



RESPONSE TO EXQ CA.1.37

The Examining Authority ('ExA') has asked the Amesbury Property Company and Classmaxi (through PFA) to: (i) indicate whether it is agreed that in respect of plots 10-18 and 11-05 there would be compliance with section 132 (3) Planning Act 2008 ('PA 2008'); and (ii) If not, please explain why that is the case and identify any areas of disagreement.

Section 132 PA 2008 makes provision in respect of instances when a DCO authorises the compulsory acquisition of a new right over land forming part of a common, open space, or fuel or field garden. In the present case, plots 10-18 and 11-05 of CMs land are designated public open space land provided for in a s106 agreement with Wiltshire Council. Such land is known as 'special category land', which is afforded special protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of an order including such land (i.e. DCO in the present case) may be subject to what is known as 'special parliamentary procedure' ('SPP'). If a DCO includes land whose acquisition is subject to SPP, any confirmation of this part of the DCO would be made subject to the SPP procedure.

HE are relying, in relation to plots 10-18 and 11-05, on the specified exception in section 132(3) PA 2008. This provides that SPP will not be necessary if the new right does not result in imposition of a burden on the order land which would make it less advantageous to the person to whom the land is vested, the persons entitled to the existing rights, and also to the public. In order to consider whether this 'no less advantageous' exception in section 132(3) PA 2008 is engaged, it is necessary to consider the purpose for which HE intends to acquire new rights over CMs land. In this regard, the Book of Reference and Statement of Reasons submitted with the DCO are of assistance. The Book of Reference states, with respect to plots 10-18, that HE are seeking to acquire rights over land of approximately 2056 sq. metres of grassland, woodland and public bridleway (AMES29) (Solstice Park) and, with respect to plots 11-05, that HE are seeking to acquire rights over land of approximately 265 square metres of grassland (Solstice Park). The Statement of Reasons then specifies the purpose for which HE are seeking to acquire new rights over plots 10-18 and 11-05. In relation to both plots 10-18 and 11-05, HE states that the authorised purpose is: "new rights required for installation, use, protection and maintenance of, and access to, statutory undertakers apparatus for the benefit of the relevant statutory undertaker".

While it seems that the land is required for the provision of services, the precise nature and extent of the new rights sought, and works to be undertaken pursuant to these rights, is currently unclear. Further information needs to be provided by HE to be able to assess whether the 'no less advantageous exception' properly applies. We therefore request further and better particulars from HE as to the new rights over the land sought, the authorised purpose, and the works to be undertaken pursuant to the authorised rights.