

**M25 J10/A3 Wisley Interchange
TR010030**

**9.116 Written submission of
Applicant's case put orally at the
Compulsory Acquisition Hearings held
on 16, 17 and 18 June**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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The Infrastructure Planning (Examination Procedure) Rules 2010

M25 junction 10/A3 Wisley interchange

Development Consent Order 202 [x]

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Table of contents

Chapter	Pages
1. Introduction	4
2. CAH Session 1, Part 1 – Non site-specific Compulsory Acquisition (CA) and Temporary Possession (TP) matters	5
3. CAH Session 1, Part 2 – Heyswood Girl Guides Camp Site	16
4. CAH Session 2, Part 2 – Painshill Park	20
5. CAH Session 2, Part 3 – Special Category Land and Replacement Land Matters	23
Special category land needed for the Scheme	23
Replacement land	23
Alternative replacement land locations considered	24
Relevant provisions of the dDCO	24
Legal compliance – sections 131 and 132 Planning Act 2008	24
In respect of all special category land subject to (outright) compulsory acquisition)	25
In respect of the acquisition of permanent rights over special category land which will burden the land	25
In respect of the acquisition of permanent rights over special category land which will not burden the land	25
6. CAH- Session 2, Part 4 – Surrey County Council (non-special category land matters)	32
7. CAH1 Session 2, Part 5 - RHS Wisley	35
8. CAH1 Session 2, Part 6 - Wisley Airfield	40

1. Introduction

- 1.1.1. This document summarises the case put forward by Highways England (the Applicant), at the Compulsory Acquisition Hearing (CAH 1) which took place on 16, 17 and 18 June 2020.
- 1.1.2. Michael Humphries QC (MHQC) of Francis Taylor Building represented the Applicant.
- 1.1.3. The summary of the submissions below broadly follows the Examining Authority's (ExA) agenda for each session.

2. CAH Session 1, Part 1 – Non site-specific Compulsory Acquisition (CA) and Temporary Possession (TP) matters

The ExA asked the Applicant to present and justify its case for CA and TP.

- 2.1.2. MHQC explained that the Applicant's approach to and justification for the use of CA and TP and compliance with the requirements of section 122 of the Planning Act 2008 (PA2008) is set out in the Statement of Reasons (SoR) (APP-022) and the addendum to the SoR submitted as part of the application for the Scheme changes at Deadline 4 (REP4a-006).
- 2.1.3. MHQC explained the Applicant's general approach to CA and TP powers is set out at section 3 of the SoR. The SoR explains that the land within the dDCO boundary is necessary to deliver the Scheme. Appendix A to the SoR [APP-022] explains how the Applicant intends to use the land and rights in land to be acquired pursuant to the powers conferred by the dDCO if made.

Compelling case in the public interest

- 2.1.4. MHQC explained the Applicant's position that there is a compelling case in the public interest for the CA of land and rights in land and TP of land in order to facilitate the Scheme, which is derived from the need for critical improvements across the strategic road network of which M25 junction 10 is a critical element as identified in the National Policy Statement for National Networks and the Road Investment Strategy.

Alternatives to compulsory acquisition

- 2.1.5. MHQC explained that in designing the Scheme and determining the extent of land to be subject to CA and TP powers, the Applicant has considered alternatives and modifications to the Scheme to minimise the potential land take. MHQC referred to section 5.5 of the SoR where this is explained in further detail.
- 2.1.6. MHQC explained that none of the alternatives would obviate the need for some form of CA, this being a case involving the widening of an existing highway over several kilometres together with various adjustments to the local highway network and the need to provide environmental mitigation.

Scheme changes and implications for CA/TP of land

- 2.1.7. MHQC referred to the Scheme changes which have implications for CA/TP of land. MHQC explained that some of the Scheme changes require the CA/TP of additional land, including Changes 1-3, 5, 7, 8 and 9.
- 2.1.8. The relevant Scheme changes and the implications for additional CA or TP of land are as follows.

Change 1 - extension of the proposed green element on Cockcrow Bridge:

2.1.9. Change 1 requires a modest amount of additional land (compared to the Scheme as applied for) but does not result in an extension to the red line boundary. The additional land is shown on the revised Land Plans [see Sheet 4 of REP8-003] and the additional plots identified in the addendum to the Book of Reference submitted in support of Change 1 [REP4a-008]. Some of the additional plots are common land and/or open space.

Change 2 - incorporation of two toad underpasses at Old Lane and other mitigation measures.

2.1.10. Change 2 necessitates a small additional amount of temporary possession in order to construct the mitigation measures. No permanent acquisition (either outright or of permanent rights) is necessary [see Sheet 24 of the revised Land Plans [REP8-003]].

Change 3 - removal of part of the proposed improvements to the A245 eastbound between the Seven Hills Road and Painshill junctions.

2.1.11. This change reduces the permanent land-take of the Scheme as the retaining wall at Manor Pond (Work No. 47(c) in the original dDCO) is no longer required to be constructed for its full intended length. See sheet 9 of the revised Land Plans [REP8-003].

Change 5 - adjustments to the Order limits in the draft DCO to accommodate the diversion of a gas main.

2.1.12. Change 5 necessitates an additional area of temporary possession and a small area of additional land subject to the acquisition of permanent rights to accommodate a gas main crossing. See sheet 12 of the revised Land Plans [REP8-003]

Change 7- Optional alternative Private Means of Access to Court Close Farm through Heyswood Campsite

2.1.13. The change comprises an alternative option to the private means of access to New Farm, the Gas Valve Compound, Heyswood Campsite and Court Close Farm currently proposed as part of the Scheme (Work No. 40), re-routing the access road to the north, to run along the periphery of Heyswood campsite parallel to the A3 Portsmouth Road.

Change 8 - Old Lane and Elm Lane Visibility Splays

2.1.14. This change requires an additional area of temporary possession on land owned by Surrey County Council and leased to Surrey Wildlife Trust as shown on sheet 24 of the revised Land Plans [REP8-003].

Change 9 – Wisley Airfield Construction Worksite

2.1.15. This change increases the purposes for which temporary possession of plot 2/1 may be taken to include use as a materials processing area, and the purposes for which temporary possession of plots 2/1, 2/2, 2/3, 2/4 and 2/6 may be taken

to include a traffic management area and the provision of welfare facilities (see Schedule 7 – Land Plans Sheet 2 of the revised dDCO [REP8-013])

- 2.1.16. In relation to changes 1, 5 and 7, the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 were engaged on the basis that each change required “additional land” within the meaning of those Regulations. Consent from each affected party has been obtained such that the prescribed procedure in the 2010 Regulations need not be invoked [see the ExA’s acceptance of these changes in procedural decisions PD-012 and PD-017].

Human rights considerations

- 2.1.17. MHQC referred to the CA guidance and summarised that it requires CA to be for purposes which are legitimate, necessary and proportionate.
- 2.1.18. MHQC explained that proposed interference with the rights of those persons with an interest in land affected by the Scheme is for a legitimate purpose (the improvement of the strategic road network), is necessary (for the reasons given in the SoR [APP-022], including Appendix A) and is proportionate (as HE has not taken greater land, rights or temporary possession than is required).
- 2.1.19. MHQC explained that the compulsory powers are ‘in accordance with the law’ and necessary and in the interests of ‘the economic well-being of the country’ for the purposes of the article 8 right to respect for private and family life. MHQC confirmed that this human right provision is, therefore, satisfied.
- 2.1.20. MHQC also explained that the compulsory powers are in the public interest and subject to the conditions provided for by law for the purposes of article 1 of the First Protocol (A1P1) (the right to peaceful enjoyment of property). Again, MHQC confirmed that this human right provision is, therefore, satisfied.
- 2.1.21. MHQC set out that those affected by CA powers will be entitled to compensation and the Applicant has the resources to pay such compensation, as demonstrated by the Funding Statement.
- 2.1.22. In relation to Article 6 and the right to a fair hearing, MHQC explained that there has been an opportunity for those affected to make representations on and object to the Scheme as part of the DCO examination process, including by attendance at the CA hearing. MHQC confirmed that this human right provision is also, therefore, satisfied.
- 2.1.23. MHQC set out the approach of the Applicant in carrying out a plot-by-plot review exercise to ensure the justification for and extent to which each plot was required, to ensure that only land that was absolutely required to deliver the Scheme was included within the Order limits, including reductions in land-take where practicable. The Applicant carried out a review of plot land use and ownership to understand the impacts resulting from the inclusion of a given plot on the individual’s land ownership and business. In addition, the Applicant has reviewed plot areas and shape to refine the design within existing field, landownership and land use boundaries to configure the design to contain it within one land area to minimise the impact on multiple landowners or uses.

- 2.1.24. In summary and with reference to the three tests, that the purpose of CA must be legitimate, necessary and proportionate, MHQC summarised that the CA proposed as part of the Scheme is for a proper purpose as there is a need for the improvement of the junction. MHQC added that the taking of the land is necessary and there is a need to exercise CA powers in order to implement the Scheme. MHQC added that those having land taken are entitled to compensation. MHQC explained the Applicant's clear case is that it has been careful to identify where it requires freehold acquisition and where it only requires TP rights or temporary possession over the land, to ensure that the taking of the land is proportionate.
- 2.1.25. In conclusion, the compulsory acquisition and temporary possession powers in the draft DCO are in accordance with the requirements of the Human Rights Act 1998.

Book of Reference (BoR)

- 2.1.26. MHQC explained that the BoR is a document required to be submitted with a DCO application seeking the CA of land under regulation 5 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the 2009 Regulations). MHQC explained that the Applicant has followed the prescribed form set out in regulation 7 of the 2009 Regulations and has taken into account the CA guidance in preparing the BoR.
- 2.1.27. MHQC drew the ExA's attention to Part 1 of the BoR which contains the Categories 1 and 2 land, as set out in section 44 of the Planning Act 2008 (PA2008). Part 2 contains the Category 3 land, which is land typically not within land to be acquired but where landowners may have a relevant claim. MHQC also referred to Part 2a and Part 2b, which contain potential claimants under section 10 Compulsory Purchase Act 1965 and potential claimants under Part 1 of the Land Compensation Act 1973 respectively.
- 2.1.28. MHQC explained that the land referencing undertaken to identify affected persons was carried out by a specialist land referencing agency. The District Valuer was involved in identifying the Category 3 persons. MHQC added that the way in which the Applicant identified potential Category 3 persons was on a precautionary basis and that approach is set out in section 4.6 of the SoR. MHQC emphasised that, simply because a person may not be identified as a Category 3 person in the BoR does not preclude them from making a relevant claim.
- 2.1.29. MHQC referred the ExA to the slightly unusual addition in the BoR which sets out what the Applicant has called "orange land", which is land within the overall DCO limits but where the Applicant is not acquiring the land or taking TP. MHQC set out the Applicant's reasons for doing this and explained that the land coloured orange is required for one of four distinct purposes, as follows:-
- land which is affected by the creation of, or enhancement to, a public right of way (PROW);
 - land which forms historic common land and over which compulsory powers are not sought in order to avoid engaging section 131 PA2008;

- where provision is made in the dDCO for a speed limit change on a highway, where no other works are proposed to be carried out on that land; and
- in relation to plot 8/15 only, land containing existing utilities infrastructure which is not affected by the Scheme, but for reasons of clarity has been shown within the limits of land coloured orange.

2.1.30. MHQC added that the BoR is a 'living' document, updated at deadlines 2, 5a and 8 to reflect general changes. It was also updated at deadlines 4 and 7 in support of the Scheme changes applications.

Funding Statement

2.1.31. MHQC explained that this document is required under regulation 5(2) of the 2009 Regulations and is prepared in accordance with guidance set out in PA2008. MHQC referred the ExA to the 'reasonable prospect' test at paragraph 9 of the CA guidance, which requires the Applicant to demonstrate that there is a "reasonable prospect of the requisite funds for the acquisition becoming available".

2.1.32. MHQC explained that the approved Scheme budget, estimated at £272.6 million, is identified in the Funding Statement. MHQC explained that this covers the capital costs of constructing the Scheme and includes a land acquisition cost estimate of £23.5 million being the likely quantum of CA compensation which may be payable as a result of the implementation of the Scheme. MHQC noted that, as a result of some of the Scheme changes, that figure is expected to reduce.

2.1.33. In relation to blight costs, MHQC confirmed that the £23.5 million includes provision for statutory blight (as distinguished from generalised blight). MHQC explained that statutory blight relates to sections 149, 150 and schedule 13 of the Town and Country Planning Act 1990. MHQC explained that statutory blight may exist where a landowner within the dDCO boundary, whose land is subject to CA, has made reasonable endeavours to sell their land but cannot sell it except at a substantially lower price and may, in those circumstances, be entitled to serve a blight notice on the Applicant.

2.1.34. MHQC summarised that the Applicant is confident that there is more than a 'reasonable prospect' of funding being available for the Scheme. In relation to the green element of the Cockcrow Bridge (Work No. 35(b)), change 1 sought to widen the green element and the Applicant is confident that there is a reasonable prospect of funding for the widened bridge structure. In the event that the funding is not approved, MHQC explained that requirement 9(3) of schedule 2 to the dDCO does permit the Secretary of State (SoS) to omit the green element from the approved design of the replacement Cockcrow overbridge.

Structure and content of the Statement of Reasons (SoR)

2.1.35. MHQC outlined that the Applicant is required to provide a SoR under regulation 5(2)(h) of the 2009 Regulations, however there is no prescribed form for that document. MHQC explained the Applicant has followed the conventional

approach of its previous schemes promoted by the Applicant and other development consent order schemes more generally.

- 2.1.36. MHQC referred the ExA to section 5 of the SoR which sets out its case for CA. MHQC highlighted that the SoR also provides information on particular categories of land that have been given special statutory protection, such as statutory undertakers' land, Crown land and special category land. In relation to the latter, MHQC referred the ExA to Appendix C which provides a detailed Common Land and Open Space Report.
- 2.1.37. MHQC noted that the SoR has been updated to reflect Scheme changes affecting CA and TP powers.

Impending legislative changes

- 2.1.38. **The ExA referred to some changes being made to TP under Neighbourhood Planning Act 2017 (the 2017 Act). The ExA noted that the changes have been written into the Act but have not yet been fully enacted. The ExA asked the Applicant if this is the Applicant's understanding of the current status of the changes.**
- 2.1.39. MHQC confirmed that the Applicant agreed with this statement. MHQC referred to sections 18 - 31 of the 2017 Act which introduced a new regime for TP that would apply more widely than just for DCOs. MHQC highlighted that this was important because whilst DCOs can create powers of TP, other types of procedures for compulsory purchase order do not currently allow for these powers to be conferred unless the authorising Act allows it. In summary, MHQC explained the purposes of sections 18 - 31 were to widen the power of temporary possession to other instruments conferring CA powers such as compulsory purchase orders.
- 2.1.40. MHQC confirmed that ExA's understanding of the position was correct in that these provisions are not yet in force and the Applicant is not aware of any timescale for their commencement. MHQC referred the ExA to article 3(3) of the dDCO which disapplies the 2017 Act. The Applicant's view is that, it is for the SoS to decide whether the TP provisions contained in the dDCO are appropriate and adequate or whether the provisions in the 2017 Act should apply instead. MHQC explained that, as far as the Applicant is aware, these provisions are not about to come into force and, therefore, the ExA should assume that the Applicant's TP provisions in Articles 32 and 33 of the dDCO would apply.
- 2.1.41. **The ExA asked the Applicant in reference to the Funding Statement, if it is correct to say that the Road Investment Strategy 1 had a period that ran up until the end of the financial year 2019-2020 but then was granted an extension which expires March 2021. The ExA asked the Applicant what is the position with funding if the SoS makes the DCO but the decision is delayed beyond March 2021.**
- 2.1.42. Jonathan Wade (JAW) of Highways England responded on behalf of the Applicant. JAW confirmed that the Scheme is a Road Investment Strategy 1 Scheme and the funding was secured in Road Investment Strategy Period 1.

JAW explained that the fact that the Scheme will be delivered in Road Investment Strategy Period 2 has no bearing on the funding available for it.

- 2.1.43. **The ExA invited the Applicant to provide an update with respect to Statutory Undertaker land proposed for acquisition or the extinguishment of rights over land etc, under section 127 of the Planning Act 2008 (PA2008), further to the position set out in REP8-025. The ExA referred to the Applicant's Schedule of Statutory Undertaker Representations in REP8-025.**
- 2.1.44. In respect of section 127 PA2008, MHQC referred to Schedule 1 of REP8-025 which sets out the position in relation to the remaining two parties where settlements have not yet been reached.
- 2.1.45. In relation to National Grid, MHQC explained that the Applicant has agreed protective provisions and is currently finalising a side agreement.
- 2.1.46. In relation to Affinity Water, MHQC explained his understanding that the Applicant is in advanced negotiations and the Applicant anticipates agreement being reached before the end of the examination.
- 2.1.47. **The ExA asked the Applicant if there will be a firm indication whether agreement has been reached with Affinity Water by the close of the examination on 12 July. The ExA requested a position statement by the end of D12 if no agreement has been reached.**
- 2.1.48. Jon Barker (JB) responded on behalf of the Applicant and explained that the negotiations are ongoing and the Applicant is aiming to provide a clear indication of the position by the close of the examination.
- 2.1.49. Mark Challis (MC) added on behalf of the Applicant that the Applicant has no reason to believe that Affinity Water would not reach agreement by the close of the examination.
- 2.1.50. **The ExA invited the Applicant to provide an update with respect to Statutory Undertaker land proposed for acquisition or the extinguishment of rights over land etc, under section 138 of the Planning Act 2008 (PA2008), further to the position set out in REP8-026.**
- 2.1.51. MHQC explained on behalf of the Applicant that section 138 deals with extinguishment of rights in relation to apparatus for statutory undertakers and MHQC briefly set out the test of necessity, i.e. whether it is necessary for the Applicant to extinguish those rights.
- 2.1.52. MHQC referred to Schedule 2 in REP8-026 which lists a large number of parties and noted that either agreement has been reached with the statutory undertakers affected or no objections have been received, with the exception of Affinity Water and South Eastern Power Networks plc.
- 2.1.53. In relation to Affinity Water, negotiations are still ongoing and in relation to South Eastern Power Networks, agreement has been reached and the agreement is awaiting signature.

- 2.1.54. MHQC explained that the Applicant anticipates in both cases that agreements will be concluded before the end of the examination period.
- 2.1.55. **The ExA asked the Applicant to provide an update with respect to the Crown consent issues relating to the Crown Land affected by the Proposed Development.**
- 2.1.56. MHQC set out on behalf of the Applicant that there are two different aspects to this matter:
- 2.1.57. First, in relation to Crown land belonging to the SoS for Transport: land was transferred under an agreement dated 30 March 2015 under section 15 of the Infrastructure Act 2015. The transfer of the titles has been undertaken on a rolling programme since then. As a result of the transfer of the titles within the footprint of this Scheme, there is no longer any Crown land in the ownership of the SoS for Transport shown in the BoR submitted at Deadline 8.
- 2.1.58. MHQC noted the Applicant has corrected an error in Sheet 2 of the Crown land plans. Sheet 2 incorrectly identifies 2/27b as Crown land. The Applicant noted this error and informed the ExA that it will be corrected in plans to be submitted at Deadline 11.
- 2.1.59. Second, there are plots that are Crown land belonging to Secretary of State for Environment, Food and Rural Affairs, namely plots 1/14, /15, 1/18, 1/18a, 1/21 and 1/22 as shown on the Land Plans. In respect of these plots, the Applicant and its legal representatives are continuing to engage with Department for Environment, Food and Rural Affairs (DEFRA) in order to obtain the certificate of consent as soon as reasonably practicable. MHQC added that the Applicant is doing all it can to ensure it obtains the consent before the end of the examination. MHQC noted that the Applicant understands there is no objection from DEFRA to the Scheme.
- 2.1.60. **The ExA noted that if consent from DEFRA is not received by the end of the examination, the ExA must report to the SoS that the SoS cannot grant consent over that affected land without the consent of DEFRA. In addition, the ExA asked why this matter was not resolved before the applicant was submitted, in line with CA guidance that it should be addressed before an application is lodged.**
- 2.1.61. MHQC acknowledged that the Applicant understands the position and that it is trying to resolve it as soon as possible.
- 2.1.62. MHQC added that many applicants for development consent face this issue and explained that all applicants would obviously like the necessary Crown consents to be granted immediately, but are not able to control the speed that Crown bodies provides consent.

Site-specific objections made by APs, other than those attending any CAH1 sessions and those of Statutory Undertakers

- 2.1.63. **The ExA invited the Applicant to provide an update with respect to the CA Objections recorded in The CA Schedule in REP10-010.**

- 2.1.64. MHQC responded that the schedule is up to date and therefore did not propose to go through it in detail unless the ExA wished to.
- 2.1.65. Richard Pugh (RP) of the Valuation Office Agency (VOA) confirmed that the schedule is up to date and there is nothing substantial to add as the table was recently updated at examination deadline 10.
- 2.1.66. **The ExA referred to the former San Domenico site and the schedule in REP10-010. The ExA noted there has been no contact between the Applicant and the objector since 31 January 2020. The ExA asked the Applicant for an update on this objection and whether it is still a live objection, noting that the position in relation to the undetermined appeal should not be discussed as this is being dealt with by a different planning inspector.**
- 2.1.67. RP of the VOA responded that he has been dealing with the owners of the San Domenico site, Monte Blackburn Ltd. RP explained that his understanding is that the extant planning appeal is central to Monte Blackburn Ltd.'s approach and it appears that they are refraining from engaging until the appeal decision has been issued.
- 2.1.68. MHQC added that the Applicant's position on this and the appeal may have greater relevance in respect to potential compensation for land taken, rather than to the objection to the Scheme. MHQC noted that if planning permission was granted, that may influence land values. MHQC added that the Applicant's position relating to why it requires the land and the way in which it has provided a replacement means of access to that site will remain the same regardless of the outcome of the appeal.
- 2.1.69. MHQC acknowledged the ExA's request that a position statement would be required on the San Domenico site by the close of the examination if no agreement is reached.
- 2.1.70. **The ExA referred to the objection from the Painshill residents and a quote from entry 6 in REP10-010: "...These Category 2 and 3 interests cannot be acquired by the Applicant but meetings have been held in 2019 and 2020 with the Painshill Residents Association where residents have engaged on a variety of issues that they have raised during the examination". The ExA asked the Applicant to advise on the precise status of this objection in CA terms and also to explain the above quote.**
- 2.1.71. Oliver Spencer (OS) responded on behalf of the Applicant that the Painshill Residents Association and members of the Association have made various points throughout the examination about the Scheme generally, but these points do not necessarily relate to CA of land.
- 2.1.72. The ExA asked the Applicant to clarify whether there is any ongoing or live CA or TP objection under the legislation, in relation to the Painshill residents.
- 2.1.73. MHQC agreed that the Applicant would produce a note covering what interests/plots the residents do or do not have (i.e. the Applicant can provide a list of plots for title acquisition, TP and rights) and an explanation of the nature of

the objections and discussions that the Applicant has had with the residents by Deadline 11.

Post-hearing note: Please see the separate note on the status of objections from the Painshill residents submitted at deadline 11 as document 9.118.

The ExA referred to the TP objection from Mr Emmanuel Coccolios of Nutberry Fruit Farm (Nutberry Farm) and asked the Applicant for an update on the negotiations. The ExA noted that the agent for Nutberry Farm has not engaged with ExA.

- 2.1.74. MHQC referred to the February submission (AS-034) which was a representation from Mr Coccolios (which appeared on the PINS website on 8 June) which set out three issues. First, that negotiations had not taken place. Secondly, that viable access from Mr Coccolios's land to the site and his proposed development would be impacted by the temporary works compound. Thirdly, that the temporary compound would interfere with the business of car boot sales which he operates on the land.
- 2.1.75. MHQC explained that contrary to the impression given by the submission, there has in fact been extensive communications between Mr Coccolios and the VOA (noted around 22 communications from September 2019 to date). MHQC added that some of these communications consisted of negotiations in relation to fee levels that the Applicant would pay for Mr Coccolios's agents. MHQC explained that the Applicant's understanding is that these objections amount to points which go to matters of compensation.
- 2.1.76. Graham Smith (GS) of the VOA explained that there have been discussions with Mr Coccolios's agent since late last year. GS explained that the objections appear to have been overtaken now by the ongoing discussions regarding compensation.
- 2.1.77. **The ExA requested that the Applicant provide a brief written note setting out the current position with Mr Coccolios.**
- 2.1.78. JAW added that since the February submission, there was a meeting with Mr Coccolios and his agent on site.
- 2.1.79. MHQC confirmed that the Applicant would be willing to provide the ExA with a note on the current position at deadline 11.

Post-hearing note: Please see the separate note on Nutberry Fruit Farm submitted at deadline 11 as document 9.119.

- 2.1.80. **The ExA asked the Applicant if the area proposed for TP at Nutberry Farm has changed since Change 9, which is the Wisley construction compound where activities have been moved from Nutberry Farm to Wisley Airfield site.**
- 2.1.81. MHQC explained that there has not been a change to the area proposed for TP within the Nutberry Farm as a result of Change 9, which was confirmed by JAW.
- 2.1.82. **The ExA referred to the site specific objections at Elm Corner, in particular plot 23/4 and the proposed turning head between Orchard Cottage and plot**

20/12. The ExA asked the Applicant if there is CA and/or a TP objection that is still live.

- 2.1.83. JAW explained on behalf of the Applicant that there has been considerable dialogue with the Elm Lane residents and there are now monthly meetings between the Applicant and the representatives of the Elm Lane residents. JAW explained that the issue over the turning head was a question from the residents as to why the turning head could not be placed on the north side of the road, rather than the south side. JAW explained to the residents that the Applicant cannot accommodate this due to the SPA land on the north side. JAW explained that his understanding was that the issue had been resolved on the basis of that explanation.
- 2.1.84. **The ExA asked the Applicant if the Elm Lane residents recently appointed an agent and whether this is assisting matters.**
- 2.1.85. JAW explained that the residents appointed an agent around 3 months ago in order to formalise matters. JAW added that the agent wasn't present at the meetings which have been held with the Applicant but that the residents have formed a group among themselves and are well-represented.
- 2.1.86. MHQC referred the ExA to item 5 of the CA Schedule, which states that on 15 April 2020, agents White and Sons were engaged and the Applicant is now corresponding with the agents.

3. CAH Session 1, Part 2 – Heyswood Girl Guides Camp Site

- 3.1.1. **The ExA asked the Applicant whether it has any concerns with Girlguiding Greater London West (GGLW) acting on behalf of the Guide Association Trust Corporation during the examination.**
- 3.1.2. MHQC confirmed that the Applicant had no issue with this. MHQC explained that the matter was only raised because the Applicant noticed recently that the Guide Association Trust Corporation is the landowner and GGLW is the occupier of the Heyswood Campsite. MHQC explained that this is more an issue for the ExA. It was suggested that the Guide Association Trust Corporation should provide the ExA with a letter confirming that GGLW is acting on its behalf.
- 3.1.3. **The ExA asked the Applicant to respond to the GGLW's submissions, with particular reference to the statutory and policy tests and any other considerations that the Applicant would like to raise with the ExA.**
- 3.1.4. MHQC explained that there are two options in relation to GGLW's land. One option is the original Work number 40 and the other is the alternative known as "Change 7". MHQC placed both options in the context of the requirements of section 122 Planning Act 2008 and explained that the Applicant has a requirement for the land in both scenarios and that there is a compelling case in the public interest for the acquisition of the land.
- 3.1.5. MHQC explained that the Applicant has a requirement under section 122 either for the outright acquisition of the land on the original route for the new private access road and the gas pipeline diversion and for the acquisition of rights for the pipeline on the Change 7 route. In both cases, MHQC set out that the Applicant has a compelling case in the public interest, pursuant to section 122(3) Planning Act 2008. This is because there is a need to widen the A3 as part of the scheme. The widening of the A3 necessitates the closure of the existing accesses to Heyswood Campsite and Court Close Farm requiring new accesses to be provided. Such accesses cannot be direct from the A3 owing to safety concerns which led to the requirement for compulsory acquisition of land from Heyswood Campsite in order to private a substitute private means of access to the site and to Court Close Farm.
- 3.1.6. MHQC explained that Change 7 had been introduced as an optional alternative in response to representations made by GGLW and that it has different environmental effects to the current alignment that the ExA is already aware of, as set out in the report at REP7-016. MHQC drew the ExA's attention to the different land take requirements at section 3.6 of REP7-016. MHQC noted that if Change 7 is adopted, there will be various changes to the Book of Reference (BoR), land plans and rights of way plans. MHQC referred to the BoR addendum at REP7-018 and noted that there will be various minor amendments to the DCO if Change 7 is recommended by the ExA.
- 3.1.7. In relation to human rights, MHQC explained that Applicant's case is clear as to compliance with Article 1 of the First Protocol (A1P1) and Article 6 (the right to a fair hearing) by reference to its comments made during CAH session 1.

- 3.1.8. MHQC referred to the submission made by Christine Donovan (CD) on behalf of GGLW regarding a reduced width of the access road and passing places. MHQC referred to the scheme change drawings at sheet 7 of REP-017. MHQC explained that this is the Applicant's proposal and it does show some passing places. MHQC explained his understanding that the access road is the narrowest width the Applicant can accommodate and there is no option for a lesser land take, as set out in section 3.6 of REP7-016.
- 3.1.9. MHQC referred to the point made by GGLW that the gas pipeline would continue along the original corridor. MHQC confirmed that the Applicant took part in a site visit last week and this matter was discussed with GGLW. MHQC highlighted that the corridor shown on the plans is 10-14-metre-wide corridor whereas the gas main requires a narrower corridor itself for the permanent rights, including the right to maintain it. MHQC explained that one of the advantages of the wider corridor is that it allows the Applicant to seek to position the pipeline to do least harm to trees. MHQC reiterated that the trees within the corridor are not part of the ancient woodland.
- 3.1.10. MHQC explained that one of the various reasons that the Applicant decided not to position the gas pipeline through the new Change 7 highway corridor was that this would take more of the ancient woodland. MHQC explained that the Applicant's intention where possible is to ensure that the gas main is constructed on the least damaging alignment. In addition, it is also the Applicant's position that the existing Heywood site access track could be realigned alongside the gas main within the corridor to minimise the overall land take. MHQC added that the Applicant would be prepared to undertake screening planting within those parts of the corridor which would not be required for the gas pipeline and its required maintenance. MHQC also stated that the Applicant would also be willing to discuss with GGLW any other appropriate planting which may be beneficial.
- 3.1.11. **The ExA asked the Applicant to clarify whether the intention behind routing the gas pipeline down the original route and the corridor being up to 14m wide, is to allow enough flexibility in the final design to minimise the effect on trees. The ExA also asked the Applicant to clarify that the actual land take could be less than 14m and the Applicant's approach in building in these limits of deviation is to minimise the impact on trees.**
- 3.1.12. MHQC confirmed that is the Applicant's intention. MHQC elaborated that one of the benefits of having a wider corridor is exactly for that reason, i.e. it allows the Applicant to position the assets to reduce harm to the trees where practicable. MHQC explained that whilst the Applicant cannot construct the pipeline to avoid all obstacles, it would be able to design the pipeline to minimise the overall adverse effect on the trees where practicable. MHQC added that the Applicant has no problem with the access track being moved to follow the line of the gas pipeline and so that, subsequently, the existing access track can be used for additional planting if that was thought appropriate.
- 3.1.13. **The ExA queried the Applicant's land plans in response to the GGLW's concerns about the accuracy of the plans, in relation to the gas pipeline corridor and the red line.**

- 3.1.14. MHQC clarified that the corridor is correctly shown on the plan at REP7-017. MHQC added that if the Secretary of State were to decide that Change 7 is appropriate, there would be certain amendments to be made to the land plans and the Applicant has identified those. In relation to the proposed pipeline and its corridor which is anticipated to be about 6m wide, there would be opportunity to move the access track to align with the pipeline where the pipeline deviates from the access track and that would leave space for planting.
- 3.1.15. **The ExA asked the Applicant if there are any accuracy issues with the land plan, i.e. that the corridor that has been identified moves a long way off the existing track alignment. The ExA asked if there is any confusion between the survey and the design on the scheme drawings.**
- 3.1.16. Graham Bown (GB) explained on behalf of the Applicant that the part of the track on the north western side nearest to the A3 is intended to align along the boundary of the ancient woodland designation and therefore the Applicant has offset from that towards the Painshill Park side to align with the original DCO submission.
- 3.1.17. In response to David Hill (DH)'s query on behalf of GGLW that it is not preferable to run the track through a sweet chestnut tree which GGLW understood is designated to be kept, GB responded that the Applicant is still reviewing the surveys including the recent survey carried out last week.
- Post-hearing note: Please see the separate note on tree surveys submitted at deadline 11 as document 9.120.*
- 3.1.18. **The ExA referred to an issue raised by GGLW and Surrey County Council (SCC) at the Issue Specific Hearings (ISHs) regarding the original track being "over-engineered" in terms of the width required and asked the Applicant to respond to this.**
- 3.1.19. GB explained that the Applicant designed the track to the SCC standard for track access to properties of up to 25 in number. It was only at the ISHs that the Applicant became aware that SCC would accept a lower width. GB confirmed that when the Applicant drafted Change 7, it did not modify the original DCO submission to reduce the corridor although as had been explained, the corridor provides a sufficiently flexible working area within which the required infrastructure will be required.
- 3.1.20. **The ExA asked the Applicant if a narrower path would have CA implications, in terms of land take. The ExA also asked the Applicant if it intended to submit any plans with a narrower path before the end of the examination.**
- 3.1.21. GB confirmed a narrower path would require less land take. MHQC explained that providing a narrower path in the plans could restrict the Applicant's flexibility in building the pipeline. MHQC confirmed the Applicant's preference would be to maintain the wider corridor but with the intention that the route within the corridor is as narrow as possible. MHQC explained the Applicant wishes to retain greater flexibility because if an issue arises on site, the engineers can micro-design the route to mitigate any effect.

- 3.1.22. MHQC added that he would discuss this issue with the Applicant's team to see what type of mechanism could work and provide an update at Deadline 11. MHQC noted that any mechanism would of course have to be acceptable to SCC.

Post-hearing note: Please see the separate note submitted at deadline 11 as document 9.120.

- 3.1.23. **The ExA asked that the Applicant provide an explanation at the Deadline 11 submission of the Applicant's approach in relation to the corridor. The ExA explained it would like to have a submission in writing explaining the Applicant's approach and why it is seeking a land envelope. In addition, the ExA would also like clarification in the note that the Applicant is content that the plans are accurate against the ordinance survey map, in light of the new survey information.**

Post-hearing note: Please see the separate note submitted at deadline 11 as document 9.120.

- 3.1.24. **The ExA asked the Applicant if the recent tree survey carried out by the Applicant (which GB referred to) also includes other survey work. The ExA asked the Applicant to pinpoint the exact location of the sweet chestnut tree and also asked if the new survey information will be available by the end of the examination.**

- 3.1.25. GB confirmed that the Applicant undertook tree survey work and other survey work recently, with a particular focus on the ancient woodland impact of Change 7.

- 3.1.26. MHQC added that the Applicant will be willing to arrange further tree surveys to be carried out and the Applicant will identify the exact location of the chestnut tree and the results of this survey will be submitted by the end of the examination.

Post-hearing note: Please see the separate note on tree surveys submitted at deadline 11 as document 9.120.

4. CAH Session 2, Part 2 – Painshill Park

- 4.1.1. **The ExA asked the Applicant to respond to Painshill Park Trust (PPT)'s opening submissions, in particular with reference to the CA issues.**
- 4.1.2. First, MHQC explained that the Applicant is proposing to acquire the freehold to the existing secondary vehicular access to Painshill Park at plots 6/18 and 6/18a. MHQC reiterated the Applicant's compelling case in the public interest to exercise compulsory acquisition powers to widen the A3 which necessitates the closure of the existing direct access to Painshill Park from the A3. MHQC noted that PPT have confirmed that they do not dispute the need to stop up the access from the A3 at the 15 January ISHs (at 2 hours 15 minutes of the tape).
- 4.1.3. In addition, MHQC clarified a point made by the PPT in their REP6-023 submission (in "conclusions" on the final page). In this representation, PPT quoted MHQC stating that: "the Applicant doesn't believe there is a compelling case in the public interest for compulsorily acquiring that land". MHQC referred the ExA to 2 hours 22 minutes on the tape and clarified that this quote was in the context of there not being a compelling case to acquire land for an alternative access. MHQC confirmed that he was not saying that the Applicant does not believe there is a compelling case for acquiring the land in respect of the existing access. The Applicant's case is that there is no compelling case in the public interest to exercise CA over third party land to re-provide PPT with an alternative access. To provide a replacement access to the western end of the park would entail providing a new route across third-party land, effectively through their lawn, to connect to the private means of access (PMA) at Court Close Farm. The Applicant consider that need for such an alternative access does not outweigh the rights of Court Close Farm under A1P1 and Article 8 HRA 1998.
- 4.1.4. The Applicant disagrees with PPT's assertion that there is a need to extend the western access to allow for access of emergency vehicles. MHQC drew the ExA's attention to Surrey Fire and Rescue Service email of 20 January 2020 at REP3-063. MHQC noted that there have been multiple exchanges between the Applicant and PPT on this point and the Applicant disagrees with PPT's interpretation of SFRS' position on this.
- 4.1.5. MHQC addressed the PPT's submission regarding the impact of the access closure on the restoration of the park. MHQC confirmed that the Applicant does not accept this as there are access tracks within the parks and the Applicant does not agree that loss of the existing secondary access prejudices the restoration. In addition, MHQC addressed PPT's concern that outstanding harm will be done to the heritage asset, and explained that the Applicant has consulted with Historic England and they have agreed with the Applicant's assessment that there will not be substantial harm caused to the Grade I registered garden or the Grade II style listed gothic tower. The Applicant agrees with Historic England on this matter.
- 4.1.6. MHQC further explained that the Applicant does not agree with the issue raised by the PPT that it would be impossible or prohibitively expensive to obtain insurance. MHQC added that the Applicant could not comment on the precise

terms of any insurance policy however it had not seen anything that suggested that appropriate insurance could not be obtained.

- 4.1.7. Finally, MHQC addressed the issue of the Applicant giving assurances to PPT in 2018 and at other times that it would retain separate access. MHQC explained that assurances were given at a certain date however they related to earlier versions of the entire scheme that included elements from which a vehicular access to the western part of the park could have been provided. The change was made primarily as a result of representations made by Girlguiding Greater London West (GGLW) primarily to address concerns over safeguarding for the children who visit the Girl Guides campsite. Therefore, MHQC explained that the Applicant changed the NMU so that it went across the Redhill bridge which subsequently meant that the possibility of routing the access into the park would involve acquiring the land from Court Close Farm. Since the change in the NMU route, it was not possible for the Applicant to provide this secondary access as it was once thought.
- 4.1.8. **The ExA asked the Applicant what the acquisition of plot 6/23(a) is for, in reference to the blue line on sheet 6 of land plan REP8-003. The ExA asked this question as this plot is heading in the direction towards the access that PPT are seeking. The ExA noted that this land is to be used temporarily and rights to be acquired permanently and the ExA would like to understand what the permanent rights acquisition will be used for.**
- 4.1.9. Jonathan Wade (JAW) of the Applicant explained that the acquisition of this plot is in relation to an existing gas main which crosses beneath the A3 and the Applicant is seeking to re-route the gas pipe to pick up on the existing mains gas pipe and therefore, the rights are required for the gas main.
- 4.1.10. MHQC referred the ExA to page 110 of Schedule A of the BoR, which shows plot 6/23(a) and states that the acquisition is “to construct, operate, access, maintain a diversion of an existing gas pipeline and associated equipment”.
- 4.1.11. **The ExA asked the Applicant what impact it would have on the scheme if the seven plots that PPT are objecting to were not subject to CA.**
- 4.1.12. MHQC explained that a number of the seven plots would potentially leave an access onto the four lane A3 which would not be acceptable in terms of safety. In relation to plot 7/29, this plot is required as part of the access track which comes down through to GGLW campsite, otherwise it would leave GGLW without access.
- 4.1.13. In reference to plot 8/5c (which is a plot for permanent rights with temporary possession), MHQC explained his understanding that this plot is not required permanently but would be required to construct the part of the access which then runs down to the GGLW camp and Mr Macateer's land and provides access to the utility facilities.
- 4.1.14. Without these plots, MHQC summarised that the Applicant would be leaving certain landowners without access to their land.

- 4.1.15. **The ExA asked the Applicant whether it is usual practice to provide alternative accommodation access to replace an access that is lost, to ensure that the affected party is not disadvantaged.**
- 4.1.16. MHQC agreed that typically in infrastructure schemes, accommodation works are provided however in this case PPT will not be left without access. MHQC explained that PPT has an existing access and therefore the issue is whether the Applicant is required to replace a secondary access and in doing so, compulsorily acquire third-party land.
- 4.1.17. JAW added that the difficulty here in that the four properties affected in this area are inextricably linked and it is difficult to balance each of their interests.
- 4.1.18. **The ExA asked the Applicant to explain the following statement quoted by PPT in REP6-023, in the note of the meeting between the parties held on 29 July 2019: “it was their (PPT’s) understanding that the applicant confirmed that although there is no technical reason why the access route could not be extended, this has not been included in the DCO submission because due to the pressure on Highways England to make the application, time had run out to negotiate with these parties”. The ExA asked the Applicant if this was an accurate summation of the situation prior to the application submission.**
- 4.1.19. JAW confirmed that this statement is correct. By way of explanation, JAW explained that when he made this comment, there was indeed no technical reason why the access route could not be extended because the previous route design could have been used by vehicles as far as Painshill Park ground. However, when the NMU was moved to the north side, the route was lost and therefore the access route was no longer feasible.
- 4.1.20. JAW explained further that the Applicant was finding it difficult to bring two or three parties together to achieve a successful outcome and the Applicant was concerned about the powers required to take land from Court Close Farm.

5. CAH Session 2, Part 3 – Special Category Land and Replacement Land Matters

- 5.1.1. The ExA asked the Applicant to explain its general case for compulsory acquisition (CA) and temporary possession (TP) in respect of Special Category Land (SCL), including Replacement Land (RL) considerations.
- 5.1.2. MHQC outlined the Applicant's case for the compulsory acquisition of special category land and replacement land as follows.

Special category land needed for the Scheme

- 5.1.3. The Scheme is located in an area of special category land, as the construction of the M25/A3 interchange required the taking of land from Wisley Common, Chatley Heath and Ockham Common).
- 5.1.4. The special category land plots required for the Scheme are shown on the Special Category Land Plans Common and open space land is coloured separately, and different types of land acquisition of either type of special category land are also distinguished for clarity. They are also identified in parts 1-3 of schedule 10 to the dDCO
- 5.1.5. The total special category land requirement is set out in Table 3.1 of the Common Land and Open Space Report **[REP8-015 at page 42]**
- 5.1.6. A description of the special category land affected by the Scheme is set out at section 4 of the Common Land and Open Space Report **[REP8-015]** and also in the response to **ExAQ 3.16.9**.

Replacement land

- 5.1.7. Replacement land has been provided in exchange for the special category land which is to be acquired compulsorily, and for which permanent rights are sought which may impose a burden on the land.
- 5.1.8. The replacement land is located at Park Barn Farm (PBF1-3), Hatchford End (HE1-2) and Chatley Farm (CF1-4). The parcels are shown on Sheets 11, 12, 13, 14, 26, 27, 28, 29 and 30 of the Land Plans **[REP8-003]**. The land parcels are identified in part 4 of schedule 10 to the dDCO **[REP8-013]**.
- 5.1.9. The approach to identifying and calculating the extent of replacement land is described in sections 2.7 and 5 of the Common Land and Open Space Report **[REP8-015]**.
- 5.1.10. Replacement land is to be provided at the following ratios:-
- 2.5:1 for land permanently acquired from common land;
 - 2:1 for land permanently acquired from open space;
 - 1:1 for rights permanently acquired along bridleway and associated routes where these are separate from the M25 and A3 and associated overbridges*;
and

- Nothing for rights permanently acquired for the undertaking and initial management of the SPA compensation land and SPA enhancement areas, or for mitigation wood pasture planting on the field southeast of Buxton Wood.

5.1.11. The replacement land parcels are described in section 5 and Appendix B of the Common Land and Open Space Report **[REP8-015]**.

5.1.12. Other than the owner of Park Barn Farm, none of the current owners of the replacement land object to its acquisition for the Scheme.

Alternative replacement land locations considered

5.1.13. Highways England's consideration of alternative locations for replacement land is set out at section 5.5 of the Common Land and open Space Report [REP8-015] and in response to representations made by Park Barn Farm

5.1.14. In particular, the use of land at Pond Farm as an alternative was explored, but this was discounted because the acquisition of land for use for public access and recreation would conflict with the existing use of the land as a herd management business by Surrey Wildlife Trust which fulfils wider public purposes in relation to the SPA.

5.1.15. HE's reasons for rejecting Pond Farm are set out in the Common Land and Open Space Report **[REP8-015 at section 5.5.1], [REP4-004 at page 12] and [REP6-014 at pages 7 to 9]**.

Relevant provisions of the dDCO

5.1.16. The provision of replacement land is secured by article 38 and requirement 7 (Design, layout and implementation of Replacement Land) of the dDCO **[REP8-013]**.

5.1.17. Article 38 prevents Highways England acquiring the special category land needed for construction of the Scheme until it has acquired the replacement land and details of a scheme for its implementation has been approved by the Secretary of State under requirement 7.

5.1.18. Requirement 7 provides further details of the measures to be approved by the Secretary of State, including the requirement for consultation before taking a decision on an application under the requirement. Requirement 7(2) requires the authorised development to be carried out in accordance with the approved details.

Legal compliance – sections 131 and 132 Planning Act 2008

5.1.19. A development consent order which authorises the compulsory acquisition of special category land is subject to section 131 Planning Act 2008. Section 132 is the equivalent provision in the case of the compulsory acquisition of rights over special category land. Both are engaged in respect of the Scheme.

5.1.20. The starting point is that a DCO which includes the compulsory acquisition of special category land (or rights over such land) is subject to special parliamentary procedure (SPP): section 131(3) and 132(2) Planning Act 2008.

5.1.21. SPP is a lengthy and uncertain process which requires the order to be laid before Parliament and a period given for affected parties to petition against it. The order (and any petitions) must then be considered by a joint committee of Parliament. The application of special parliamentary procedure would almost certainly lead to very significant delays in the approval of the Scheme and would not be in the public interest. Accordingly, Highways England intends to rely upon one or more of the exceptions in the Planning Act 2008 such that it need not be engaged.

5.1.22. Highways England's position in relation to ss. 131 and 132 Planning Act 2008 is as follows:-

In respect of all special category land subject to (outright) compulsory acquisition)

5.1.23. Replacement land (at the 2.5:1/2:1 ratios identified above) will be provided in accordance with section 131(4) and will be vested in the "prospective seller" by virtue of article 38 of the dDCO.

5.1.24. The replacement land meets the statutory definition of replacement land in section 131(12) as it is not less in area than the special category land to which it relates and will be no less advantageous than it.

In respect of the acquisition of permanent rights over special category land which will burden the land

5.1.25. These rights include rights to carry out works to implement culverts, drainage works, earthworks, and for maintenance access for highway and utility apparatus.

5.1.26. These are the plots listed in table C3 to the Common Land and Open Space Report **[REP8-015]** and in Part 2 of Schedule 10 to the dDCO **[REP8-013]**

5.1.27. Replacement land (at the lower 1:1 ratio identified above) will be provided in accordance with section 132(4) and will be vested in the "prospective seller" by virtue of article 38 of the dDCO.

5.1.28. The replacement land meets the statutory definition of replacement land in section 131(12) as it is adequate to compensate for the disadvantages which will result from the acquisition of the relevant rights over the land.

In respect of the acquisition of permanent rights over special category land which will not burden the land

5.1.29. These rights may be characterised as being environmental in nature or those that would not be inconsistent with public access (i.e. because they are rights for the maintenance of NMU routes). These are the plots listed in table C4 to REP8-015 and in Part 3 of Schedule 10 to the dDCO **[REP8-013]**).

5.1.30. No replacement land has been provided in exchange for the acquisition of permanent rights over these plots.

5.1.31. Instead, reliance is placed on section 132(3) Planning Act on the basis that the relevant land will be no less advantageous when burdened with the 'order right' than it is currently.

- 5.1.32. If the Secretary of State does not accept that argument, Highways England relies in the alternative on the exception under section 132(5). This is on the basis that the above rights are required in connection with the widening or drainage of an existing highway (a wider test than in section 131(5)) and that it would be unnecessary to provide replacement land in exchange for the acquisition of the rights.
- 5.1.33. **The ExA asked the Applicant to respond to Surrey County Council's (SCC) submission that it would expect all land titles to have undergone full due diligence to enable unencumbered transfer of the land.**
- 5.1.34. MHQC explained that one of the effects of the dDCO, in particular Article 38, is that when the Applicant acquires SCL, the land is cleared of all rights. When the Applicant is acquiring RL, that is also cleared of rights but it is then burdened with all the rights, trusts and incidents to which the original SCL was subject. MHQC clarified that the land given to SCC and other parties is not entirely unencumbered, rather it has the same encumbrances as the land that the Applicant would acquire from them. MHQC confirmed that the Applicant is willing to discuss this matter with SCC outside of the formal examination process.
- 5.1.35. **The ExA asked the Applicant to respond to the points raised by Mr Ben Garbett's (BG) in his submissions on behalf of Park Barn Farm.**
- 5.1.36. MHQC responded with five submissions in relation to the points raised by BG:
- 5.1.37. MHQC explained that the landowner wishes to sell his land as it has been on the market for sale. The landowner has served a blight notice on the Applicant requiring the Applicant to purchase all of the farm and claiming material detriment. The landowner does not object to purchase, in fact he is actually wants the Applicant to purchase all of the property.
- 5.1.38. MHQC explained that the Applicant has served a counter notice effectively saying it shouldn't have to buy all of the land, but only should have to buy what it needs for the Scheme. MHQC clarified the Applicant's position that in effect, this amounts to an objection that is focused around compensation.
- 5.1.39. MHQC rejected BG's submission that the only rational objective judgment that could be made is that not all the replacement land is needed. MHQC noted that the Applicant very strongly disagrees with that position and that there clearly is an issue between the parties on the ratios of RL to be provided. In relation to the dispute about the ratios, MHQC introduced Mr Andrew Shuttleworth (AS) of Atkins as the Applicant's expert involved in the assessment of replacement land. The Applicant's position is that the ratios it has put forward are reasonable. MHQC explained that the Secretary of State may disagree with the Applicant. However, if he agrees with the Applicant, MHQC noted that it would not be irrational or unreasonable for the Secretary of State to accept the evidence of AS and SCC.
- 5.1.40. MHQC noted that the Applicant is not wedded to the RL ratios used for the original M25 scheme although it has had regard to them. The Applicant has looked at previous experience but has departed from that to appropriately reflect the circumstances of the current Scheme. MHQC referred the ExA to the SCL report on this matter to explain what the Applicant has done.

- 5.1.41. MHQC noted that BG had clarified that Park Barn Farm's position is not an objection to the whole dDCO nor is the position that no RL should be acquired. Rather, that Park Barn Farm's issue is one of ratios and essentially, which particular parcels of replacement land should be acquired.
- 5.1.42. **The ExA asked the Applicant to confirm the total area proposed for outright CA.**
- 5.1.43. MHQC clarified that the total area proposed to outright CA is 137,679 m² (13.77 ha).
- 5.1.44. **The ExA asked the Applicant whether land plots 4/39, 4/87, 5/5 and 5/20 (which surround Junction 10 of the M25) would be most used by SCL users?**
- 5.1.45. AS explained that the four plots the ExA referred to are not strictly plots that are "most used" by SCL users. However, there are parts of certain plots that are used more than others. For example, plot 5/5 has a bridleway trail that crosses part of the plot and therefore, that particular part of the plot is well used by SCL users.
- 5.1.46. AS summarised that the perception of users is that all of these plots form part of the buffer of the woodlands retained alongside the motorway junction and therefore, the role of these plots is to provide a buffer to the larger areas where more paths run. Generally, AS explained these plots are partly used as a result of users using the wider areas of land and they are perceived as part of the wider areas of public access land.
- 5.1.47. **The ExA asked the Applicant to explain how disadvantaged users of the SCL would be by the CA of these plots (4/39, 4/87, 5/5 and 5/20).**
- 5.1.48. AS explained that the principal disadvantage in taking out these plots of land is the loss of their buffer role. As a result, the quieter areas that are further in from the road and are used more by the public will be affected as these will subsequently become the buffer for the road and therefore, these quieter areas will become less buffered from the noise of the road and more visually impacted by the road. Much of these plots of land are woodland and therefore, there would be some loss of attractive woodland. In addition, in the southernmost parts of Wisley Common, there may be a perception by users that this section is separated from the rest of Wisley Common by the realigned Wisley lane.
- 5.1.49. **The ExA asked the Applicant whether the loss of the open land which was acquired when the M25 was first built (to the north of Junction 10) would be at a higher order of magnitude than the loss of land proposed in the dDCO at the corners of Junction 10.**
- 5.1.50. AS agreed that the open land acquired when the M25 was first built would have had a more significant adverse impact on the usability of Wisley Common, than would the areas which are closer to the previous A3 carriageway. This was because it created a new line of severance across the common at the time the M25 was built.
- 5.1.51. **The ExA asked the Applicant if it accepts that prior to the M25 being built, there was a quieter environment than there is at present and therefore, the**

amount of RL required to mitigate the effect of the proposal was different due to there being a different effect on the function of the area.

- 5.1.52. AS agreed that this is true to a degree, however AS also pointed out that the A3 dual carriageway existed before the M25 and it was already built on its line across the commons where the M25 Junction stands today and therefore there was already a degree of noise prior to the construction of the M25.
- 5.1.53. MHQC referred the ExA to Appendix C of the Statement of Reasons (the SCL report) and noted that these points are acknowledged in Section 2.7 and this section deals with why the ratios of RL to acquired land proposed for this scheme are lower than the original M25 scheme. MHQC explained that these ratios have been carefully thought through, taking into account all of the circumstances of this scheme.
- 5.1.54. **The ExA asked the Applicant to clarify in its written submissions, the ratio of RL during the M25 build and the relevant law, and the ratio now. The ExA also asked the Applicant to provide a comparison between the following: the RL land if the current scheme was running under the old regime (i.e. at the time of the M25) and what the current scheme is proposing now.**

Post-hearing note: Please refer to the relevant section of the separate note submitted at deadline 11 as document 9.121.

- 5.1.55. **The ExA asked the Applicant to confirm in writing exactly how much SCL will be lost. I.e. by how much percentage would Wisley Common shrink.**

Post-hearing note: Please refer to the relevant section of the separate note submitted at deadline 11 as document 9.121.

- 5.1.56. **The ExA asked the Applicant to provide confirmation of the area of SCL for which the acquisition of permanent rights is proposed.**
- 5.1.57. MHQC referred to Table C4 of the Common and Open Space Report and confirmed the area proposed for acquisition of permanent rights is a total of 85,108 sq metre (8.51 ha).

Post-hearing clarification. The 8.51 ha figure refers to the area of special category land over which permanent rights are sought which, in Highways England's opinion would burden the land and for which replacement land has been provided.

The total figure for all special category land subject to the acquisition of permanent rights, including the land over which rights are sought but no replacement land is to be provided, is, 319,923 sq metres of common land and 387,537 sq m of open space.

- 5.1.58. **The ExA referred to plot 2/36 as seen on REP8-016 Sheet 3, for which the acquisition of permanent rights is proposed, and asked the Applicant to explain whether this plot is a "high performing" piece of SCL?**
- 5.1.59. AS explained that this plot is noisy but well used because it is well connected. Due to the noise factor, it is not one of the "highest" performing pieces of SCL.

AS summarised that the Applicant viewed this plot as a middling piece of SCL in terms of pleasantness and interest. AS could not speak to the usage of the land.

- 5.1.60. The ExA requested that the Applicant submits the report of the survey of users of the SCL areas that was conducted on Sunday 24 and Wednesday 27 September 2017. The report is referred to in paragraph 4.7.4 of REP8-015: Statement of Reasons Appendix C: Common Land and Open Space Report.

Post-hearing note: Please refer to the relevant section of the separate note submitted at deadline 11 as document 9.121.

- 5.1.61. **The ExA asked the Applicant in relation to the provision for RL for SCL, whether there has been any muddling of seeking to address the loss of SCL in relation to environmental enhancements and a biodiversity role.**
- 5.1.62. AS explained there are two factors to take into account in respect of this question:
- 5.1.63. First, AS explained that most of the SCL is designated as SSSI and a large portion of that is designated as part of the Thames Basin Heaths SPA and much of the remainder is designated as an SNCI. In effect, AS explained that all of the SCL proposed in the scheme has a high biodiversity value and interest. In the Applicant's search for RL, AS explained the Applicant believes it valid to consider what biodiversity value the land may already provide and the cost of maintenance. None of the proposed RL has an existing biodiversity designation.
- 5.1.64. Second, AS explained that where it is necessary to provide replacement land as part of a scheme, the Applicant will consider the use of the land as part of the biodiversity balance of the project and the potential for mitigation so that it may seek to make the best use of parcels of land. Whilst the potential for biodiversity enhancements was not a driver for identifying or calculating the extent of RL needed for the Scheme, it was a factor in influencing the choice of some parcels of land over others. It is part of a blend of many factors, including contiguous connection with existing SCL, provision of access and works needed. In essence, there has been some consideration by the Applicant of biodiversity and environmental enhancement but it is an ancillary function of choosing the replacement land and was not confused by the Applicant with the identification for mitigation for the SPA and other biodiversity impacts.
- 5.1.65. **The ExA asked the Applicant to provide written clarification on the following: undertake a review all of the statutory designations and what the Applicant is doing to mitigate effects in each, and balance up the recreational needs related to the effect on the SCL.**

Post-hearing note: Please refer to the relevant section of the separate note submitted at deadline 11 as document 9.121.

- 5.1.66. **The ExA asked the Applicant whether the average user (without the benefit of a map) using the land shown on plan A5-005 page 86, would be able to differentiate which parts of the land are common land and which are open space.**

- 5.1.67. AS explained that there are in places some remnant boundary features and some differences in the nature of the woodland, however for the average user these localised differences would not inform them that they are moving between common land and open space. In some cases, there are impediments to moving across boundaries, e.g. natural features such as drainage ditches, but most users would simply view these natural boundaries as features of the land.
- 5.1.68. **The ExA asked the Applicant to explain what disadvantage there would be to users of the SCL at plot 2/36, as seen on plan REP8-006 sheet 3, in respect of the maintenance of highways equipment or utilities equipment.**
- 5.1.69. AS responded that the main disadvantage to users would be the restriction of movement whilst maintenance is being carried out from time to time. There are some plots in this area where earth works supporting the tracks will be used for maintenance and inspection works and these earth works would act as an impediment to users. AS provided the example of an area of earth works near Clearmount Bridge and therefore, users would be impeded there during works.
- 5.1.70. **The ExA asked the Applicant to provide figures to show where rights are being acquired for the use of "tracks" (e.g. bridleway) and where rights are being acquired for physical works (e.g. where from time to time a bridge has to be replaced).**

Post-hearing note: Please refer to the relevant section of the separate note submitted at deadline 11 as document 9.121.

- 5.1.71. **The ExA asked the Applicant whether it is appropriate to apply the historic M25 ratios, which were used when the M25 was first built. The ExA also asked the Applicant whether any other precedents are being used, other than the M25.**
- 5.1.72. AS responded that the Applicant considers the ratios are an appropriate place to start the process from. However, AS emphasised the Applicant has not applied those ratios directly.
- 5.1.73. In relation to other precedents being used, AS explained that the A3 Hindhead scheme was considered as a precedent as it is most relevant to this scheme in terms of complex exchange land issues and the ratios applied in this precedent were approximately 2:1. Another less relevant precedent scheme was the Walton Bridge scheme which also involved complex exchange land however due to the specific requirements of this scheme, the ratio of the exchange land as part of that scheme was substantially lower.
- 5.1.74. **The ExA asked the Applicant for its written response to Mr Ben Garbett's (BG) submission on behalf of Park Barn Farm that the Greenwich case is relevant to this scheme.**

Post-hearing note: Please refer to the relevant section of the separate note submitted at deadline 11 as document 9.121.

- 5.1.75. **The ExA asked the Applicant whether there is a need for this scheme to provide 39.8 hectares of RL?**

- 5.1.76. The Applicant's position is that its proposal for replacement land is both appropriate and reasonable. However, it has also set out a potential alternative solution if the ExA should prefer this, including amending the land plans in the Applicant's recent submissions and therefore, some of the options set out by BG on behalf of Park Barn Farm could potentially be implemented were the ExA minded to do so.
- 5.1.77. **The ExA asked the Applicant if there is another ratio that the Applicant considers might be suitable? Could there be another ratio that the Applicant would consider instead of the current ratios of 2.5:1 for common land and 2:1 for open space.**
- 5.1.78. MHQC noted that it is a matter for the ExA to consider whether it agrees with the Applicant's ratios. On a practical point, MHQC suggested that it would be helpful for the ExA to provide a provisional view on the ratios before the end of the examination to ensure there is no complaint from the parties on lack of consultation on this issue. MHQC referred to an early DCO decision which was relevant to this point, namely the Preesall Underground Gas Storage Facility project where the applicant for that project was not given an opportunity to comment on an issue that was raised by the inspectors post-examination.
- 5.1.79. AS referred to the proposals put forward in submissions, for example the proposal in relation to Park Barn Farm (known as Option 4) in REP18-044, where the Applicant set out an average ratio of 1.75:1. However, the Applicant does not have another ratio in mind generally and has set out the ratios that it considers are correct.
- 5.1.80. **The ExA asked the Applicant to provide written submissions in respect of the SCL subject to the 'historic exchange' under the Compulsory Purchase Orders (CPOs) of 1979 and 1982. The ExA asked for detail on what should have happened once the CPOs in 1979 and 1982 had been confirmed and the various steps through to the acquisition, what has actually happened and if possible, an indication as to why steps might have been missed, including whether the failure to regularise the historic position has any bearing on the making of the order for the Scheme.**

Post-hearing note: Please refer to separate note submitted at deadline 11 as document 9.122.

- 5.1.81. **The ExA asked the Applicant to respond in writing to the following question: "For so long as any of the special category land subject to work proposed by the submitted application and which is also subject the incomplete historic exchange of the special category land and RL, can any such land that continues not to be owned by the applicant be excluded from the DCO? That is, while the position with respect to exercising of the historic CPO might give rise to a potentially perverse outcome (see para 7.2.19 on page 31 of APP-002), under the circumstances that have arisen, does that obviate the need for any relevant provisions under the PA 2008 to be applied or not?"**

Post-hearing note: Please refer to separate note submitted at deadline 11 as document 9.122.

6. CAH- Session 2, Part 4 – Surrey County Council (non-special category land matters)

- 6.1.1. **The ExA asked the Applicant to provide its response to David Stempfer's (DS) submissions on behalf of SCC.**
- 6.1.2. MHQC noted that there has been intense engagement between the Applicant and SCC and the Applicant is grateful for that. There are still some matters being negotiated but a lot of progress has been made.
- 6.1.3. MHQC addressed the four points that SCC set out in its opening summary:-
- 6.1.4. First, MHQC explained that SCC is correct that in relation to the Ockham Bites car park, there would be a loss of about a third of the capacity of the car park, although the café will remain operational. MHQC noted that the Applicant has been discussing a series of accommodation works with SCC. MHQC added that the Applicant cannot reduce the height of the embankment (work number 35) due to the presence of the overbridge, however the Applicant is in talks with SCC to include accommodation works in the proposed side agreement which would maintain a certain minimum capacity of the car park, retain a woodland buffer, retain certain trees and vegetation and include resurfacing for suitable access.
- 6.1.5. Jacqueline Watson (JW) made further comments on behalf of the Applicant. JW explained that in relation to the horizontal and vertical alignment of the embankment, the ExA might find it helpful to look at longitudinal profile which can be found in the document Volume 2.9 Engineering Drawings and Sections at sheet 11 of REP8-011. This document shows the height of the embankment relative to the overbridge across the A3 and the reasons behind the need to reach that height.
- 6.1.6. JW confirmed that the Applicant has responded to SCC's queries regarding the horizontal alignment and the possibility of realigning the embankment to the other side of the café. JW referred the ExA to REP2-014 (which was the Applicant's response to SCC written representations). JW also referred the ExA to REP3-007 and explained that the Applicant's position is that it needs to provide vehicular access across the overbridge and therefore, in order to achieve the necessary radii for vehicles, it is not possible to realign the embankment away from the A3. However, JW confirmed the Applicant is working towards a side agreement with SCC to make provision for the accommodation works to be carried out subject to any necessary consents having been obtained.
- 6.1.7. Second, MHQC explained that there are a basket of issues in relation to the permanent rights and, in particular, the long NMU route. MHQC reminded the ExA of earlier submissions from SCC in which they asked that the Applicant take permanent rights to allow the Applicant to maintain assets forming part of the local highway network in the long-term so that SCC would not need to do so. The Applicant's general position is that it does not believe it should acquire those permanent rights and be responsible for the maintenance of those assets which form part of the local highway network and for which SCC is funded as a local highway authority to maintain. MHQC added that the Applicant's discussions with SCC have now moved on to provide some sort of contribution, sometimes

known as a commuted payment, in a side agreement for what have been termed 'non-standard highway assets'.

- 6.1.8. JW added that one of the other issues within the basket of issues that MHQC referred to, is the land acquisition categories which have been applied in relation to the land needed for the Wisley Lane diversion. JW noted that the Applicant believes there is no further disagreement between SCC and the Applicant on this matter.
- 6.1.9. Third, MHQC referred to the point made by SCC that relates to plots of land which are subject to temporary possession but where the Applicant is also taking certain permanent rights to undertake long-term maintenance, for example areas where the Applicant has long term obligations under the LEMP (Landscape and Ecology Management and Monitoring Plan). The Applicant's view is that it is not appropriate or precedented to take temporary possession powers for such a long period of time. Accordingly, the Applicant has taken permanent rights over the land in order to ensure that these activities will be carried out but recognises that these rights will eventually become 'spent' and at that point, the Applicant will take steps to ensure that the rights no longer burden SCC's title.
- 6.1.10. Fourth, MHQC explained the point made by SCC in relation to land acquisition around the Ockham roundabout, where there are some plots in which the freehold ownership is with SCC and the works that the Applicant will carry out in connection to the Wisley Lane diversion will eventually become a SCC road. MHQC agreed with DS's submissions that it is the Applicant's usual practice to include land within the DCO to "clean the title", i.e. acquire or extinguish any rights that may arise.
- 6.1.11. Finally, MHQC referred to the few remaining points made by DS relating to SCC obtaining access to some of their retained land and assets and some other points which relate to highway design and visibility. The Applicant is confident that there will be solution found with SCC in respect of all of these points raised.
- 6.1.12. JW added that the issues presented by SCC are matters of detail and are subject to negotiations. The Applicant thinks there is enough space in the scheme to accommodate these issues through detailed design or a final Statement of Common Ground by Deadline 12.
- 6.1.13. **The ExA asked the Applicant to explain whether users of Ockham Bites would be significantly disadvantaged in relation to how the car park might function for users of the SCL.**
- 6.1.14. MHQC referred the ExA to sheet 4 of REP8-009 and indicated where the embankment and the NMU will be situated. MHQC noted that from the car park, it will be relatively easy for users to access the NMU route and get onto the embankment. MHQC added that the Applicant believes the existing layout of the car park could be improved to reconfigure it in order maintain an adequate number of car parking spaces. In summary, the Applicant acknowledges that whilst there will be an impact on the car park, it believes it will remain a good facility in giving access to the common open space and SPA following the construction of the replacement Cockcrow overbridge.

- 6.1.15. Robert Marks (RM) added on behalf of the Applicant that the access between Old Lane and where the embankment starts to rise is a very shallow embankment so it will be easy for users to walk across the NMU route and gain access to the Common. RM also referred to sheet 4 of REP8-009 and noted that the NMU route on the embankment rises at the maximum gradient of 5% and that it would not be possible to increase it to a steeper gradient to reduce the embankment footprint.
- 6.1.16. **The ExA asked the Applicant when the side agreement with SCC will be finalised.**
- 6.1.17. Mark Challis (MC) explained that the Applicant intends to agree terms with SCC as soon as possible. A full agreement has been drafted and is with SCC for comment. The Applicant intends to conclude the full binding agreement with SCC by the end of the examination.
- 6.1.18. **The ExA asked the Applicant whether planning permission would be required for the redesign of the car park. The ExA emphasised that it needs clarity on some sort of resolution on this issue ideally by Deadline 11 and certainly by Deadline 12.**
- 6.1.19. MC explained that this is an issue under discussion and the Applicant's view is that it would be easier and more appropriate for SCC to obtain planning permission (if planning permission is required) and the Applicant will then carry out the works. If there is disagreement on this, the Applicant will resolve this with SCC.

7. CAH1 Session 2, Part 5 - RHS Wisley

- 7.1.1. **The ExA asked the Applicant to respond to Richard Max (RM)'s summary submissions on behalf of RHS Wisley (RHS), in relation to RHS's objection to the scheme.**
- 7.1.2. MHQC responded to the RHS's submissions on behalf of the Applicant:
- 7.1.3. First, MHQC referred to the statutory tests and the guidance in relation to CA. MHQC explained that originally in its first representations, RHS had objected to all of its land being taken, however that changed at Deadline 5 (MHQC referred the ExA to REP5-045, paragraphs 11-12). Now, RHS only object to the following three plots: 2/27 (outright CA), 2/27a and 2/30 (both temporary possession).
- 7.1.4. In relation to demonstrating that the Applicant's taking of the land is legitimate, necessary and proportionate, MHQC reiterated the Applicant's need to widen the A3 in order to deliver the scheme. The widening of the A3 necessitates the closure of the existing "left in, left out" access and egress to Wisley Lane. There is therefore a need for a replacement access to Wisley Lane to be provided. The replacement access arrangements cannot be a "left in, left out" configuration on safety grounds as the Applicant has already explained to the ExA extensively in its previous submissions. MHQC explained that the replacement access needs to take some other form. MHQC reminded the ExA that the Applicant originally looked at a link road alignment on the north / northwest side of the A3 and RHS objected very strongly to that which caused the alternative access road to go to the other side (i.e. the south / southeast of the existing A3).
- 7.1.5. In relation to RHS's concerns about the Wisley Lane overbridge, MHQC emphasised that the Applicant needs to construct the bridge on a skewed alignment in order to maintain the existing access to Wisley Lane. Therefore, the skewed alignment requires the Applicant to take further plots, including 2/27 and 2/27a in connection with the re-provision of access to Wisley Lane. MHQC explained that plot 2/30 is the existing Wisley Lane and RHS's interest there is a subsoil interest. MHQC clarified that there was never a proposal to make the overbridge a 'green' bridge. There was some thought that the overbridge might be a feature bridge, but that proposal was dropped a number of years ago.
- 7.1.6. MHQC summarised that if the Applicant's proposals are accepted in relation to widening the A3, the provision of an overbridge and the decision that the bridge should be skewed, then the Applicant will have demonstrated the need to take permanent possession of plot 2/27 and to take temporary possession of plots 2/27a and 2/30. Without the acceptance of the Applicant's proposals, the Applicant's position is simply that it would be very difficult to see how the Scheme could proceed if access to Wisley Lane and RHS Wisley was not re-provided. If the Applicant cannot acquire these plots, and in particular plot 2/27, then there cannot be a southern access to Wisley Lane. The Applicant therefore has a very compelling case in relation to the acquisition of these plots.
- 7.1.7. MHQC outlined that in the Applicant's discussions with RHS, three particular points have arisen, which can be seen on the plan that RHS recently submitted. MHQC noted that it is not usual practice for the ExA to accept plans between

deadlines and the Applicant would have submitted plans of its own to inform the CAH had it thought possible.

7.1.8. MQHC set out the three particular points:

- a) First, in relation to access to plot 2/27a, MHQC referred to sheet 2 of the Works Plans (REP8-004). MHQC explained that this access is needed temporarily to facilitate construction of the overbridge. Pointing out the NMU on the plan, MHQC explained that there is a spur off the NMU which comes down towards the edge of the A3 embankment and then meets the edge of the Wisley Lane diversion (Work number 33(h)). MHQC highlighted the new footpath linking Wisley Lane overbridge to Work 35. MHQC summarised that it would not be right to say that the land is completely landlocked. The Applicant understands that RHS have ambitions to put a welcome/advertising sign out on that piece of land. MHQC confirmed that pedestrian access would be possible and perhaps some form of vehicle access could be feasible, subject to detailed design. The Applicant believes this overcomes the concern that RHS have.
- b) Second, MHQC referred to the RHS's concern about "excessive land take" within plot 2/27. The Applicant's position is that the preliminary scheme design indicates that all of the land within plot 2/27 will be required, albeit that there is more design work to be done on the overbridge as part of detailed design. As explained previously, the Applicant has taken enough land to ensure it can undertake the works required. MHQC emphasised that it could be the case that the Applicant finds later on that it does not need to retain all of the land permanently. The Applicant's position is that it would not take land that it would not need in the long term and the Applicant is therefore very satisfied that the land take for plot 2/27 is justified.
- c) Third, MHQC referred to the compound and the access track on the plan that RHS submitted. MHQC noted David Alexander's (DA) concerns on behalf of RHS regarding access to this land and indicated that the Applicant would be content to discuss practical arrangements with RHS.

7.1.9. In relation to Human Rights, MHQC reiterated the Applicant's position in respect of A1P1 and Article 6 HRA 1998 (Right to a Fair Hearing) which was explained as part of CAH session 1.

7.1.10. **The ExA asked the Applicant to explain the continued access for the RHS during the construction period.**

7.1.11. MHQC summarised the Applicant's position that it does want to ensure continued access for RHS during construction. MHQC noted that it would not be reasonable for the Applicant to give an unqualified undertaking that access would always be available as highways are often closed owing to unforeseen circumstances.

7.1.12. James Lucini (JL) gave further assurances on behalf on behalf of the Applicant. JL explained that the Applicant has sufficient space within the temporary possession land plot 2/28 to ensure access would continue to be available, however RHS have indicated a preference for widening their existing exit in the area marked Inset A on the plan referred to during the hearing as a means to

reduce tree loss in this area. JL confirmed that the Applicant has taken RHS's comments on board in good faith. JL referred to another comment made by RM on behalf of RHS in which RM stated that the only safe access is outside of the red line boundary. JL explained the Applicant strongly believes that it can provide safe access by utilising plot 2/28 if required albeit that the Applicant is willing to discuss RHS's preferred solution further.

- 7.1.13. JL confirmed a working group has been set up and there have been meetings between RHS and the Applicant. In reference to the plans submitted recently by RHS, JL outlined that the traffic management and access arrangements can be split into 3 phases:
- 7.1.14. The initial phase would be the construction of a temporary access into RHS for visitor traffic. Under the current proposals being discussed, this would be via the widening of the existing exit and this will facilitate a two way flow of traffic in and out of RHS's car park.
- 7.1.15. The second phase would start upon the opening of the temporary entrance and exit whereby the Applicant will then close the existing RHS entrance (as shown on the RHS's plan near the green dotted line) and this will enable construction of the Wisley Lane overbridge and approach embankment between the structure itself and past the position of the spur for RHS's entrance. JL explained this will allow the Applicant to construct the Wisley Lane diversion.
- 7.1.16. Once the highway works are completed, the third phase would be to open the new Wisley Lane from Ockham junction down the spur into the RHS access road. JL noted that this would need temporarily to be a two way access to allow traffic to and from the A3. JL clarified that other users of Wisley Lane who are not seeking access to the RHS would have to use the temporary crossover shown on the plan (to the left-hand side of plot 2/28). JL explained this will allow the Applicant to complete the tie in for the embankment. Once this is complete, the Applicant can open diverted Wisley Lane fully to traffic and the traffic flows will be as per the final road design.
- 7.1.17. JL summarised that it is not the Applicant's intention to block access to RHS during construction and the Applicant will work with RHS to this end.
- 7.1.18. The ExA asked the Applicant if it has traffic modelled the temporary access and egress solutions to the RHS site, using one of the RHS's more popular events.
- 7.1.19. JL explained the Applicant has not yet traffic modelled the temporary access proposal however it would be content to do so. JL confirmed the Applicant has already requested visitor numbers from RHS for the previous year in order to inform modelling.
- 7.1.20. **The ExA asked the Applicant how long a road closure might have to be, in response to RHS's concerns of disruption caused due to closures.**
- 7.1.21. JL explained that any closures would be limited to matters such as white lining or stitching which would typically take place overnight or two nights at most. JL added that the installation of beams on Wisley Lane will also require approximately two nights of overnight work. JL explained the Applicant would not

seek to do these works during the day when it would have an impact on RHS and it is certainly not usual practice to do this.

- 7.1.22. The ExA asked the Applicant if it envisaged any daytime closures that might affect RHS.
- 7.1.23. JL explained that there was no need for any daytime closures, beyond unforeseeable events.
- 7.1.24. MHQC added that there are no planned closures of the road during the RHS's opening times but the Applicant cannot give a guarantee on this due to unforeseen events which are the same for any highway e.g. on account of accidents.
- 7.1.25. The ExA asked the Applicant whether it is likely that the side agreement would contain provision for specific overnight working hours, for example 10pm-6am, as suggested by RHS.
- 7.1.26. JL commented that he cannot speak to the proposed Land and Works Agreement, however it is usual practice to carry out these works overnight.
- 7.1.27. MHQC added that it is very much the Applicant's intention that any works required to close the road would be carried out at night and these works would be very brief.
- 7.1.28. MC confirmed that working hours could be addressed as part of the discussions in relation to the proposed Land and Works agreement.
- 7.1.29. The ExA asked the Applicant if it can provide the RHS with some reassurance that the arrangement shown in "Inset A" on RHS's plan is possible and will be committed to by the Applicant, subject to the necessary planning permission being obtained.
- 7.1.30. JL responded that the arrangement shown in Inset A is possible in a technical sense. JL added that it is not the only option but it is the preferred option by the RHS.
- 7.1.31. In relation to planning permission, JL explained that the "Inset A design" would be built for temporary purposes and it is the Applicant's position that if the RHS wish to keep it permanently, then it is for the RHS to obtain planning permission. Otherwise, JL confirmed the Applicant would remove it following the construction of the scheme.
- 7.1.32. The ExA asked the Applicant whether the red line extends beyond the bounds of the plan.
- 7.1.33. JL confirmed that the red line extends up to Wisley Lane and referred the ExA to sheet 20 of the Land Plans to show the red line.
- 7.1.34. MC explained that the red line extension along Wisley Lane is to accommodate the proposed speed limit change.
- 7.1.35. **The ExA asked the Applicant if it is able to provide a timescale for concluding the Land and Works Agreement with RHS.**

- 7.1.36. MC explained on behalf of the Applicant that heads of terms have been drafted with a view to a full Land and Works agreement to be agreed later. MC confirmed that the Applicant has not dealt with the specific issues relating to Inset A in the Heads of Terms, rather the Heads of Terms are more of a general agreement on how things will work before and during construction, for example it deals with the access issue in a general way.
- 7.1.37. MC added that the Applicant views the draft Heads of Terms to be at a well advanced stage and the Applicant is optimistic that the Heads of Terms will be settled before the end of examination. MC referred the ExA to REP10-008 for a summary of this point.
- 7.1.38. **The ExA asked the Applicant whether working hours are being covering in the draft Heads of Terms. If not, the ExA asked the Applicant if this is something that can be included in the draft Heads of Terms.**
- 7.1.39. MC explained on behalf of the Applicant that there is not currently a provision covering this, however the draft Heads of Terms does contain general provisions about access and maintaining access.
- 7.1.40. MC commented that although the Applicant is not in a position to give guarantees or an undertaking regarding the addition of a working hours provision, working hours could be addressed as part of the discussions in relation to the proposed Land and Works agreement.

8. CAH1 Session 2, Part 6 - Wisley Airfield

- 8.1.1. The ExA asked the Applicant to respond to WPIL's opening submissions.
- 8.1.2. MHQC responded that there is a compelling case in the public interest to acquire the plots set out in Appendix A to the Statement of Reasons. MHQC explained that without these plots, it will not be possible for the Applicant to construct the Wisley Lane diversion and the scheme would not be able to go ahead because there would be no access to Wisley Lane. MHQC added that the Applicant requires the construction compound and the various other areas to carry out that construction work.
- 8.1.3. MHQC set out the Applicant's case that its aims are legitimate, necessary and proportionate. In particular, MHQC highlighted the Applicant's careful approach in being proportionate, for example by identifying those areas where the Applicant requires acquisition of freehold and where it only requires temporary possession. MHQC referred to Article 32 of the dDCO which sets out the way in which the temporary possession power may be used. MHQC explained that the Applicant does not agree with the point made by WPIL that the powers are inappropriate. MHQC reiterated to the ExA that it could be the case that the Applicant does not require all of the land marked for permanent acquisition as it will be able to decide upon entering onto the land whether or not it is needed.
- 8.1.4. In respect of the Wisley Lane access issue, MHQC drew the ExA's attention to the fact that WPIL does not have planning permission yet for their proposed development and to some extent, WPIL's development actually relies on the Applicant's scheme. MHQC explained that it is proposed that the access will come off the Applicant's Wisley Lane diversion.
- 8.1.5. In relation to key aspects of the design, MHQC explained that the design is continuing to develop. MHQC noted that the Applicant is trying to ensure WPIL's concerns are addressed in the proposed side agreement.
- 8.1.6. MHQC clarified that the Applicant is constructing the Wisley Lane diversion for its own purposes and in accordance with its own design, however it is keen not to compromise other developments and the Applicant is willing to enter into negotiations and agreements to ensure a collaborative approach. Having said that, the Applicant is not willing to have the design of this piece of infrastructure, which is paid for by the public, decided by a private sector development which may or may not obtain planning permission.
- 8.1.7. The Applicant's view is that the discussions with WPIL have been constructive. MHQC referred to the environment permeability issue raised by WPIL and drew the ExA's attention to the Environmental Statement at APP-052, in particular paragraphs 7.10.43, 7.4.37 and 7.4.40 of the biodiversity chapter. In this chapter, the Applicant sets out what environmental measures it intends to make for its own development. In this example, MHQC explained that the Applicant is satisfied that the environment measures that it requires are secured by the DCO. If WPIL wish for measures on top of the measures already in place, MHQC explained the Applicant is willing to co-operate. However the Applicant would not be looking to introduce a mechanism into the DCO itself, rather it would deal with this issue in a side agreement with WPIL.

- 8.1.8. MHQC addressed WPIL's submissions regarding the compound and noted that WPIL has no objection to the use of the large area of hard standing for the construction compound however WPIL want this "yielded up" as soon as possible. MHQC confirmed the Applicant has no desire to use this land longer than necessary and it has taken the necessary temporary possession that it needs and the Applicant is happy to discuss details with WPIL and in fact, is already doing so.
- 8.1.9. MHQC responded to WPIL's point regarding reinstatement of the hard standing land. MHQC explained that there is no obligation on the Applicant to effectively improve this land to a standard that a developer wants for its development. Having said that, MHQC stated that the Applicant does remain willing to discuss these matters. The Applicant does not wish to cause an unnecessary burden to another development and is seeking to address these issues through a side agreement with WPIL.
- 8.1.10. MHQC acknowledged WPIL's submission that it has no objection in principle to the Applicant's development.
- 8.1.11. Finally, MHQC reiterated the Applicant's general position in relation to Article 1 Protocol 1 and Article 8 HRA 1998, that the scheme is in the public interest.
- 8.1.12. **The ExA asked the Applicant for an update on progress with the proposed side agreement with WPIL.**
- 8.1.13. MC responded on behalf of the Applicant that the Applicant and WPIL have been discussing the Heads of Terms and the full Land and Works Agreement for a number of months. Whilst the issues are complex, MC confirmed that the Applicant is willing to co-operate with WPIL in the delivery of its scheme.
- 8.1.14. MC added that there was some delay in negotiations whilst Taylor Wimpey acquired WPIL and the Applicant has only been dealing with the new professional team since late March 2020. However, the Applicant views the progress on the agreement to be good. MC added that the agreement covers a number of issues, including the shared construction issue, arrangements for vacating the Wisley Lane work site at the earliest opportunity, details of the environmental permeability, retaining trees and vegetation that can form part of WPIL's development, arrangements for survey access and various other provisions.
- 8.1.15. MC added that in respect of the more detailed land provisions, the Applicant only received these from WPIL in mid-May and the Applicant is currently reviewing these. MC confirmed the Applicant's intention is to conclude the agreement before the end of the examination, however the Applicant will provide an update to the ExA in any event.
- 8.1.16. **The ExA asked the Applicant whether it thinks the Heads of Terms with WPIL will be agreed by close of the examination (i.e. 10 July 2020).**
- 8.1.17. MC explained that the Applicant has now decided to pursue a full agreement rather than just Heads of Terms, which does make the task more time consuming. Although it is difficult for the Applicant to say, MC explained the Applicant is reasonably confident that the parties will agree something before 10

July 2020 but it is difficult to confirm at this stage to what extent. The Applicant will certainly do its best to make progress.

- 8.1.18. **The ExA asked the Applicant to respond to the timescales set out by WPIL in relation to applying for planning permission and starting works for WPIL's own development. The ExA would like to understand what overlap there is likely to be between the Applicant's scheme and WIPL's development, given that WIPL's main development works are planned to start in January 2022.**
- 8.1.19. JL responded on behalf of the Applicant and explained that for the initial phase, it appears that WPIL need fairly small scale access and the Applicant thinks this can be accommodated without any issues.
- 8.1.20. JL and Laura Christie (LC) explained that it is anticipated that in January 2022, the Applicant would be progressing with the Wisley Lane diversion and the Applicant would hope by that stage to be fairly well progressed with it, which may suit WPIL's timescales particularly as the access off the Ockham junction should be almost finished by this time.
- 8.1.21. **The ExA asked the Applicant when it would expect to vacate the compound. The ExA requested that the Applicant and WPIL produce a note setting out how the respective key dates of works might be coinciding with each other.**
- 8.1.22. JC and LC explained that the Applicant envisages that it will require the use of the compound until the end of the Scheme. The Applicant expects the Scheme to complete construction around Q2 2023.
- 8.1.23. **The ExA asked the Applicant what level of activity it envisages for the compound in mid-2023. The ExA would like to understand how much "tripping up" there may be of WPIL's project.**
- 8.1.24. JL explained that the Applicant's level of activity in mid-2023 would be similar to the level of activity in the main part of the Scheme as the compound is an area for material processing. JL added that there will be some storage for traffic management that will be carried on through the Scheme. JL explained that the area that would not be required by the Applicant by then is the structures' work site because the bridge will have already been constructed and there will still need to be some welfare arrangements. JL added that the Applicant's hands are somewhat tied in relation to the welfare arrangements, due to the fact that this is one of the few areas that is not within an SPA.
- 8.1.25. JL explained that the Applicant does not think there should be too much "tripping up" over each other's schemes and it is the Applicant's intention that the two parties work together and that the Applicant will accommodate WPIL wherever possible.

- END -

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