

NPB/kg/GC.110(3)/GC.417(3)/GC.499
24 October 2019

By e-mail only:

m42junction6@planninginspectorate.gov.uk

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Sir

**Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) - Rule 13
Application by Highways England for an Order Granting Development Consent for the M42 Junction 6 Improvement
Compulsory Acquisition Hearing - 22nd October 2019**

Interested Party Reference No: 42J6-AFP045

Our Client: Mr Geoff Cattell, Woodhouse Farm, Catherine de Barnes, Solihull, B92 0DJ

I refer to my appearance before the Inspector on the 22nd October and I am writing to confirm the points that I made.

1. I confirm that we have been in discussions with Highways England for some considerable time and over a year ago wrote to Jonathan Pizzey to confirm that Mr Cattell was amenable to discussions for voluntary land-take (at market value) provided that all of his land was taken and he was not left with uneconomic areas. This stance has been maintained throughout, including a recent letter that I sent to Nicola Harrington of Ardent of the 20th June 2019 and, again, at the meeting of the 12th September, the minutes from that of the 18th and my email of the 20th (see attached).
2. Acquiring authorities are charged with resolving matters by agreement first without the use of compulsory purchase powers, where possible. Mr Cattell has been amenable to this process but on the basis that either all of his land was taken (namely plots 3/1a, 3/1b, 3/1c, 3/1d, 3/1f, 3/1g, 2/76a, 2/76b, 2/76d), or as a concession, he might be prepared to retain land to the south of the current GAA outline on Fig.8.21 provided that the remaining land was capable of being farmed economically and had suitable accesses both off the

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reconfigured Catherine de Barnes Lane and his existing farm drive (as at present).

3. In meetings with Highways England / AECOM and Ardent, we were told in May and June 2019 that we would “imminently” be sent heads of terms with a draft option for the acquisition of Mr Cattell’s land. (The same undertaking was given in respect of William Freeman & Sons, Messrs Ali and Choudhry Jacqui Melbourn, for whom I am also acting). Whilst we received the draft option, it was no use without the heads of terms which are still awaited. As the Inspector heard at the Inquiry, Highways England have indicated that they should be able to provide these draft heads of terms by deadline 8 ie., on the 5th November 2019 ie., over six months after they told us they were imminent. We have agreed that, provisionally, I will consider these heads of terms by the 14th December, after the Inquiry has closed (Regulation 17).
4. As explained at the Inquiry, our client does not wish to be left with the difficulty of farming 3/1d for reasons highlighted in my letter to Nicola Harrington of the 20th September 2019 (attached). Mr Cattell can run stock from his adjoining land to all of the plots in question and the stock can run between the fields without the need to drive them or to move them. The third paragraph of the letter of the 20th September explains the position clearly.

The distance from his existing farm drive to plot 3/1d is over 400m and it is simply unacceptable to accept “skittish” suckler cows with calves at foot to be driven that length past noisy rugby pitches and over the ESSO pipeline. Access provisions to 3/1d have provisionally been discussed with Highways England and are simply not workable for my elderly client..

We maintain that the DCO process, already outlined, i.e. Highways England acquiring all plots set out in 2 above (or varied as set out there) should be adhered to.

5. The acquisition of plots 3/1a, 3/1b, 3/1c and 3/1f is as stated on Fig 8.21 (attached) but the extent of temporary works is not clear. Furthermore, the “legacy” proposal put forward by the GAA would alter the acquisition by Highways England and would give uneconomic areas of those plots left, at least to the west.
6. I made the point at the Inquiry that the Planning Act 2008 and in particular the guidance related to procedures for compulsory purchase, makes a number of points c/o Section 122 of that Act. This requires that there is a compelling case in the public interest for compulsory acquisition -

are there any reasonable alternatives;
 is it necessary and proportionate; and
 is the land required no more than is necessary?

In particular, in paragraph 8 of the Government Guidance, it states that:

“The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition

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(including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.”

As you heard at the Inquiry, Highways England have not made reasonable efforts to negotiate with my client nor to find alternative areas of land. There were discussions with another of my clients about the possible acquisition of land south-west of the current GAA site, but after an early indication that the land might be required, nothing further was heard at all and the land was dropped from the DCO process. There were no discussions with me or my clients after an early indication it might be required; for the same reason that I have highlighted above, namely that it is unreasonable to dispossess one party at the expense of the other was deemed legally to be the position.

As I said, it is not reasonable unless on agreed terms, and without the use of compulsory powers, to deprive one person trying to earn a living at the expense of another who is purely there for recreational purposes. Highways England have not demonstrated reasonable endeavours to find alternative sites elsewhere and the Inspector required them to so demonstrate or engage with Mr Cattell to acquire, at market value, all of his plots.

7. Now we know that the GAA object to Fig 8.21 but are agreeable to the “Legacy Scheme”, as I pointed out at the hearing, the Legacy Scheme requires the construction of two new pitches and a new club house, amongst other things, and Highways England’s Counsel and lawyer have previously stated that Highways England must satisfy the Inspector that there are “no reasonable alternatives” to moving the GAA elsewhere. The cost of re-siting and acquiring my clients land might be outweighed by seeking an alternative site and the Inspector sought confirmation of what was looked at and why it was rejected. The Inspector heard at the Inquiry that the GAA were alleged to have been provided with six alternatives (as put to Mr O’Reilly) but the GAA made it very clear that they had been given one alternative only.

Whilst HE are not necessarily approaching works on the GAA site as “equivalent reinstatement”, it is nevertheless a suitable equivalent reinstatement operation.

In summary, my clients Mr Cattell, Mr Ali and Mr Choudhry and William Freeman & Sons are all suffering material detriment to their remaining land holdings as a result of Highways England coming up with a variety of different schemes, some of which do not currently demonstrate the full acquisition of their holdings. This is what they are seeking. HE “surprised” the Inspector that the DCO boundaries might now not be followed.

- A) In respect of Mr Cattell, we have outlined that the ability for him, at his age, to economically farm the remainder of the land (after the GAA pitch alteration) and particularly plot 3/1d is not met and not feasible. Highways England have not demonstrated reasonable alternatives to relocating the GAA nor have they provided heads of terms to my client for the voluntary acquisition of this land. Finally, they most definitely have not demonstrated why it is reasonable in all the

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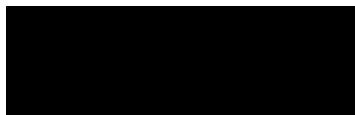


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circumstances and particularly related to the Planning Act, that it is fair and equitable to dispossess my client of land which he uses to earn a living in favour of a club which would use the land for recreational purposes only.

- B) In respect of William Freeman & Sons, if HE do not take all of their land the remainder of the land that is left out the acquisition of plots 3/45a, 3/45b and 3/45c would definitely make the remainder of this land uneconomic. Access to this area of land, as proposed, is significantly less good because the current direct accesses off Catherine de Barnes Lane will be lost by a proposed feeder road which will be narrow and involve access through Bickenhill.
- C) In respect of Mr Ali and Mr Choudhry, plots 3/53a, b, c, d and e, the Inspector was unaware that Highways England were considering only acquiring part of their land, despite the fact that all of their land is demonstrated in the DCO as being needed. Therefore the same point as B) above applies.
- D) In respect of both William Freeman & Sons and Messrs Ali and Choudhry, the areas that Highways England are saying may not be of use to them would usefully be available for landscaping and additions to Bickenhill Meadows SSSI. If the acquiring authority are so keen on conservation and mitigation, then amenity woodland and planting would provide "legacy" in the same way as the GAA and prevent our clients being so adversely affected. It is not reasonable that they should be made to try and justify material detriment when they have indicated that they would willingly sell all their land, on terms, but have never been approached with proper heads of terms at all.

Yours faithfully
BARLOW ASSOCIATES LIMITED



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NPB/GC.110(1)/(3)

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20 June 2019

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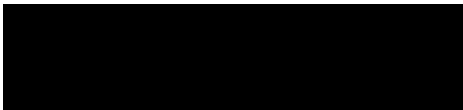
Dear Nicola

M42 JUNCTION 6 IMPROVEMENT SCHEME - MELBOURN AND CATTELL

With reference to your e-mail of the 19th June enclosing the Minutes of the meeting held on the 1st May 2019, please add that Geoff Cattell would wish to sell all his land for the scheme, particularly the northerly of the two fields (due to likely access difficulties). He may be prepared to retain part of the southerly field if it is economic to farm.

Yours sincerely

BARLOW ASSOCIATES LIMITED

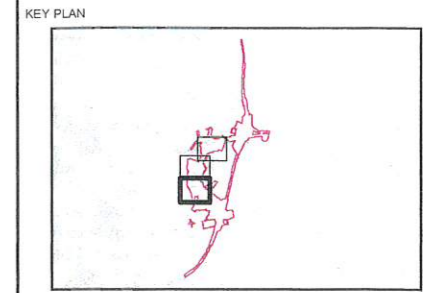
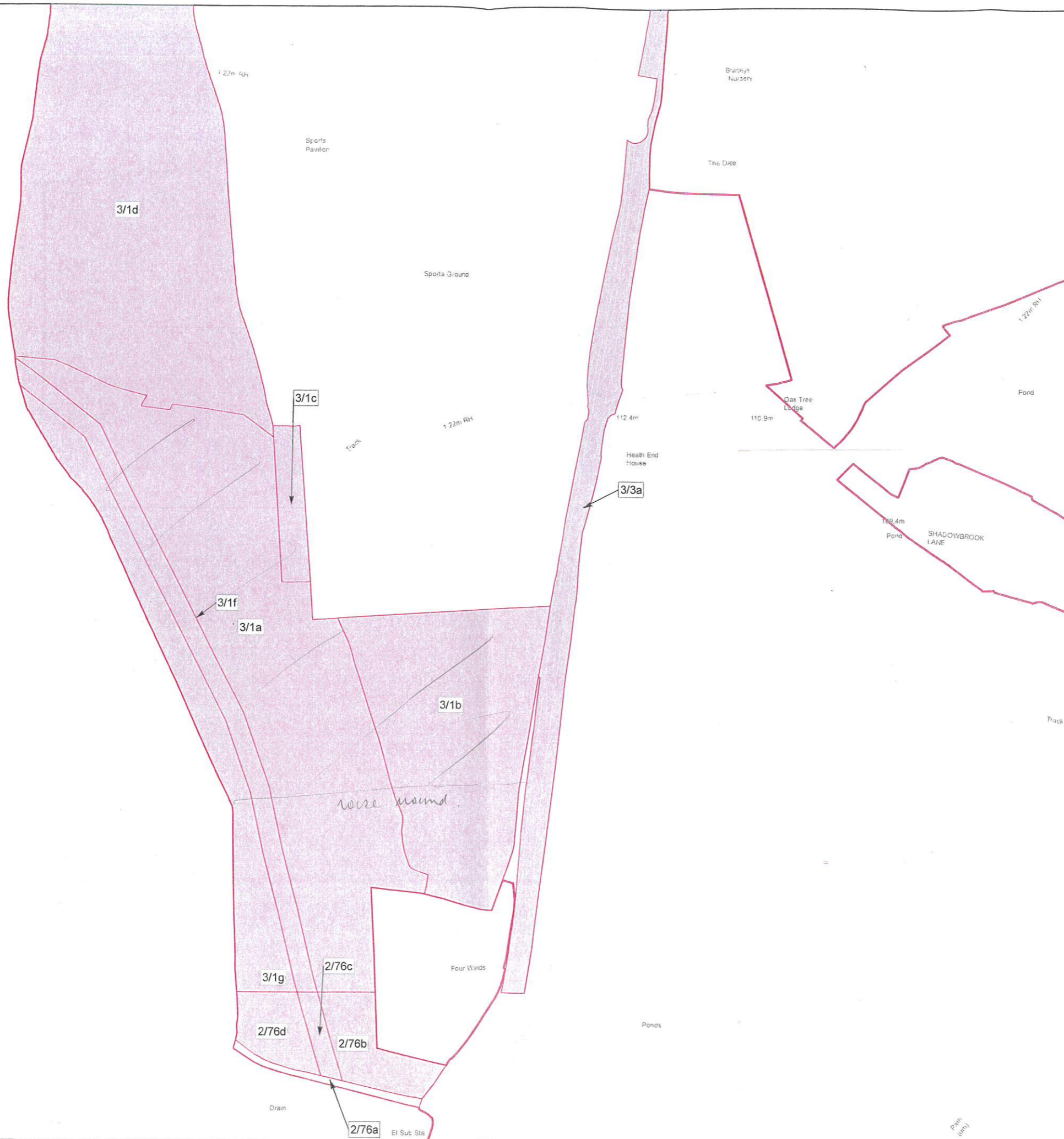


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Plot Date: 01 February 2019 11:57:33
 File Name: N:\GIS\Team\M42_Junction_6\MXD\S56_Notices\M42_Individual_Land_Plan_S56_Notices_Geoffrey Hugh Cattell.mxd



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- Key
- Limits of land to be acquired or used permanently or temporarily (the Order limits)
 - Land to be acquired permanently
 - Land to be used temporarily
 - Land to be used temporarily and rights to be acquired permanently

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Project: M42 JUNCTION 6 IMPROVEMENT

Drawing Title: INDIVIDUAL LAND PLANS GEOFFREY HUGH CATTELL SHEET 1 OF 3

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