



Summary of Representations made during the Compulsory Acquisition and Second Issue Specific Hearings

1. INTRODUCTION

- 1.1 Pinsent Masons LLP act for Mr and Mrs Wildman ("**Client**").
- 1.2 During the recent Compulsory Acquisition Hearing ("**CAH**"), which took place on 23 May, and the Second Issue Specific Hearing ("**ISH**"), which took place on 25 May, our Client was represented by Legal Counsel, Isabella Tafur ("**IT**") of Francis Taylor Building Chambers.
- 1.3 We have set out below a summary of the oral submissions made on behalf of our Client during both hearings.

2. WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE ON BEHALF OF MR AND MRS WILDMAN AT THE CAH

Agenda Item 3.1 – Need

- 2.1 There was discussion regarding the tailpiece within article 20(1)(b) (numbering recently updated) of the draft DCO which reads as follows:

20.—(1) The undertaker may

*(b) use any land so acquired for the purposes authorised by this Order **or for any other purposes in connection with or ancillary to the authorised development.*** (emphasis added)

- 2.2 It was made clear that 96% of our Client's land would be subject to the acquisition of rights by Keuper Gas Storage Limited ("**KGSL**"). This would be disproportionate and would enable KGSL to access almost the entirety of our Client's land upon just 2 week's notice in order to undertake surveys, leave equipment, enter/exit the land etc. The grant of such broad powers would cause severe anxiety and disruption to our Client, if granted in their current form.
- 2.3 In addition, KGSL does not appear to have a clear idea of how it wishes to use this land or why it is required. The powers sought under the tailpiece to Article 20(b) (as set out at 2.1 above) are extremely wide and allow any "ancillary works" to take place on the Wildman's land.
- 2.4 The taking of rights across our Client's land is not justified in accordance with s.122 Planning Act 2008 by virtue of either sections 5 or 6 of the Statement of Reasons ("**SoR**").
- 2.5 At the CAH, the Examining Inspector also expressed concerns regarding the above tailpiece, noting that if KGSL are unable to clarify which activities will take place, there would be a case for its removal. Likewise, if the activities are clear in documentation elsewhere then the tailpiece should not be required.
- 2.6 We understand that KGSL confirmed during the second day of the ISH (on 26 May) that it would revise Article 20(1)(b) to restrict the wording, in light of the comments made during the CAH.



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- 2.7 With regard to paragraph 5.29 of the SoR, It is noted that that KGSL *'anticipates that there will be a maximum of 20 visits per year, per farm'*. However, this is only an indication and given the powers under the DCO there would be no restriction on surveys. This is a concern to our Client.
- 2.8 KGSL have provided no evidence regarding the potential impact of the Project on our Client's farm. It should not be for our Client to prove the impact; KGSL should have sought to justify their need for the land under the DCO.
- 2.9 We note representations made during the ISH on 25 May 2016 regarding the provision of alternative land, however this is not suitable due to its distance from our Client's Property and the fact that it must accessed across a main road.
- 2.10 We note that the Inspector questioned the need for the number of wellheads at the CAH and was advised that 19 wellheads is the optimum number for viability reasons and would provide a good balance between economies of scale and impact on residents. This is not supported by our client or indeed, by any evidence as to the viability of the Project.

Agenda Item 3.1 –Alternatives

- 2.11 The failure by KGSL to attempt to acquire the land by negotiation was noted. At no point have questions been asked by KGSL regarding the potential impact of the Project on our Client's business. Without clear discussion and understanding of the impacts, proper negotiations cannot take place.
- 2.12 Alternative locations for the Project do not appear to have been properly considered. There is a distinct lack of evidence that other locations were considered/rejected.
- 2.13 Whilst we note KGSL's representations regarding there being no legal requirement to deal with the issue of general location (i.e.in choosing Cheshire as the location for the Project), we would query the level of consideration that has been taken in selecting the precise location of the wellheads and associated infrastructure.
- 2.14 Paragraph 15.4.1 of the Environmental Statement and paragraphs 6.59, 6.63, 6.68 and 6.73 of the Statement of Reasons ("**SoR**") all fail to outline the alternatives that have been considered. We note that the Inspector raised queries at the CAH regarding the "narrowing down process" and was informed by KGSL that this is set out in the Statement of Reasons. We would reiterate that there is no detailed evidence in any of the documentation of how the selection process was undertaken and no transparency regarding the consideration of alternatives.
- 2.15 We note that the presence of brine and existing infrastructure for solution mining appear to have been a key factor in determining the location of the Project. The availability of a local market for brine and the potential profits for KGSL are not enough to justify the particular location of the Project or the use of compulsory acquisition powers.
- 2.16 Brine solution mining does not constitute a Nationally Significant Infrastructure Project and the profits to be made by a private developer from such activity are not a public benefit outweighing the private loss that would be suffered by those whose land is to



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be acquired. This is particularly the case given that KGSL is reluctant to properly compensate our Client for their loss of mineral rights arising from the Project.

2.17 The following specific queries and statements were made in relation to the SoR and consideration of alternatives:

2.17.1 It is not clear which (if any) alternative locations were considered for the design of the Project;

2.17.2 Paragraph 6.50 of the SoR is incorrect;

2.17.3 Where are the studies referred to in 6.77 SoR?

2.17.4 The statement contained at paragraph 6.79 of the SoR is very general;

2.17.5 There is no overall process leading to a balanced conclusion (see 6.85 SoR);

2.17.6 Why is it not possible to locate the wellheads on land already owned by KGSL?

2.17.7 Similarly, why is it not possible for the pipeline to go across KGSL owned land with small individual pipelines accessing each wellhead on our Client's land?

2.17.8 The onus should be on KGSL to take the burden of the Project, not our Client.

2.17.9 The Seismic Report, Capacity Study and Subsurface Safety Report only consider the appropriateness of the 19 wellhead locations submitted as part of the application and fail to consider any other locations.

2.17.10 We note that a presentation was given by KGSL at the CAH which contained some information not previously made available as part of the DCO Process. This included reference to safety distances from settlements, ecological considerations and build costs and the suggestion that an alternative layout, excluding our Client's land, would give rise to concerns as to the Project's viability. The assertions made by KGSL were entirely unsupported by any written evidence. A copy of the presentation has not subsequently been made available in the examination library and we should appreciate if this could be arranged. The explanation provided by KGSL was cursory at best, and in our view entirely inadequate to justify the design approach taken by them and the need to compulsorily acquire our Client's land. It was suggested by KGSL that an alternative design, locating the wellheads and/or pipeline on land within their ownership would be 'onerous'. However, KGSL's preferred design is onerous for our Client and amounts to a draconian interference with their interests in land. If there are alternative design options which avoid the need to compulsorily acquire our Client's land, KGSL is obliged to consider those and to justify the reasons for rejecting those options. It is wholly inappropriate for KGSL to provide the only explanation of alternative design approaches during an oral presentation at the CAH.



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This approach deprives our Client of the opportunity to interrogate the explanations provided by them.

2.17.11 We remind the Examining Authority that while the NPS establishes that there is a need for underground gas storage facilities, this does not mean that the 'compelling case in the public interest' test is necessarily met, justifying the authorisation of compulsory purchase powers (*R (oao FCC Environment (UK) Ltd) v Secretary of State for Energy and Climate Change* [2015] EWCA Civ 55 at [10]). The effect of s.104(3) of the Planning Act 2008 is that where the NPS identifies the need for a development, that need must be treated as established in assessing whether there is a compelling case in the public interest for the compulsory acquisition of land. However, it may be possible to meet the need without the use of powers of compulsory acquisition, in which case there would not be a compelling case in the public interest for the use of such powers.

2.17.12 KGSL has failed to properly consider whether the Project can be delivered without acquiring our Clients' land and has not established that there is a compelling case in the public interest for its acquisition.

Agenda Item 3.2 – Funding

2.18 The continued lack of information regarding the actual cost of the Project was noted.

Agenda Item 4.1 – Affected Persons – Colin Wildman

2.19 Our Client, Mr Wildman, read out a pre-prepared statement outlining his concerns regarding the Project's potential impact on his home and business. A copy of this statement can be found at **Appendix 1** to this document.

2.20 After hearing the statement, the Examining Inspector asked Mr Wildman whether he has experience of level points, to which Mr Wildman responded that he is very familiar with them and that they create a nuisance due to difficulties in manoeuvring large machinery in order to cut crops and grass around them. Mr Wildman went on to state that the thought of KGSL having access to the majority of his land is very disturbing.

3. WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE ON BEHALF OF MR AND MRS WILDMAN AT THE ISH

Agenda Item 3.1 – Geology

3.1 Geology was discussed at the ISH and it was noted that the safety reports referred to by KGSL have not been disclosed.

Agenda Item 3.2 – Water

3.2 We note comments made by KGSL at the ISH that the Environment Agency did not have any comment on the Flood Risk Assessment submitted as part of the DCO application. However, we would draw the Examining Authority's attention to the points raised in relation to Flood Risk at paragraphs 6.3.6 to 6.3.9 of our detailed Written Representations.



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Agenda Item 3.3 – Land Quality

- 3.3 KGSL confirmed at the ISH that they have worked on the basis that all land is graded as Grade 3a, which is categorised as Best and Most Versatile ("**BMV**") Agricultural Land.
- 3.4 Paragraph 3.1.12 of the ES refers to paragraph 5.10.8 of EN-1 which requires applicants to seek to minimise impacts on BMV Agricultural Land and preferably use land in areas of poorer quality.
- 3.5 Table 13.11 of the ES acknowledges that 97% of the agricultural land to be permanently lost as a result of the Project is grade 3. However, there is no indication that KGSL has sought to minimise impacts on BMV agricultural land and to instead use land of poorer quality.
- 3.6 Instead KGSL merely states at paragraph 13.4.18 of the ES that they expect that the impact of this land take on agricultural business will be negligible with mitigation. For the reasons discussed at length in our Client's Written Representations and previous submissions (including the Relevant Representations and pre-submission consultation responses) we strongly disagree with this assumption.
- 3.7 We note that KGSL confirmed that the next draft of the DCO will be updated to include a requirement in relation to brine spillage and amended wording regarding contamination and we look forward to having sight of this.

Agenda Item 4 – Ecology

- 3.8 We note that KGSL confirmed that the impacts on protected species are yet to be assessed and will be covered in the next iteration of the DCO. We look forward to having sight of this.
- 3.9 Furthermore, KGSL confirmed that the minimum working distance from animals will be covered in the biodiversity management plan. This is of particular interest to our Client and we reserve the right to make comments on this information, once available.

Agenda Item 5 – Noise and Vibration

- 3.10 Concerns were raised by Cheshire West and Chester Council regarding the potential for significant and prolonged noise and vibration impact on all receptors. Whilst there may be compliance with industry set standards, it is likely that impacts will be compounded by the tranquil setting and current low levels of noise. We note that KGSL has agreed to work closely with the Council in developing and agreeing an appropriate noise strategy. As a potential receptor of noise and vibration, our Client is particularly interested in such matters and we therefore look forward to receiving further details of the noise strategy as it progresses.
- 3.11 It is noted that there are inconsistencies in KGSL's current approach to noise assessment with predicted decibel levels varying across application documents. KGSL have confirmed that they will look into this and we look forward to receiving an update in this regard.



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Agenda Item 8 – Socio Economic

- 3.12 As stated at the ISH, we firmly believe that KGSL's characterisation of agricultural businesses within the Main Assessment Area as "low sensitivity" is incorrect. In our view, the characterisation should be "medium" or "high sensitivity".
- 3.13 We believe that the methodology and criteria used for assessing sensitivity is flawed and that a tailored approach, akin to that adopted for the Progress Power DCO, would be more appropriate.
- 3.14 The comments made in paragraph 13.4.11 of the ES fail to consider the actual impacts of construction and instead just looks to the area of temporary land-take, with no consideration of knock-on effects which will have a significant impact on the operation of our Client's business.
- 3.15 A report prepared by David Hughes Consultancy Limited was tabled at the ISH and a full copy has since been submitted to the Examining Authority and uploaded to the Project Website.
- 3.16 We have set out below a summary of the questions raised by the Examining Inspector in relation to the report, together with a written note of our Client's response:

Question from the Inspector	CW Response
Given that cows are housed in the winter, presumably the infrastructure is in place to house them during the summer?	Yes. The winter regime would need to be adopted during the summer. As highlighted in the report this is more expensive.
My understanding of the construction period upon your land would not last a full year?	It is not clear from the application documents when construction would take place on the Wildman's land, a point which has been made in previous representations. In previous discussions with KGSL it has been suggested that construction works would last approximately 4 years. However, even if works were to last less than a year but fall during the summer months (as has been suggested) the impact would effectively be the same as if they were to last a full year.
What is the impact of the road across grazing areas?	Very disruptive. Difficult to 'coax' animals across the road. Would limit grazing areas. Grazing land must be within half a mile of the farmhouse given difficulty in moving animals around.
What would be the impact to other land owned by the Wildmans?	Arable land only.



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- 3.17 We note representations made by KGSL that our Client will be adequately compensated for any losses under the Compensation Code. As is clear from the statement made by our Client at the CAH (copy enclosed at Appendix 1) this is a family business which our Client cares about deeply. It is not merely a case of assessing any financial loss to be suffered by our Client and compensating them accordingly. In any event, we must stress that it is disingenuous of KGSL to repeatedly claim that our Client will be consulted on the terms of the Project and the DCO given that to date KGSL has paid little heed to the nature of our Clients' business or the likely effect of the Project on that business, on the basis that any disruption can simply be compensated for through the compulsory purchase regime.
- 3.18 With regard to claims made by KGSL that substitute land could be provided, as Mr Wildman explained at the hearing, this land is not appropriate due to its distance from our Client's farm and the fact that it must accessed across a main road.

Pinsent Masons LLP

7 June 2016



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APPENDIX 1

STATEMENT BY C WILDMAN

HISTORY

Cross Lanes Farm was purchased by my great-grandfather in 1898 and I am the fourth generation to farm here. The farm was only 65 acres when I left school at the age of 15 and started working with my father.

Because this was a relatively small farm at that time, my lifetime ambition was to grow it into a large and profitable dairy business.

In due course my wife and I were able to purchase the farm from my three siblings, and we have since grown it with the purchase of land and also renting land within the village.

Now farming 300 acres with 360 dairy cows and an annual turnover in excess of 1 million pounds, the business employs 3 full time staff and some part time help.

Currently the only land directly accessible to the cows is 95 acres close to the farm buildings. (The bare minimum required to graze this amount of cows)

WHILST UNDER CONSTRUCTION

The proposed pipeline road and boreholes will take 14.3 acres and make 35 acres inaccessible to the dairy cows.

This totals 49 acres which is obviously more than half of the grazing land available.

This would mean we would have to house the cows all year round which would create a lot of extra work and increased costs, and would be detrimental to the welfare of the cows.

For example, potentially increasing lameness and infections of the udder and increased stress on the cows.

These things are measured under my milk buyer contract and, as you might be aware, there are moves within the industry to have cows out in the field as much as possible.

In addition Keuper are wanting rights over the **whole** of the farm for the installation of Precise Levelling Points.

The exact rights haven't been explained to us as yet but this will obviously affect our farming over **all our land** and not just the construction area.

FARMHOUSE

As I am sure you will appreciate on a livestock farm, the business is also our home.

The views from our house and adjacent bungalow will be blighted by well heads and drilling rigs which, when lit up at night, will be more suited to Blackpool than a country village like Byley.

Also the traffic using the access road with all associated flashing beacons and hazard warning lights, and people in hi viz jackets will have a huge impact on our personal enjoyment of the land.

There will be no more peaceful summer evenings sitting in our garden with uninterrupted views across our fields.

When we were first approached by Keuper we were basically told if we didn't agree to their terms we would be compulsorily purchased anyway.

I have obviously been very upset by the thought that the business and land that I and my family have worked on all of our lives will be severely impacted and will never be the same again, and may mean future generations cannot the work the farm.