

Email to all Parties

From the Inspector

Re: Inquiry Timings and Duration

I have now had the opportunity of reviewing the email correspondence from National Highways timed at 5.40pm on Friday 19 November, the email letter from Blake Morgan of 22 November 2021 and National Highways emailed response of 3.09pm on 22 November 2021. This correspondence emanated as a response to my note of last week in which I expressed concerns about time estimates in relation to the Inquiry.

It is now apparent that the Inquiry could not sit for an additional 4 days on 13, 14, 15 or 16 December due to the non-availability of Counsel. The situation now is that the Inquiry is scheduled to open next Tuesday and to sit for 5 days of live evidence, with closings to be heard remotely on Wednesday 8 December 2021.

Both parties and their legal representatives were in attendance at the Case Management Conference held on 17 September 2021. It is not the case that Mr Keeling was unaware that there was to be an Inquiry. That CMC was held to discuss the administrative arrangements for the Inquiry, the number of witnesses to be called, the likely duration of the Inquiry and the procedure at the Inquiry. Mr Keeling was represented by Counsel at the CMC and his representative played a full part in discussions as to the Inquiry duration and format. Mr Zwart indicated that Mr Keeling intended to call three witnesses.

At that time the Inquiry was scheduled to sit for a period of 5 days. At the CMC I explained to the parties that I was due to leave the employment of the Inspectorate at the end of January 2022 and that if there was any suggestion of an overrunning of the Inquiry, the parties should indicate at the CMC so that an alternative Inspector could be found. The duration of the Inquiry was discussed. After hearing that there were 12 witnesses, I took the precaution of adding a further 2 reserve days to the Inquiry. Both parties gave an assurance that that would be sufficient to hear all of the evidence.

I am conscious that the estimates made at the CMC as to duration of the Inquiry were given without the benefit of expert evidence having been prepared. I am also aware that the cases of the parties have moved on since the date of the CMC. Time estimates change as the evidence is considered and the positions of parties become clear. It is inevitable that there may be some revisions in terms of time estimates. In these circumstances it is incumbent on both parties to notify the Inspectorate as early as possible in the case of an Inquiry being of insufficient duration.

The time estimates which I currently have amount to some 9 days to hear the live evidence. This does not include closing submissions, which it would appear would take a further 4-6 hours. I have explored with the parties the prospect of adding 4 further sitting days but Counsel is not available.

Given that there are 12 witnesses to provide evidence in chief and to undergo cross-examination and given the indications of the parties, I do not consider it feasible for me to continue to act as the appointed Inspector and to open the Inquiry next Tuesday. There is currently a significant risk of an overrun of the scheduled sitting days and it would be unfair to both parties for me to embark upon an Inquiry in these circumstances. I do not favour the idea of curtailing cross examination of witnesses to fit into the programme. The disparity between current time estimates and the available sitting time is too great to render this a feasible or fair option.

I am therefore going to withdraw from the Inquiry which will now be transferred to another Inspector. I have requested that the Inquiry be listed for 10 sitting days (with 2 reserve days) before another Inspector on the first available date in the New Year. The Planning Inspectorate and/or Programme Officer will be in touch with all parties in the next few days once a date and Inspector has been confirmed.

Finally, I must point out that there has not been any unilateral communications between myself and National Highways and I am surprised that such an assertion has been made. The Programme Officer acts on my behalf and at my direction. She enjoys my full confidence, and I am assured that she has copied all substantive correspondence to all parties.

Karen Ridge

Inspector