
OBJECTOR REFERENCE: TR010030 / M25J10-AP034

PARK BARN FARM (“PBF”) – ALDERSON

SUBMISSIONS FOR DEADLINE 6

IN RESPONSE TO HIGHWAYS ENGLAND SUBMISSIONS AT DEADLINE 5a:

9.74 Note to Examining Authority on the implications of potential reductions in the provision of replacement land as part of the Scheme (3rd March 2020)

Abbreviations appearing below are the same as the ones used in previous written representations submitted on behalf of the objector.

PRELIMINARY

1. This representation responds to the information contained in HE’s note (submitted at Deadline 5a) entitled “*9.74 Note to Examining Authority on the implications of potential reductions in the provision of replacement land as part of the Scheme (3rd March 2020)*”.
2. HE has not, so far, responded our most recent representations for Deadline 5 (**Rep4-004**). We anticipate that HE will deliver its response to those points at Deadline 6, whereupon it is likely that we will wish to comment further.

OVERVIEW OF OBJECTION AT DEADLINE 6

3. We stand by the comments made in the previous representation lodged on behalf of Mr Alderson:

Overstated RL requirement / Flawed methodology & target ratios

4. HE’s approach to setting target ratios is deeply flawed, not merely as a concept (being so heavily influenced by the earlier road schemes), but also in view of the direct practical application of its approach.
5. In this regard it is significant to note that HE does now concede that the use of target ratios is not a statutory requirement of the PA 2008, nor a requirement of

the relevant policy [para. 1.2.1]. This is, as HE notes, a matter of professional judgement, according to a number of relevant factors.

6. Nevertheless, the use of the previous road scheme ratios as guiding “precedent” for the RL requirement was a basic error of principle which takes matters way beyond rational professional judgment. No good explanation has been offered as to why those target guides should apply. HE’s suggestion that the current project is a direct result of the original road scheme is not a defensible reason: it bears no relationship to the statutory requirements.
7. As we have already pointed out, HE had adopted this approach to the target ratios during the early discussions surrounding the issue of ‘compensatory’ land provision. That was long before the loss of advantage to persons enjoying the rights of common, and the public, had ever been assessed. It appears this error was then carried through, without any significant change, into HE’s final stated requirements (for RL) in the published road scheme.
8. On the strength of all the evidence it is clear that the target ratios have guided the professional judgment to a significant degree, rather than the other way around as it properly should have been.
9. The objector’s criticisms also extend to HE’s mistaken belief concerning the interplay between the relevant statutory definitions for RL as contained in ss.131(12) & 132(12) PA 2008. As we have explained, HE is wrong to assert that RL compensation for rights to be acquired must always be counted cumulatively.

Unreasonable rejection of other viable options which satisfy the RL definition

10. All this now manifests in a situation where, demonstrably, HE has rejected a series of other viable options for reducing the overall quantum of RL. We say that it is unreasonable to overlook these lesser options because it is plain and obvious that they would also satisfy the requirement for providing RL as measured against the relevant statutory definitions which need to be satisfied.¹
11. Helpfully, the HE has now identified the other RL options which it says it has considered, but which it has already rejected, in its recent note: “9.74 Note to Examining Authority on the implications of potential reductions in the provision of replacement land as part of the Scheme (3rd March 2020)”. We comment on these options further below.

¹ Sub-sections 122(2)(c), 131(12), and 132(12) PA 2008.

12. As we have previously suggested, these options ought to include acquisition of part of the land at Pond Farm. The significant advantage of that site is that it would unify a central portion of Wisley Common, and so which, in theory at least, would help to minimise the overall RL requirement.

Impact of the compulsory acquisition on residential amenity / personal and private interests

13. Confirmation of the draft Order authorising the compulsory acquisition of land at PBF will cause a material detriment to the objector's personal and private interests, and those of his family. This is amply illustrated by the witness evidence which has been submitted to this Examination.

14. There will be a significant loss of residential amenity. The residue of the landholding at PBF is not capable of being enjoyed in the same manner that it has hitherto been enjoyed due to:-

- The loss of a substantial part (approx. 50%) of the domestic curtilage by area;
- The loss of the pole barn and summerhouse, which are positioned away from the main house. These structures have often been used for hosting family events and other private parties;
- The loss of the most secluded and visually attractive part of the curtilage, which includes an ornamental pond (with seating), mature rolling parkland, all of which is overlooked from the Summerhouse on elevated land.

15. The scheme is also blighting the objector's attempts to sell the site, which in turn is negatively impacting on his ability to move on with his other life plans.

16. The compulsory acquisition will thus cause (and does indeed already cause) a substantial interference to interests which are given protection under Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights.

No compelling case in the public interest for the land to be acquired compulsorily

17. The 'second' condition (section 122(3) PA 2008) requires that "*there is a compelling case in the public interest for the land to be acquired compulsorily.*"

18. It is impossible to satisfy this condition because other options for RL (i.e. those options excluding PBF) would cause substantially less interference with private rights and interests, but which do also satisfy the 'first' condition for RL.

COMMENTS ON THE OPTIONS PRESENTED BY HE FOR REDUCING THE QUANTUM OF RL

19. HE has now presented a series of 10 possible options for reducing the overall quantum of RL (**Table 1**). Table 1 provides data on the overall area of reduction (with plot numbers), the associated adjustments required, resultant ratios, and comments on the implications in respect of all 10 options.
20. Four of the options relate solely to the land at PBF, and the other six options relate to possible adjustments at the other chosen RL sites. All 10 options *exceed* the statutory minimum RL requirement as measured by area (1:1 replacement ratio for land to be acquired).
21. Table 1 does not factor in the possible inclusion of any other alternative sites, e.g. Pond Farm. In our view this site would have to be discounted first (in its entirety) as a precursor to deciding the scale of the residual RL requirement from any of these sites.
22. We consider that there is room for adding two other variants on the options set out under Table 1:-
- a. **Option 4A:** Additional land reduction from PBF2 and PBF 3 (i.e. a variant of option 4 as presented in Figure 2);
 - b. **Option 4B:** A combination of options 1 and 4A, i.e. omit PBF1 and reduce PBF2 & PBF3 (as additional reduction of land from PBF2 and PBF3 compared to what is shown in Figure 2).
23. As regards option 4A, this would mean moving the scheme boundary even further south, in order to reduce the associated impact on PBF2 and PBF3 still more. There would need to be an additional re-alignment of the new bridleway connection which is intended to run across the open land in PBF2.
24. Option 3 represents Mr Alderson's objection to this DCO application, and which remains his strong preference, i.e. a complete deletion of PBF from the RL requirements under the scheme.

25. Mr Alderson has recently indicated that he would also be willing to accept an alternative proposal which would see him relinquishing ownership of the “Cow field”, but retaining the other parts of the land (PBF2 and PBF3) in their entirety. This is represented by “option 2” in Table 1. The degree of interference with residential amenity, and other private and personal interests would be greatly reduced if option 2 was to be followed.
26. Mr Alderson does not support either option 4 or option 1, but from his point of view, a significant reduction of land-take within areas PBF2 and PBF3 (option 4) is far preferable to his retaining PBF1 (option 1), because the quality and amenity value of PBF1 is measurably lower from the objector’s perspective.
27. The Table 1 options in relation to PBF are ranked in the following order of preference, from best (1) to worst (6):-

- (1) Option 3
- (2) Option 2
- (3) Option 4A *
- (4) Option 4B *
- (5) Option 4
- (6) Option 1

* New option: not currently assessed by HE

28. In section 1.3 HE categorises the 10 options according to whether their impact on the *‘quantity or quality of the overall replacement land package’* is considered to be “not material”, “moderate”, or “significant detrimental”.
29. However, these labels are meaningless given that HE’s package is vastly over-inflated to begin with. The correct ‘test’ that needs to be applied is not whether these options have a ‘non-material’ or ‘significant detrimental’ impact on the existing RL package as a whole (or something which lies in-between those parameters), but whether the resultant RL package actually meets the statutory test under the PA 2008 in each case.
30. In order to satisfy other statutory conditions the correct approach, and starting point, is to work from the bottom up. Options requiring the least amount of land-take are to be favoured first. Other options requiring a higher overall level of compulsory acquisition should be considered only after those options which

involve a smaller amount of land have been discounted, by reference to the relevant factors.

KEYSTONE LAW

On behalf of Mr Ronald Alderson