**
- **They needed to conduct a series of tests including monitoring boreholes and installation of a well. Water would be pumped onto adjoining land and ‘percolated’. The EA had approved the method statements**
- **Due to some issues with reinstatement, Mr Sawkill refused access**
- **HE applied to SoS initially under S53 of the PA 2008 and latterly under S172 HPA**
- **The first challenge was whether S53 authorised the discharging of water onto land. Due to the EA approval and lack of credible alternative this challenge was thrown out.**
- **The second challenge related to the use of S172 over S53 (which is more onerous). Again the court found in HE’s favour as the powers were overlapping and open for HE to choose its power.**
- **Mr Sawkill again challenged the water discharge on the basis he would be displaced from that land = not a survey. Court again found in favour of HE as the water discharge was part and parcel of the surveys.**

# CPO Update – Neighbourhood Planning Act 2017

- Further alterations to the ‘no scheme world’ principle to be disregarded for assessing compensation
- Removal of the second bite of the cherry compensation
- The prospect of the continuation or renewal of a tenancy is to be taken into account reversing the decision in the leading case of Bishopsgate Space Management v London Underground.
- Introduced a model claim form - [Compulsory purchase process and the Crichel Down Rules - GOV.UK \(www.gov.uk\)](http://www.gov.uk). This helps with the assessment of advance payments

# George Mellor & Ors v SoS 2021

- A blight notice was served on the Secretary of State (SoS) as a result of HS2 Phase 2a bisecting two blocks of agricultural land.
- The blight notice required the acquisition of the whole of both blocks, which comprised land and residential property.
- The land was farmed by two generations of the same family – father & mother occupying one of the houses and son & daughter in law the other
- The blight notice was served in the names of the four family members and the limited company.
- The SoS served a counter notice, objecting to the blight notice on two grounds:
- (i) Qualifying interest
- The BN was found to be invalid as none of the interests were a qualifying one (see s168(2) TCPA). As the land was subject to a licence to the limited company, none of the 4 individuals could demonstrate a qualifying interest. And the limited company did not occupy the two houses
- If the family farmed as a Partnership then the notice would have been valid as a Partnership has no separate legal personality

# **RICS Initiatives**

## **RICS Consumer Guide**

**[RICS Find a Surveyor - RICS Consumer Guide: Compulsory Purchase \(ricsfirms.com\)](https://www.ricsfirms.com)**

**A clear, impartial guide to compulsory purchase**

## **RICS – Surveyors Advising in Respect of CPO & Compensation**

**[Surveyors Advising in Respect of Compulsory Purchase and Statutory Compensation, UK, 1st edition \(rics.org\)](https://www.rics.org)**

**Created in 2017**

**Sets out the Professional Standards for all those acting for Acquiring Authorities and Claimants including conduct , competence, basis of fees etc**

**A must read for those working on any CPO matters**

## **RICS CPO ADR Service**

**A new scheme for resolving claims. Alternative to the Upper Tribunal**

**Affordable for all parties and fixed fee basis**

**Two tiers – Independent Determination for differences below £50,000 and Independent Evaluation for those over £50,000**

