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PLANNING ACT 2008 AND THE  
INFRASTRUCTURE PLANNING (EXAMINATION  
PROCEDURE) RULES 2010

APPLICATION BY HIGHWAYS ENGLAND FOR AN  
ORDER GRANTING DEVELOPMENT CONSENT  
FOR THE PROPOSED M25 JUNCTION 28  
IMPROVEMENTS SCHEME

WRITTEN REPRESENTATION ON BEHALF OF  
GLEBELAND ESTATES LIMITED

4 FEBRUARY 2021



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# 1. Introduction

## Qualifications and Experience

- 1.1 I, John Matthew Scott Bodley have been a professional member of the Royal Institution of Chartered Surveyors since 1992 and am a member of its Valuer Registration Scheme. In addition, I hold a Bachelor of Science degree in Urban Estate Surveying from Trent Polytechnic (now Nottingham Trent University). I have over 30 years' professional experience, 26 of which have been in the field of compulsory purchase and compensation.
- 1.2 I am the managing director and sole member of Matthew Bodley Consulting Limited which is a consultancy business formed in May 2015 specialising in compulsory purchase and compensation advice. I was previously a partner and the National Head of Compulsory Purchase and Compensation at Carter Jonas LLP, before I left to set up my own business.
- 1.3 Prior to Carter Jonas I worked for 20 years at Drivers Jonas LLP (latterly Drivers Jonas Deloitte) and two years at GVA Grimley. I was Head of the Compulsory Purchase teams at both firms.
- 1.4 I have advised numerous acquiring authorities, developers, private landowners and occupiers in respect of compulsory purchase procedure and compensation. This has included both those promoting and implementing compulsory purchase powers, and those resisting them. I have been involved for the promoters of infrastructure, housing and commercial regeneration projects. I have provided compulsory purchase advice on projects of national significance including the London 2012 Olympic and Paralympic games, High Speed 1, High Speed 2, Crossrail, Crossrail 2 and Hinkley Point C new nuclear power station. I have given evidence as an Expert Witness at public local inquiries and the Lands Tribunal.
- 1.5 I was the principal author of the series of five public information "Claimants' guidance booklets" produced by the then Department for Transport Local Government and the Regions (now Ministry of Housing, Communities and Local Government ("**MHCLG**")) in England and Wales, first published in 2001. I have been a member of the Compulsory Purchase Association since its inception in 2002 and was an elected committee member for five years from 2008 to 2013.

## Instructions

- 1.6 I am instructed by Glebeland Estates Limited ("**GEL**") which is the owner of approximately 300 acres of land in Romford to the west of junction 28 of the M25. The land includes the Maylands Golf and Country Club (hereafter referred to as the "**Golf Club**" or the "**Golf Course**") and surrounding land.
- 1.7 In August 2021 I was instructed by GEL to advise in connection with the potential compulsory purchase of significant parts of their land holding by Highways England ("**HE**").

- 1.8 Part of GEL's land has been included in the Development Consent Order (“**DCO**”) application by HE for the M25 Junction 28 improvement works (the “**Scheme**”). The said land has been included for a combination of compulsory acquisition and temporary possession, further details of which are provided below.
- 1.9 I am instructed to advise my client generally in respect of the compulsory purchase aspects of the DCO application. Specifically, my client would like to achieve a reduction in the extent of the land subject to compulsory acquisition and to safeguard the Golf Course.

### **Land to Which This Written Representation Relates**

- 1.10 This Written Representation relates to land owned by GEL which has been included in the DCO Application as the following plots.

#### **Freehold Acquisition Plots**

<b>Plot</b>	<b>m<sup>2</sup></b>	<b>acres</b>
1/10	130,040	32.13
1/12	1,717	0.42
1/13	238	0.06
3/8	425	0.11
3/20	59,277	14.65
3/22	3,209	0.79
<b>TOTAL</b>	<b>194,906</b>	<b>48.16</b>

#### **Temporary Possession Plots**

<b>Plot</b>	<b>m<sup>2</sup></b>	<b>acres</b>
1/11	45,844	11.33
1/14	7,007	1.73
3/2	13,319	3.29
3/6	376	0.09
3/21	12,568	3.11
<b>TOTAL</b>	<b>79,114</b>	<b>19.55</b>

## 2. Representation

### Landowner's Representation

- 2.1 I submitted a Representation on my client's behalf on 9 September 2020, a copy of which is attached at Appendix 1. The Representation objected to the extent of land which HE is seeking acquire. The principal grounds of the objection can be summarised as follows:
- 2.1.1 adverse impact on Golf Club which is an historic and important community asset;
  - 2.1.2 failure to consider alternative proposals put forward by the owners of land;
  - 2.1.3 the extent of land which has been included for permanent acquisition is excessive and goes significantly beyond the extent of the permanent works;
- 2.2 The Representation requested the opportunity to expand upon the grounds of objection, which I do in the following section.

### Update Since Submission of Representation

- 2.3 The Planning Inspectorate ("**PINS**") has issued its Rule 8 letter and Examination Timetable. On behalf of my client, I have responded to notify of my wish to speak at the Compulsory Acquisition Hearing and this has been accepted.
- 2.4 In addition, HE has issued a targeted non-statutory consultation document (the "**Consultation Document**") which was initially issued in December 2020 and then re-issued with minor revisions on 7 January 2021.
- 2.5 The Consultation Document provides details of four proposed changes to the Scheme which it states have been identified following engagement with and feedback from key stakeholders, including landowners. The deadline for response to this consultation is 4 February 2021, the same date as the deadline for Written Representations.
- 2.6 Changes 1 to 3 directly affect my client's land and I comment upon them in the next section. Change 4 does not directly affect my client's land and, accordingly, I have not provided comments. I have today responded to the consultation by email. My response is consistent with statements made in this Written Representation.
- 2.7 My client is broadly supportive of the proposed changes which relate to their land but feel that they do not go far enough. This is explained in the following section.

### 3. Grounds of Objection

3.1 GEL objects to the compulsory acquisition of its land on the following principal grounds:

#### **Adverse Impact on Golf Club**

3.2 GEL owns the freehold interest in the Golf Course and adjoining land. The Golf Course is leased to Luddington Golf Ltd (“**LGL**”) on a long lease with five yearly upward only market rent reviews. In addition, GEL has granted LGL a licence of the practice area.

3.3 The Golf Club has existed in this location since 1936 having been designed by Harry Colt, a renowned twentieth century golf course architect. It is an historic and important community facility. It provides both physical exercise and mental health benefits to its members and their guests, many of whom are retired and elderly. The primary function of the Golf Club is the playing of golf but in addition it hosts dinners and events which provides members and guests with the opportunity to meet and socialise with each other. The Golf Club also provides economic benefits in the form of employment to the ground staff, teachers, professionals and catering staff.

3.4 The Golf Club is a minor course on the Professional Golfers’ Association (“**PGA**”) tour, meaning that it hosts events played by professional golfers. This demonstrates its standing and reputation as a high quality golf course and brings with it a kudos and notoriety which attracts potential members. The hosting of PGA events is also a significant revenue generator to LGL, both directly from spectators on the days of play but also indirectly from golf societies wishing to play on a PGA tour course . Any reduction in the quality of the Golf Course could adversely affect its standing on the PGA tour. If it were to lose its status with the PGA it could have a significant adverse impact on the Golf Club’s continued viability.

3.5 The land which has been included for compulsory acquisition in the DCO includes the second green, the practice area as well as other parts of the Golf Course. A standard golf course requires 18 holes and the loss of any of the holes would be unacceptable. The Golf Club will be unable to operate if one of the holes is compulsorily acquired. HE has proposed an alteration to the second hole to mitigate the proposed land take. The Golf Course operator, LGL, considers the proposed amendment to be unacceptable.

3.6 From my discussion with both HE and LGL I am aware of ongoing discussions regarding proposals to reconfigure parts of the Golf Course to accommodate HE’s proposed land acquisition. In this regard LGL has instructed Weller Design Ltd (“**Weller**”), a specialist Golf Course architect, to undertake an impact assessment and to review the alternative design proposals put forward by HE, and also to come up with its own solution.

3.7 GEL has not appointed its own golf course architect as this would be a duplication of the exercise being undertaken by LGL. In the circumstances, the most sensible course of action is for LGL, as Golf Course operator, to lead on course design matters. As LGL’s landlord, any concerns expressed by LGL are shared by GEL, and could have a direct impact on GEL if the quality of the Golf Course is diminished in any way.

- 3.8 I have been provided with a summary of Weller's advice on course alterations to accommodate the proposed land acquisition and their conclusions on HE's proposals. As at the date of the submission of the Representation in September 2020, Weller were of the clear opinion that HE's proposals were wholly unacceptable in health and safety, operational, playability, social, environmental, ecological and economic terms.
- 3.9 As an additional matter, on closer examination of the HE proposal it is apparent that their proposed relocation of the second green is on land which is outside of LGL's lease demise meaning that it is impracticable as a solution in any event.
- 3.10 I am aware that further discussions regarding course design have continued since then and HE have come up with a revised solution for dealing with the second hole. I have seen HE's latest design alteration proposal as it is comprised in Change 3 in the recent Consultation Document. The proposed location of the amended second green has not altered from HE's original proposal. The only amendment is the proposal to construct a boardwalk from the second green to the third tee. Weller remain of the view that the HE proposal is unacceptable as it does not adequately address the deficiencies of the previous HE design proposal. Furthermore, it proposes the construction of boardwalk goes through a protected nature conservation area and pond for great crested newts, and is therefore unacceptable in nature conservation and ecological terms, in addition to the existing deficiencies of the previous proposal.
- 3.11 Weller have come up with an alternative design which they consider to be far superior to the HE proposal and have provided details of this to HE. I have been provided with an overview of the Weller proposal and can see how it addresses many of the deficiencies of the HE proposal. It is clearly preferable to the HE proposal.
- 3.12 Furthermore, the overall economic cost of delivering the Weller proposal is likely to be substantially less than the HE proposal as a whole after taking into account statutory compensation liability. HE should have a duty to protect public finances in the delivery of the Scheme. It seems illogical for HE to reject an alternative proposal favoured by the affected landowners which will also represent better value for money and better protect the public purse.
- 3.13 Accordingly, GEL supports LGL's objection to HE's proposed solution to the second hole and is supportive of the alternative design proposal put forward by Weller.
- 3.14 In addition, to the potential loss of the second green, the Scheme will impact adversely upon the visual and noise amenity of the first hole and lead to the loss of the practice area. These are both very important elements of the Golf Course, and the HE has not provided any details of how it intends to address these concerns.
- 3.15 In summary, the proposed acquisition and HE solution will make the Golf Course less playable and less attractive to members and visitors which will weaken the standing of the course resulting in its deterioration which will have a severe adverse impact on the Golf Club and its members and guests. The worst case scenario would be that membership and revenues decline leading to a deterioration of the quality of the Golf Club or potentially threaten its future existence and result in closure. This would have unacceptable adverse economic, social and environmental impacts. These could be

largely addressed by accepting Weller's alternative design proposal without any substantive impact on costs to HE.

### **Failure to Consider Alternative Proposals**

- 3.16 Guidance to acquiring authorities on the use of compulsory purchase powers is set out in MHCLG Guidance on Compulsory Purchase Process and the Crichel Down Rules updated in July 2019 (the "**Guidance**"). The Guidance is targeted toward powers promoted under compulsory purchase orders, however, it is equally applicable to compulsory purchase powers sought under different statutory instruments such as DCOs.
- 3.17 Paragraph 106 of the Guidance states that an important consideration in deciding whether or not compulsory purchase powers should be confirmed is whether the purpose for which the acquiring authority is seeking to acquire the land could be achieved by any other means. It states that acquiring authorities should consider the appropriateness of any alternative proposals put forward by the owners of the land.
- 3.18 As set out above, LGL, the owner of the long leasehold interest in the land has put forward an alternative proposal, which is supported by GEL, the owner of the land. This alternative proposal would still enable HE to achieve its objectives whilst significantly reducing the adverse impact on the owners and the users of the Golf Course, at no additional cost.
- 3.19 HE has failed to give sufficient consideration to this alternative proposal.

### **Excessive and Disproportionate Permanent Land Take**

- 3.20 The area proposed for permanent land take is excessive and goes significantly beyond what is required. Specifically, the proposed land take extends significantly beyond the area identified for the permanent works. This situation now appears even more stark in light of Changes 1 and 2 proposed in the Consultation Document. The reasons for this are explained below.
- 3.21 Change 1 relates to a proposed surplus construction material deposit on my client's land to the west of Weald Brook (Work No. 17). This was not a requirement of the Scheme as such but rather a consequence, as it was a means of disposing of spoil generated from other parts of the project rather than taking it off site.
- 3.22 It is apparent from the Consultation Document that HE now accepts that this is not required as it is proposing to remove it from the DCO Application. The originally proposed work occupied plot 3/20 which comprises approximately 14.65 acres.
- 3.23 HE's proposal to remove the deposit from the DCO Application is welcomed and is an endorsement of the views expressed in our original Representation. However, despite this HE is still seeking to acquire the entirety of this plot.
- 3.24 A similar situation has arisen in respect of Change 2. The land was included for temporary land take in the original application as plot 1/11 which was required to deposit surplus construction material rather than disposing of it offsite (Work No. 18). HE is now



proposing to remodel this earth deposit into an environmental bund which will take up a much smaller area than the originally proposed deposit mound and therefore the area of land required is clearly less than was originally proposed.

- 3.25 As with Work No. 17 this is a clear acceptance of the view expressed in my client's initial Representation that the originally proposed land take was excessive, and the proposal to reduce the size of this earth mound is welcomed. However, despite the fact that the footprint of the proposed mound/bund is significantly reduced, HE does not propose to reduce the amount of land take. Conversely, they are actually proposing that the powers over this plot should be changed from temporary to permanent.
- 3.26 This is an unnecessary, excessive and disproportionate use of powers.
- 3.27 Not only is this unacceptable to my client but it also appears to be ultra vires as it goes beyond the powers sought in the original DCO Application submitted on 27 May 2020 and accepted by the Secretary of State on 24 June 2020.

### **Inadequate Attempts to Acquire by Agreement**

- 3.28 The abovementioned Guidance also sets out the duties of acquiring authorities in making attempts to acquire land by private treaty in advance of the exercise of compulsory purchase powers. Paragraph 2 of the Guidance states that acquiring authorities should be able to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement and to base negotiations on the compensation that would be payable if the land was compulsorily acquired. It goes on to say that compulsory purchase is intended as a "*last resort*".
- 3.29 Paragraph 3 states that in order to reach early settlements, public sector organisations should make reasonable initial offers and be prepared to engage constructively about mitigation and accommodation works where relevant.
- 3.30 Similar guidance on the requirement for acquiring authorities to pursue private treaty negotiation was set out in earlier versions of the Guidance and in Government Circular 06/2004 which was the predecessor to the Guidance.
- 3.31 HE has not taken reasonable attempts to acquire the land by agreement; it has not made any offers of any sort and has flatly refused to do so; and it has not engaged constructively about accommodation works.
- 3.32 With regard negotiations I have been contacted by Allan Chester of the Valuation Office Agency ("**VOA**") who has requested that I undertake a valuation of my client's land. My response to him is that my client is not a willing seller and is objecting to the compulsory acquisition of its land and that it would therefore be inappropriate for me to undertake a valuation of its land at this stage. I went on to say that despite my client's reluctance to sell its land it would be willing to consider any offer put forward by HE and I invited Mr Chester to make an offer for the acquisition of GEL's land included within the DCO. This request was made by emails to Mr Chester on 6 and 19 January 2021.
- 3.33 Whilst I have not received anything in writing which directly responds to this request, I raised the matter again in a telephone conversation with Mr Chester on 27 January

2021. He stated that he would not undertake a valuation and that it was for GEL as landowner to undertake a valuation which he would review. I pointed out the fundamental flaw of this approach given that GEL was not a willing seller. I also explained the duties of an acquiring authority to make proper and reasonable attempts to acquire land and rights by agreement as set out in the Guidance. His response was that it was for the claimant to undertake the valuation which he would then review.

- 3.34 I would share this view if we were in a situation where the acquiring authority had confirmed compulsory purchase powers, however, we are currently at the stage of proceedings where this is not the case and HE, as acquiring authority, should be adhering to the government's best practice guidance of making proper and reasonable attempts to acquire by agreement. Mr Chester's response was that that was not the way the VOA do things and that they have never done things that way.
- 3.35 Whilst I did not receive a written response which directly addressed my request for Mr Chester to put forward an offer for the land, I received an email from Mr Chester later on 27 January 2021 which was predominantly dealing with matters related to my fees but it concluded by saying that before the commencement of any negotiation he would require the submission of a valuation fully supported by comparable evidence. The very clear implication from this is that he refuses to undertake a valuation himself and put forward an offer to purchase my client's land.
- 3.36 The approach to private treaty negotiations which is being adopted by the VOA, and therefore by extension HE, is outdated and does not reflect the Guidance that has been in place for at least the last 15 years. As someone that regularly acts on behalf of acquiring authorities, I am well aware of the obligations on those promoting compulsory purchase powers to make proper and genuine attempts to acquire land and rights by agreement prior to the making of an Order. This includes putting forward offers to purchase the land. The approach adopted by HE and the VOA falls along way short of this and is simply wrong.
- 3.37 HE has clearly failed in its duty to make proper attempts to acquire the land by agreement.

## 4. Summary and Conclusion

- 4.1 In conclusion, GEL objects to the compulsory acquisition of its land which has been included in the DCO Application for the reasons stated in the previous section.
- 4.2 My client wishes to participate the compulsory acquisition hearing and has instructed me to represent its position at that hearing. I have registered my wish to appear which has been accepted by PINS.
- 4.3 HE has not demonstrated a compelling case in the public interest to justify the use of compulsory purchase powers in this case. The intended use of compulsory purchase powers is therefore premature and not proportionate and its making constitutes a breach of Section 6 of the Human Rights Act 1998 and Article 1 of the First Protocol of the European Convention on Human Rights.
- 4.4 My client request that the compulsory acquisition powers sought in the DCO should not be confirmed in their current form.



**Matthew Bodley**  
**For and on behalf of Matthew Bodley Consulting Limited**

4 February 2021

**Appendix 1: Representation Submitted on  
behalf of GEL on 9 September  
2020**

## MAYLANDS GOLF CLUB – REPRESENTATION

I act on behalf of Glebeland Estates Limited (“**GEL**”) which owns land in Romford which is affected by the M25 Junction 28 Improvements Development Consent Order being promoted by Highways England (“**HE**”). GEL owns approximately 300 acres of land to the west of junction 28 which is accessed via the A12 Colchester Road. The land includes the Maylands Golf and Country Club and surrounding land.

A significant area of GEL’s land has been included in the Development Consent Order application. Approximately 195,000 m<sup>2</sup> (48 acres) has been identified as pink land for acquisition and a further 80,000 m<sup>2</sup> (20 acres) has been identified as green land for temporary possession.

The Golf Club is leased to Luddington Golf Ltd (“**LDL**”) by way of a long lease. LDL operates the Golf Club. HE’s proposed land take includes land within the lease and will therefore have an effect on the landlord and tenant contractual relationship between GEL and LDL. Accordingly, I am in contact with LDL and have liaised with them regarding the potential impact on the Golf Course.

The land which HE is seeking to acquire includes the second hole, the practice area as well as other parts of the Golf Course. A standard golf course requires 18 holes and the loss of any of the holes would be unacceptable. The Golf Club will be unable to operate if one of the holes is compulsorily acquired. I am aware of the contact that has taken place between HE and LDL regarding proposals to reconfigure parts of the Golf Course to accommodate HE’s proposed land acquisition. I am aware that LDL instructed Weller Design Ltd, a specialist Golf Course architect to undertake an impact assessment and to review the alternative design proposals put forward by HE. I have been provided with a summary of the outcome of Weller’s findings which conclude the HE’s proposals are unacceptable in health and safety, operational, playability, social, environmental, ecological and economic terms.

In addition, to the potential loss of the second hole, the proposals will impact adversely upon the visual and noise amenity of the first hole and lead to the loss of the practice area.

In summary, it will make the Golf Course less playable and less attractive to members and visitors which will weaken the standing of the course resulting in its deterioration which will have a severe adverse impact on the Golf Club and its members and guests. The worst case scenario would be that membership and revenues decline which could lead to a deterioration of the quality of the club or potentially threaten its future existence and result in closure.

The Golf Club has existed in this location since 1936 having been designed by Harry Colt, a renowned twentieth century golf course architect. It is an historic and important community facility. It provides both physical exercise and mental health benefits to its members and their guests, many of whom are retired and elderly. The primary function of the club is the playing of golf but in addition the club hosts dinners and events which provides members and guests with the opportunity to meet and socialise with each other. The club also provides economic benefits in the form of employment to the ground staff, teachers, professionals and catering staff.

HE’s proposals are likely to have a detrimental impact on the club which would in turn have a detrimental impact on the social and environmental well-being of its members, guests and

employees which predominantly come from the local community. It will also have a detrimental impact on the economic well-being of the employees

I understand that LGL, and its architect Weller, has put forward alternative less intrusive proposals which would mitigate the adverse impacts of HE's scheme but that these have been rejected by HE.

In addition to the Golf Course, other land owned by GEL has been included for acquisition. My client intends to bring forward redevelopment proposals on its other land which are likely to be adversely affected by the proposed land acquisition. The full extent of this impact is not currently clear and we are in the process of reviewing this.

GEL objects to the compulsory acquisition of its land due to the adverse impact it will have on the Golf Club and its other landholdings.

Aside from its general objection to the acquisition of its land, GEL is of the opinion that the extent of land which has been identified for permanent acquisition is excessive and goes significantly beyond the extent of the permanent works. In particular, it is not apparent why there is a need for HE to permanently own significant parts of plots 1/10, 1/12, 1/13, 3/20 and 3/22. It appears that HE could achieve its objectives in an alternative less intrusive manner by reducing the extent of the landtake. This could be achieved by taking less land or alternatively it may be more appropriate to reduce the extent of the permanent landtake and instead take some of this land on a temporary basis and return it to my client on completion of the works, or a combination of the two.

Furthermore, GEL has road safety concerns regarding the proximity of the proposed new maintenance access and slip road on the A12 to GEL's existing access and egress into its site.

In summary, GEL opposes the acquisition of its land interests and would like the opportunity to discuss the matter with HE to see if there is a way in which its concerns can be addressed and accommodated within the scheme proposals. We would also like the opportunity of expanding upon our grounds of objection via the Examination process and to appear at any hearings into the use of compulsory acquisition powers.