
**OBJECTOR REFERENCE: TR010030 / M25J10-AP034
PARK BARN FARM (“PBF”) – ALDERSON**

**SUBMISSIONS FOR DEADLINE 7
IN REPLY TO
HIGHWAYS ENGLAND’S SUBMISSIONS AT DEADLINE 6:
REP. 6-014**

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

Page Refs. (Objector Rep.5a-013 / HE Rep.6- 014)	HE Comment	Keystone Law Response
3 / 5	The 1:3 ratio was part of a scheme summary given by the project manager at the meeting and reflects a working assumption at an earlier stage of the design of the Scheme as to the ratio of replacement land which would be provided in exchange for SCL land to be acquired as part of the Scheme, The final ratios which have been applied are lower as set out in REP4-004. [1] It is appropriate that Highways England should seek to provide, and SWT, therefore, to expect, ‘as much environmental gain as	[1] The statutory test is not satisfied merely because the final ratios are lower than were adopted for the scheme “precedent”. [2] We note this point is picked up by ExQ 3.16.8(d) and any further comments will be provided in due course. For our part, the assertion needs to be adequately justified. However, proof that environmental gain was not a motivating factor does not of itself equate to compliance with the statutory test (s.122, PA 2008)

	<p>possible' from the land acquired for the Scheme, in whatever location and for whatever purpose. This ambition has not, however, had any bearing on the quantity of replacement land being sought. [2]</p>	
<p>3 / 5</p>	<p>The provision of replacement land in compensation for the special category land which is to be acquired compulsorily for the Scheme has not been developed in order to “right past wrongs”. Paragraph 2.7.11 of the Common Land and Open Space Report [AS-005] [3] records that, as a matter of fact, that the need for capacity improvements at the M25/A3 interchange flows from the original construction of the interchange, which resulted in the loss and severance of significant areas of common land and open space. [4] Any improvements to the interchange requiring land outside the highway boundary are likely to require the acquisition of additional parcels of common land and open space.</p>	<p>[3] Paragraph 2.7.11 of the Common Land and Open Space Report [AS-005] provides a clear demonstration that the RL package HE has devised has been materially influenced by irrelevant considerations:-</p> <p>HE has made the point that <i>“the need for this Scheme is a direct consequence of the 1979 M25 project, <u>which placed the new motorway and Wisley Interchange through some of the quieter parts of the commons near Pond Farm and Telegraph Hill.</u>”</i> By comparison, the relevant baseline now is that <i>“... much of the SCL required for the Scheme is <u>close to existing busy roads and, therefore, not the best parts of such land in terms of advantage to the public.</u>”</i></p> <p>This is a straightforward admission of what the objector says is already obvious – that one of the specific reasons for applying higher ratios in the past no longer applies. Unfortunately for HE it has also indicated that, but for this factor, a lower RL ratio <i>would</i> be justified.</p> <p>[4] As a statement of “fact” it is entirely meaningless. Causation is always subject to a test of remoteness, or else one would find it possible to link all current and future events back to the very Dawn of Civilization. The statement gives no weight to a multiplicity of factors which underlie the long-term trends behind increasing use of the private motor car over the past 40 years. In order for the statement to bear any sensible meaning at all HE would at least need to show that</p>

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		<p>the 1970's / 1980's road scheme design failed to meet its original purpose (according to its expected design life).</p> <p>All this is beside the point, however, because the statutory provisions refer solely to the current "order land" (s.131(12) PA 2008) and "order right" (s.132(12) PA 2008). The current scheme is totally different and RL land provision must not be calculated according to the impacts of the past.</p>
4 / 5	<p>Highways England disputes the characterisation of the special category land that will be subject to compulsory acquisition as part of the Scheme. None of the special category being acquired is 'roadside verge', although the area of common owned by Highways England north of Wisley Lane is contiguous with the A3 highway verge. [5]</p> <p>The areas of special category land to be acquired or affected by permanent rights include land adjacent to the highway and land extending further away, up to about 200m. [6]</p>	<p>[5] Regardless, of the labelling used the applicant does accept that the SCL to be lost to the proposed development is land which is <u>adjacent</u> to the highway. More importantly, HE fails to deal with the substance of the point raised which concerns the quality and general usability of that land (the presence of obstacles to free access), and the overall user experience having regard to the point discussed immediately above (i.e. traffic disturbance).</p> <p>We are pleased to note these issues are picked up generally in ExQ3.9.2 and 3.16.8(b)&(c), and we may wish to comment further in due course.</p> <p>[6] We anticipate that only a very small fraction of the SCL (that would be lost to the proposed development) will be sufficiently far away from the carriageway so as not to be affected by the issues we have raised. In view of the difference in treatment between different parcels of SCL (depending on what is proposed) clarity is also needed as to whether any of these "further away" parcels would be affected by permanent order rights, as distinct from SCL to be permanently acquired.</p>
5 / 6	<p>Highways England does not accept the arguments made in relation to the connectivity of the replacement land parcels.</p>	<p>[7] HE2 is the smallest RL parcel (and HE1 the next smallest) so this is not necessarily a key deficiency. More importantly, however, HE's</p>

	<p>HE2 is separate from the existing special category land and is only connected via HE1. (see Figure B.1 in the Common Land and Open Space report [AS-005]) [7] CF3 and CF4 are near to CF1 and CF2 to but not adjacent – they are connected only by travelling about 200m along Pointers Road. In this respect, they are less suitable as replacement land than CF1 and CF2 or the land at Park Barn Farm. [8] Hatchford Park bridge over the M25 by CF4 is not affected by the Scheme.</p>	<p>proposal is for HE1 & HE2 to be acquired together, and so there is no substance to HE’s contention that HE2 only gains connection via HE1, unless they were to be split. HE1 & HE2 also connect directly into a large block of open space in the south-eastern quadrant. It is therefore not accepted that any serious weight can be given to HE’s contention that these parcels have only a “limited connection” with existing SCL.</p> <p>[8] CF3 & CF4 are however both connected directly into the block of open space in the south eastern quadrant via the short crossing over Hatchford Park bridge (over the M25 from CF4, land south of Pointers Road).</p> <p>In any event, connectivity is not the only measure of potential suitability as RL. One of the other relevant factors, referred to above, is that much of the existing SCL is “<i>close to existing busy roads and, therefore, not the best parts of such land in terms of advantage to the public</i>”. Land parcels HE1 and HE2 score highly in this regard being geographically the most distant from the M25/A3 and Wisley interchange.</p>
7 / 6	<p>The Environmental Statement at para 13.8.67 [in Rep4-028] assessed the loss of approximately 15 hectares of grassland from the Park Barn Farm landholding. It was noted in the environmental statement that the grassland is currently ungrazed and managed by mowing but has the potential to be restocked with livestock. As the grassland still has the character of agricultural fields, it has been looked at as such in consideration of the land as a potential replacement land location.[9] The removal of the principal areas of grassland and associated woodland that the interested party asserts</p>	<p>[9] The statutory test (s.122(3) PA 2008) requires that consideration be given to the impact on private residential amenity having regard to the submitted evidence of actual use of the land in question.</p> <p>[10] HE is correct to turn its attentions to other alternative options. However, options 3 & 2 would need to be considered in strict priority to option 4 (and options 4A and 4B) in order to apply the statutory provisions correctly, i.e. by starting with the options involving the least overall amount of land-take. In our view the evidential case and reasoning presented by HE does not come anywhere remotely close to</p>

	<p>are a valuable amenity resource for the private residence at Park Barn Farm has been considered as “option 4” in REP5a-012.[10]</p>	<p>justifying the overall scale of land-take proposed by Options 4, 4A and 4B.</p> <p>The landowner’s very strong preference is for option 3 or option 2, since all the other PBF options involve a significant interference with valuable private residential amenity land.</p>
<p>8 / 6</p>	<p>The ‘offline’ reference is from the minutes of the meeting of 20.12.2017, item 3.0 [in REP5a-013], which includes the note “The exchange land issue must be resolved. XX agreed to discuss this offline” This point of discussion was in relation to the incomplete historic exchange land process for the original M25 scheme, and not the replacement land proposals for this DCO Scheme; this was discussed offline as it was not an issue that could be progressed at that meeting. In any event the historic common latter matter is well-known to the examining authority. The second point relates to the meeting note of 24.03.2016 (not 2018) [in REP5a-013], which covered initial discussions about the constraints and opportunities related to various areas of land around the Scheme. The document referred to was a work in progress draft of a report that evolved into the Scheme Assessment Report Replacement Land Addendum (November 2017), which, whilst not currently before the examining authority, is a public document available on Highway England’s website [11]</p>	<p>[11] We have not been able to locate any document entitled “Scheme Assessment Report Replacement Land Addendum (November 2017)” on HE’s website. There is a document entitled “Regional Investment Programme M25 J10 / A3 Wisley Interchange Improvements Scheme Assessment Report November 2017”, however it does not deal with RL. We note that this document does however contain certain passages which are generally supportive of the objector’s case:-</p> <p><u>Section 2 - Summary of existing conditions</u></p> <ul style="list-style-type: none"> • Para 2.2.5: Non-motorised user arrangements <i>Because of the low flows of users, it is difficult to assess a priority of importance to specific desire lines.</i> <p><u>Comment:</u> This would tend to support the view that there is nothing special about any individual location (i.e. each of the four quadrants) in terms of preference for where new public access land ought to be provided.</p> <p>-----</p> <ul style="list-style-type: none"> • Para. 2.4 Environmental constraints facilities for walkers/cyclists along the A3 and at M25 J10 require improvement

Comment: This underscores the marked difference in terms of the impact of the original M25 motorway / A3 dual carriageway as compared to now. In the past public RoW interests were significantly damaged, whereas now they will be greatly improved.

Section 4 - Summary of do nothing consequences

• **Para. 4.5: Environmental Impacts**

Much of the land around the junction is designated as Common or Access land where the public has the right to roam but the M25 and A3 and poor provision for NMU's restrict this access. Implementing a scheme at M25 J10 could give the opportunity to reduce the severance effect of the existing infrastructure and enhance the accessibility of the land. It would be possible to link up the land and attractions of Wisley, Painshill and historic features to make the area more attractive to visitors. The scheme also gives the chance to correct some of the historical anomalies of land ownership that were left over from when the M25 was built in the 1980's. A comprehensive approach to the land around the junction could enable the ecological value of the land to be enhanced under a management plan that could see habitat linkages to be restored with the use of green bridges for example.

Comment: Ditto. Also, it needs to be shown that ecological enhancement has played no part in RL provision.

• **Para. 4.6: Conclusion**

Without intervention to M25 J10, the likely outcomes include:

....

- *ongoing local air quality issues will be exacerbated and the local environment would remain fragmented and provided reduced amenity to non-motorised users*

		<p><u>Section 5 - Summary of alternative schemes</u></p> <ul style="list-style-type: none"> • Para. 5.1.3: Environment <i>Noise from the M25 and A3 which blights much of the area could be addressed with a comprehensive set of noise mitigation measures to provide new or enhance existing provision for the benefit of local people. <u>Other environmental opportunities include new planting to improve the setting and reduce visual impact, better pollution prevention systems and new access and interpretation for the historical features and facilities in the area. All these measures would help fulfil Highways England’s Licence commitment to enhance the environment.</u></i> <p><u>Section 9 Summary of environmental assessment and environmental design (Option 14)</u></p> <ul style="list-style-type: none"> • 9.2.2.6 People and Communities <i>The change to the amenity and landscape in the immediate area around M25 J10 are likely to be less than Option 9 due to the relatively small increase in size of the roundabout. <u>The beneficial effects to NMUs of the A3 corridor and M25 J10 crossings are likely to be greater due to the provision of a footbridge and less highway infrastructure than Option 9. Similarly, the footprint of Option 14 will affect fewer PRowS and the informal footpath network in the common land</u></i>
	Appendix 3: Questions in relation to Pond Farm	
10 / 7	Area is approximately 12.5 ha, including the buildings. This does not include Birchmere camp site field and Woolger’s Wood. [12]	[12] Noted. Consideration needs to be given to using a smaller defined part of this area.

10 / 7	This varies but can be up to 30 at one time. The farm is used for autumn grazing for the Wisley Common conservation herd about 25 cattle from September to December, as well as overwintering of 10-15 cattle from December through to Spring. SWT has 500 head of cattle. See also Q4 below. [13]	[13] It would be useful for HE to comment on the agricultural classification / quality of this land, since this is relevant to the issue of whether the land is capable of supporting this same number of cattle on a reduced footprint.
10 / 7	The whole farm is used for grazing, except for the buildings and car park. [14]	[14] See comments at [13] above.
10 / 7	This is not the case. The farm is the main facility for the care and treatment of sick and injured SWT livestock at any time. Spring calving takes place from March to May in most years. [15] Bulling of about 25 cows and heifers takes place and there is a bull on the farm in June and July. Pond Farm is also used as the main handling, collection and loading point for sending animals to the abattoir.	[15] It is understood that calving (from March to May) would be mainly confined to the buildings, whilst the bull would also be placed in a separate field, for safety reasons. The objection is directed towards the opportunity to cater for a mutually compatible use, and/or a reduction in the area actually used exclusively by Pond Farm. However, to the extent this might be seen to conflict with existing operations, is there any fundamental reason why the main facility could not be located elsewhere within the Surrey area?
10 / 8	The sheep flock has recently been reduced. Ponies and goats have now been sold. The firewood business is in the farm yard indicated by the pushpin below. [Photo] [16]	[16] Noted. The only potential for conflict appears to be in connection with the operation of the cattle management business.
10 / 8	The camp site has been in place for over 40 years, is well-used and has good facilities. The site was not considered as suitable for inclusion in the replacement land proposals, as having open public access would not be compatible with maintaining safeguarding for the scouts. [17]	[17] Noted. In our view the camp site would need to be excluded.

10 / 8	<p>Yes, an area was identified for acquisition of approximately 5 ha of Pond Farm as replacement land in the 2018 public consultation scheme (see item 2.0 in minutes of meeting on 16.03.2018 [in REP5a-013]). [18] This was subsequently objected to by SCC and SWT and did not form part of the final dDCO Scheme (see item 2.0 in minutes of meeting on 26.06.2018 [in Rep5a-013]). [19]</p>	<p>[18] It would assist the objector to know which 5ha parcel of land (at Pond Farm) was previously identified, by reference to a plan, and for HE to set out its reasons for originally selecting that area.</p> <p>[19] Likewise, Mr Alderson also objects to the CA of his landholding on the basis it would interfere with the normal enjoyment of his residential property.</p>
10 / 9	<p>A right of open access must be provided for land to be considered as suitable replacement for common land or open space, [20] notwithstanding any scheme of advisory usage and movement that may be applied (by SCC/SWT) from time to time to assist with biodiversity management. Fencing on common land requires specific consent from the Secretary of State and would only be granted for the control of grazing if the grazing was a mechanism for management of that part of the common. [21]</p>	<p>[20] It is a matter of judgment as to whether unrestricted rights of public access can be suitability accommodated on any part of Pond Farm without significant disturbance to the existing cattle operation. In our view, there is insufficient information upon which to reach any firm conclusions at present.</p> <p>[21] The comment is peculiar because this is the express purpose which has been identified for keeping the cattle on the land. There is no reason to suppose that SoS consent would not be forthcoming, therefore further explanation is required to understand why fencing might not be suitable and achievable.</p>
10 / 9	<p>This would not provide replacement land that is subject to like rights, trusts and incidents, etc. [22]</p>	<p>[22] Regarding the potential for seasonal access, HE's comments require clarification because the definition of RL under s.131(12) and s.132(12) does not specify that the same "rights, trusts and incidents" are required. The only consideration is whether the RL would provide an equivalent advantage / will be adequate to compensate, and where that is not the case, a larger amount of land would be required to offset that loss.</p>

KEYSTONE LAW

On behalf of Mr Ronald Alderson

20/04/2020