REP 1-035 PARK BARN FARM ("PBF") – ALDERSON

SUBMISSIONS FOR DEADLINE 12 (10/7/20)

Comments in response to REP11-011: 9.121 Applicant's note for Action points 1, 2, 4 and 5 (CAH Session 2 Part 3 Special Category Land and Replacement Land)

Preliminary note

The appendix contains copies of recent email exchanges with solicitors for the applicant which point to some discrepancies and unexplained interpretation of key data, which requires urgent clarification: see paragraphs 6.4.4 and 6.4.6 (pp.80-81) of Appendix C, Common Land and Open Space Report, REP8-015).

We have raised concerns that some of the key information which is relevant to the proper assessment of the RL issue appears to be strewn across several different places within the application documents which not only makes cross-referencing extremely difficult and time consuming, but also results in a highly confusing picture overall. It was understood that the applicant would be submitting a consolidated piece of information to address these matters as part of its submissions for deadline 11; it has not done so.

A related aspect of our concern is that the applicant is introducing new evidence to justify its claim for 1:1 RL in respect of order rights very late in the piece, in its final representations for deadline 11 (REP11-011). In this document it appears the applicant wishes to present a different slant on those matters which is not only prejudicial to the objector, but also exposes a credibility issue.

The comments we have set out below are made without prejudice to our overriding criticism that the objector's ability to respond fully to the issues raised is unfairly impaired.

2.1.1. to 2.1.5: Note on alternative argument and s132(5)

1. Our position is as follows:

    a. RL does not need to be made available in respect of the plots of land in respect of which HE has not identified any burden (Table C.4);

    b. RL provision need only be considered in relation to the land parcels identified in Table C.3 (page 100 of Appendix C, Common Land and Open

Space Report, REP8-015). However, for reasons we have set out elsewhere in our representations we object to both the principle and the scale of that provision.

3.1.1 to 3.12: Area of SCL for outright acquisition

2. We are unable to verify whether the total of 13.77 ha is correct (Tables C.1-C.4, pp. 97-103 of Appendix C, Common Land and Open Space Report, REP8-015). These representations proceed on the assumption that the figure is correct.

4.1.1: Reduction in size of Wisley Common following the scheme

3. The figures quoted should be stated in sq. meters not in hectares.

4. It is unlikely that any users of Wisley Common would consider their public access experience was compromised or diminished to any perceptible degree by an overall 'shrinkage' of 3.1%. This reduction is tiny and it affects the outer fringes only, rather than any interior part of the Commons. There would be no overall loss of 'buffer'. The user survey evidence certainly bears this out (REP4-028) since one of the individuals interviewed had remarked that the "*Proposed works wouldn't put them off as the area is quite big so they wouldn't notice the small amount of land take*", and another said that there is "*plenty of land; in favour of the improvements at the junction*".

5. In the overall balance of advantages more significant weight by far goes to the fact that users will be receiving (in substitution for this insignificant loss) large consolidated blocks of accessible land located in areas where they will also merge with other existing, and well-used, SCL.

6. No percentage figures have been given for the percentage reduction for special category land as a whole, i.e. including Chatley Heath and other open space. The point has been made elsewhere that users on the ground would not be cognisant of the different public access designations, so perhaps a scheme-wide calculation would have been more appropriate. Even so, it would realistically not lead to a different conclusion.

5.1.1 to 5.1.4: Relative proportions of different elements of the land over which rights are to be permanently acquired

7. At para 5.1.4 (REP11-011) the applicant has remarked that "*All these factors have been taken into account when arriving at the proposal to provide replacement land at a ratio of 1:1*." The applicant did not put its case in that fashion when it described its chief rationale for RL based on target ratios in the evidence it put to

this Examination[1] originally. One must therefore treat the applicant's assertion now with a high degree of scepticism.

8. According to the information contained in Table C.3 (p.16) there is a total of 85,108 sq. metres (8.51 ha) of SCL affected by permanent rights for which RL is to be provided. This makes a total of 22.28 ha of 'affected' SCL when added to 13.77 ha of SCL to be acquired outright.

9. The 22.8ha breaks down roughly in the following proportions:

    a. 40% is SCL affected by permanent acquisition of rights;
    b. 60% is SCL permanently acquired.

10. The individual totals for different types of rights quoted in Table C.3 (p.16, "Functions provided by rights plot") may not be correct because the aggregate total of those columns is 86,311 sq. metres not 85,108 sq. metres.

11. The applicant's own assessment of *how* the SCL is affected by rights is set out below:-

    a. 0.26 ha = access wholly prevented – i.e. **3%** of the total;
    b. 2.49 ha = access impeded – i.e. **28.9%** of the total;
    c. 4.42 ha = access affected "*to varying degrees*" – i.e. **51.2%** of the total;
    d. 1.46 ha = access affected "*from time to time*" – i.e. **16.9%** of the total.

12. The 0.26ha (3%) of land where access is wholly prevented is similar to if the SCL had been acquired outright. In our view there would be <u>no loss of advantage</u> in respect of the other 97% of SCL affected by order rights.

13. Even so, a 1:1 RL ratio to compensate for the 0.26ha would be appropriate only if the advantages of the RL and SCL were the same (equal advantage) where land is to be acquired – but that is not the case here. Additional RL is not necessary.

14. It is a similar result for the 2.49ha (28.9%) which is said to be unimpeded access, but also, since the SCL is encumbered in similar ways at present, there is no disadvantage caused in any event. The applicant has itself remarked on the poor quality of public access around these roadside locations / junctions, and so it must be appreciated that such impediments are not new.

15. This was certainly our own experience from the site visit – and it is also borne out by respondents to the user survey which indicates that users are, as one would expect, mainly coming to use these areas to experience the peaceful and

[1] Para. 2.7.18, Appendix C (REP8-015)

natural surroundings for dog walks and cycling. These users are highly unlikely to be using the outermost perimeter.

16. The applicant says that just over half (4.42ha) is affected "*to varying degrees*", and the other 1.46ha (16.9%) from "*time to time*". This is non-specific and opaque. Notably the applicant does not make the case overtly that there would be actual disadvantages as a result of this use.

17. Relevant statements made by the applicant previously in respect of these matters are as follows:-

18. At para. 2.7.16 of Appendix C (REP8-015) under the heading "*Issues regarding the acquisition of permanent rights*" the applicant said this:

> *"Some of the proposed permanent rights will be along bridleways and associated routes where these are separate from the M25 and A3 and associated overbridges. These will remain part of the common land and open space and will enhance public access to them and there will, therefore, be some* ***limited loss of the advantage*** *conveyed by these areas to the owners or the public when burdened by the rights. These works are outlined in the first three bullet points of paragraph 3.5.5."*

19. To summarise the first three bullet points of para. 3.5.5, these works are:

    a. Works (e.g. drainage, earthworks and culverts) to implement the highway elements of the scheme;

    b. Maintenance works on NMU routes to ensure they are "*fit for use"*;

    c. Access for maintenance of utilities and apparatus, which entails are described as "*periodic*" inspection visits and "*very infrequent*" maintenance activities.

20. At para. 6.3.15 of Appendix C (REP8-015) the applicant says:

> *"For the purposes specified in paragraph 6.3.13 c to f above, Highways England considers that the affected Special Category Land, when subject to the acquisition of rights as provided for in the draft DCO,* ***will be no less advantageous*** *to each of the persons described in section 132(3) of the Planning Act.* ***This is because the rights described are being taken for the benefit of the land to enhance it and improve its ecological and/or amenity status****.* ***The nature of the rights taken mean that access to the land for members of the public will not be restricted or impeded to any greater extent than occurs at present during current maintenance works***

undertaken by Surrey Wildlife Trust*. The relevant plots are listed in Table C4 in Appendix C to this report."*

21. The applicant's clear view, therefore, as expressed above, is that these considerations will result in a net positive benefit, which would therefore not justify any compensatory RL provision. The para. 16.3.13 list specifically includes (c) "*works to maintain enhanced NMU routes across SCL*" and (d) "*access to RL for the purposes of land maintenance*". In relation to the assessment of these issues one must continually bear in mind the repeated claims made by the applicant that overall NMU provision will be enhanced, and so from the point of view of users these may be seen as generally positive impacts.

22. The only items missing are (a) and (b) from the para. 6.3.13 list (REP8-015):-

    a. Works to implement the highway elements of the Scheme (including culverts, drainage works and earthworks and other highway structures);

    b. Access to land for the purposes of maintenance of utilities or Highways England apparatus, which the applicant says will be periodic only / very infrequent.

23. On the basis of this clear evidence a total of 8.63 ha is not justified. At most, just 0.26ha of SCL is required to compensate for the loss of public access under this head.

6.1.1 to 6.1.4: Note regarding use of tracks along which rights have been acquired that are considered a burden on the land

24. According to the applicant Table 2 indicates that many of the access routes will be used frequently. We dispute that choice of label given that the information presented in Table 2 indicates that many of the visits would be infrequent in nature: annual, bi-annual, or quarterly, with the most regular visits being monthly litter/debris clearance and grass cutting.

25. Table 2 may also tend to over-exaggerate the overall frequency by splitting the purpose of these visits into their individual components when in practice it is likely that many of these trips would be linked together, and which therefore does not involve repeated driving up and down the same track.

26. To repeat our point above, the applicant's stated view previously was that inspection visits for maintenance of utilities and highways assets would be just

"*periodic*" and maintenance activities "*very infrequent*". Other more regular / routine maintenance visits would be undertaken alongside those already carried out by Surrey Wildlife Trust:

> *"It is Highways England's intention to avoid the need to exercise the permanent rights over the Special Category Land by entering into an agreement with Surrey County Council and Surrey Wildlife Trust, pursuant to which* ***Surrey Wildlife Trust will be responsible for carrying out the works to the SPA enhancement areas, compensation land and other environmental mitigation works for which permanent rights are taken in the draft DCO.****"*
>
> [Para. 6.3.16, REP8-015]

27. Furthermore, there is no actual information on how frequently users of the commons would be likely to encounter vehicles. The user survey (REP4-028) indicates that visitors numbered between 236 and 254 on two separate days in September 2017, but this is a scheme-wide number recorded across a 12 hour period on each of those days.

28. There was little evidence of use or activity by walkers / riders experienced during the site visit, and one of the respondents to the user survey (APP-125) said one of the reasons they came here was that there were "*not many people*". This was a person from Cobham who said they used the SCL 3-5 times per week.

29. In the absence of any other specific information it must be reasonably concluded that conflicts of movement would be very few in number, and this is not a good reason to believe it would become a noticeable blight on the experience of users.

30. We also note, in any event, that the applicant does not specifically advance its case on that basis (i.e. that the frequency and/or duration of these inspection / maintenance visits is a significant burden such that it amounts to a material loss of advantage to users of the SCL). It simply says these factors were taken into account (para. 5.1.4), which is hardly unequivocal.

31. In our view it is unlikely that vehicle encounters (such as they do arise) would be likely to be viewed as an inconvenience or detriment by users of the commons / open space because of the following reasons:

    a. Firstly, the applicant has already confirmed that the access tracks are designed in order to allow vehicles to pass a pedestrian so there is no physical impediment when these encounters do occur;

b. Secondly, SWT already carries out routine maintenance visits so this would not be a new experience but part and parcel of how the Commons are experienced now in any event;

c. Thirdly, the specific purpose of the maintenance visits is for activities such as rubbish clearance / grass cutting which will improve the general user experience. There is no reason to think these visits would not be viewed positively.

32. No serious weight in the balance can be given to other unplanned or unexpected events to warrant the forced compulsory acquisition of private land interests.

33. In our view there is no plausible reason for sanctioning a large forced acquisition of private land interests on such flimsy evidential grounds as these. This would be wholly disproportionate, and fails to satisfy s.122(3) PA 2008.

7.1.1 to 7.1.6: Base figures for Replacement Land

34. The full statutory context includes s.122(3) PA 2008 which requires demonstration of a '*compelling case in the public interest for the land to be acquired compulsorily'*.

35. The proportion of SCL affected by 'permanent rights' in the current scheme makes up around 40% of the overall total. For the 1979 and 1982 Orders (for the construction of the M25/A3 interchange) it was zero: see para. 7.1.3, REP11-011.

36. The applicant's admission, at para. 7.1.5, that its previous statement was wrong in this regard[2] reveals a worrying lack of attention to detail in relation to what is an extremely important factual matter which has guided the applicant's whole case on RL. It also discloses another fundamental reason as to why comparisons with earlier roads schemes for the M25/A3 are entirely false and misleading.

37. It must be understood from this that there are highly significant differences in relation to the nature of the legal rights acquired under these Orders, which adds to the differences in pure evidential terms which have already been highlighted in the objector's case (i.e. the different balance of advantage, in terms of public access, between SCL affected and the RL/EL provided in exchange). As such there is no reason why historical precedents should be used to set applicable 'target ratios'.

38. The applicant then goes on to state (para. 7.1.6) that the circumstances of the current scheme are not comparable to what went before, in which case one

[2] Response to question 9, p.15 of REP4-004.

must question where else there is any room left for debate in relation to the target ratios?

39. The point raised at paragraph 7.1.6 is not accepted. There is no reason why the current scheme promoted under the old legislative framework would yield ratios significantly higher than 1:1. Ultimately, the crucial difference lies not in the statutory framework (which is similar) but in the proper exercise of discretionary judgement.

7.2: M25 scheme completed in 1983

40. No comments.

7.3.1 to 7.3.6: M25 Junction 10 DCO Scheme

41. We agree that there is no distinction between existing common land and open space which should be treated as having equivalent value / importance, in recreational terms. However, ratios above 1:1 (for either common land or open space) require justification through an evidence based approach in the manner we have described elsewhere, i.e. the 'bottom-up' approach.

42. The applicant's approach has suffered from a fixation with theoretical targets which are plainly not justified. Throughout the Examination, and at a late stage, it has advanced a series of "retrofit" reasons which lack support from any convincing evidence to support those purported judgements.

43. The true picture of how badly things have gone wrong is highlighted by para. 7.3.4 of REP11-011 where the "bundled" ratios are quoted. We calculate the blended ratio is 2.9:1. This is much higher than any of the ratios which applied to the old road schemes. It is nearly triple the amount which can reasonably be justified on a fair and balanced assessment of the evidence.[3]

8.1.1 to 8.1.8: Biodiversity mitigation and RL

44. The objector has no quibble with the general approach the applicant says it took which was to split consideration of the SPA from requirements for RL provision.

45. SPA biodiversity benefits have to be considered separately in this regard, but that is not to say that such benefits are not a factor in respect of the amenity value of the RL which is to be enjoyed (paras. 8.1.4 / 8.1.8). This consideration is not excluded by what was said by the court in *Greenwich*. It is a material

[3] RL provision for the acquisition of permanent rights should be zero.

consideration to which positive weight can, and should, be attributed in favour of the RL.

8.2.1 to 8.2.13: Implications for biodiversity measures if RL is reduced or removed

46. We generally support the applicant's overall conclusion (para. 8.2.12) that residual impacts on the SSSI and LNR would arise but that permanent positive residual impacts would still result. However, it is not our place to judge whether biodiversity measures are adequate for the scheme, or would be if PBF land is removed entirely as it now should be.

47. On behalf of the objector we would simply observe that the applicant's stated case for the exercise of powers of compulsory acquisition of land interests at PBF (and elsewhere) for RL is under s.122(2)(c) PA 2008, and not because some other reasons (e.g. biodiversity enhancements) might also be said to benefit from those compulsory powers being exercised.

48. The objector would be seriously prejudiced if the powers were sought for another reason which has not been previously explained, for example biodiversity mitigation. The objector has not needed to respond to such a case, and might well have engaged a suitable expert of his own to provide evidence in relation to the biodiversity impacts had this been the specific case which the applicant had advanced.

49. Accordingly, the objector cannot provide any meaningful input in relation to the issue of whether the biodiversity impacts are suitably mitigated across the scheme. But where the land at PBF may be important from a biodiversity perspective (para. 8.2.2) these would not be lawful alternative reasons for confirming the compulsory acquisition of those land interests. For our part we do not believe that this is what the applicant did intend to suggest.

9.1.1: User surveys (Wisley Common and Ockham Common sites in 2017)

50. The user survey (APP-125: Appendix 13.2 of the ES (June 2018)) does not reveal much other than that what is already known: that walkers, cyclist and riders come to use the SCL and that quiet enjoyment of the resource is frequently cited as a positive attribute ("*other than the road*"), so to the extent RL would provide a more peaceful environment than the land which would be acquired this is a positive benefit of the RL.

10.1.1 to 10.1.5: The *Greenwich* case

51. The objector has never indicated that *Greenwich* acts as a precedent for how discretionary judgements in this case must be exercised. Just like in every other case this is a matter for the decision-maker according to the relevant facts and circumstances, subject to the limits of rationality where a court may quash an unlawful decision.

52. But in this regard *Greenwich* is no less relevant than the schemes which the applicant has cited for the derivation of target ratios. None of these cases establishes a guiding precedent, and so for the same reasons as the applicant has pointed out, the Secretary of State should be very wary not to adopt the M25/A3 schemes as a guide, these being based on past decision-making in markedly different circumstances.

53. Nevertheless, *Greenwich* does emphasise the need for an evidence based approach. It does also provide binding legal authority on where certain legal parameters lie in relation to the exercise of this discretion, for example, the important principle that the legislative scheme does <u>not</u> require the *identical* benefits to be replicated.

54. It is also not true to say, however, that the ExA does not have information about the particular circumstances involved in the *Greenwich* case. The relevant facts are set out very fully in a detailed 41 page judgment of the court – the key points of which the objector has summarised at deadline 11. In any event the same may be said about the evidence which would have been scrutinised in relation to the M25/A3 road schemes. This material is not before the Examination either.

55. All this misses the point, however. The *Greenwich* case serves as a useful reminder that discretionary judgements have certain limits. In *Greenwich* the court was only just persuaded that the Secretary of State's decision was *Wednesbury* rational. On the facts of that case there were many good reasons why the discretionary judgement could (and arguably should) have been made the other way. In the end, however, the court was able to conclude that the decision to certify the Order was one within the bounds of rationality.

56. That is unlikely to be the case here now if the Order is confirmed because on the evidence there are very strong and powerful reasons why the decision-maker should *only* be satisfied that a 1:1 ratio is appropriate. The objection at PBF is underpinned by human rights objections (unlike in the *Greenwich* case) and there are no convincing reasons why a higher ratio is needed.

57. The applicant's final remark (para. 10.1.5) illustrates an entirely different point altogether. The ELRC road project was cancelled for other political reasons because the discretionary judgement over the impact on Oxleas Wood, though

legally correct, was seen to be wrong. This merely emphasises the seriousness of Mr Alderson's plight: because unlike in the *Greenwich* case he does not have the option of cancelling the Scheme if a bad decision is now made. His only redress would be through the courts instead.

KEYSTONE LAW
(ON BEHALF OF MR ALDERSON)

APPENDIX

EMAIL CORRESPONDENCE WITH BDB PITMANS

APPENDIX

Ben Garbett

From: SPENCER Oliver <OliverSPENCER@bdbpitmans.com>
Sent: 10 July 2020 11:19
To: Ben Garbett
Cc: CHALLIS Mark
Subject: RE: Submissions at Deadline 11 - REP11-011 (URGENT) [BDB-BDB1.FID10513989]

Dear Ben,

I note the contents of your email below.

As stated in my previous email, the information presented in table 6.2 is correct. It identifies the areas of special category land subject to permanent acquisition and acquisition of rights (where those rights will burden the land) and the corresponding replacement land, by reference to ratios. It provides the information requested in your previous email of 9 July at 08:15.

You have also asked questions about the information presented in paragraphs 6.4.4 of the Common Land and Open Space Report and in particular why it refers to temporary possession of special category land. As you will appreciate the report is not limited to addressing the statutory tests in sections 131 and section 132 Planning Act 2008 but additionally provides an overview analysis of all of the special category land which will be affected by the scheme, including the land that will be affected by temporary possession only. Paragraph 6.4.4 also explains that the total area of replacement land proposed will exceed the combined areas of special category land subject to permanent acquisition, acquisition of rights which will burden the land and the special category land subject to temporary possession. This comparison was included in the report for contextual purposes only in order to assist the examining authority, the Secretary of State and interested parties who may wish to understand the temporary effects on public access and recreation in respect of the special category land subject to temporary possession during construction works.

In respect of your request for calculations and breakdowns of some of the figures, it is simply not practicable at this late stage of the examination to provide a breakdown of the sort requested. I note that this information has not been requested previously. Nor is it necessary to do so, as it has already been explained that any differences between the figures in Table 6.2 and paragraph 6.4.4 and 6.4.6 of the report are attributable to (a) the inclusion of temporary possession land in the figures in paragraph 6.4.4 but not in Table 6.2 and (b) the effects of the scheme changes on special category land (which are minor) being included in table 6.2 but not in paragraph 6.4.4 or 6.4.6 (as has been acknowledged, the report is being updated to clarify that oversight and you have been informed of the relevant figures by way of my previous email).

References were given in my previous response to the relevant tables within the Common Land and Open Space report which provide details of the special category land subject to temporary possession should you wish to consider this information in the context of your deadline 12 submissions. In any event, as has been stated previously, information regarding the areas of special category land subject to permanent acquisition, acquisition of rights (where those rights will burden the land) and replacement land is provided in table 6.2 which has been before the examination since its commencement.

Kind regards,

Oliver

BDB PITMANS

Oliver Spencer Associate
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For and on behalf of BDB Pitmans LLP

From: Ben Garbett <Ben.Garbett@keystonelaw.co.uk>
Sent: 09 July 2020 20:09
To: SPENCER Oliver <OliverSPENCER@bdbpitmans.com>
Cc: CHALLIS Mark <MarkCHALLIS@bdbpitmans.com>; Ron and Jackie <parkbarnfarm@btinternet.com>
Subject: RE: Submissions at Deadline 11 - REP11-011 (URGENT) [BDB-BDB1.FID10513989]

Dear Oliver,

I think you may have addressed the first point in my 8th July email (as reproduced below) but I am not sure as you do not refer directly to the para. 6.4.6 figures

5.87 ha (para. 6.4.6 /p.81)?
Table C1 gives 5.04ha for area CL350 and 0.05ha for CL447 (i.e. 5.09 combined). Table 6.2. gives a figure of 5.82ha (CL350) + 0.05ha (CL447). Should 5.82ha in Table 6.2 not be 5.04ha? If so, para. 6.4.6 is wrong.

Also:-

- How do you arrive at the figure of 13.33ha affected open space?
- How do you arrive at the figure of 1.86ha for Chatley Heath?

Are you saying that all these differences are accounted for by the land which is subject to temporary possession only? If so, I think that should have been set out clearly in the tables. It is not obvious that this is what you have done without cross-referring everything, which is just using up valuable time. In any case please can you explain you rationale for including temporary possession land as part of the RL calculations at para 6.4.4, given that it is not mentioned in the relevant statutory test ?

I must say this is terribly confusing and unsatisfactory. I think what is required, urgently, is a composite piece of information which gives correct figures. This is what I had expected would be produced for Deadline 11. The 'maths' should be clear and not need long convoluted explanations to make sense of it all. I will reserve judgment upon whether I need to submit further comments in respect of these issues once I have received this information from you on or before deadline 12.

It might also aid clarity before tomorrow's deadline if you can please respond to the individual points in my original email by inserting what you say are the correct figures, and with your additional comments, alongside each of my comments.

As for the last point in your email, we obviously take a different stance on whether the blended ratios provide a fair comparison or not. I believe they are entirely fair given the way that order rights have been lumped into the whole equation without any proper justification to do so given the insignificant loss of advantage (if any). These are of course matters for formal representations upon which I have made some comments already.

Thank you.

Kind Regards,

Ben Garbett | **Consultant Solicitor**
Recognised by the Legal 500 for Planning Law

From: SPENCER Oliver [mailto:OliverSPENCER@bdbpitmans.com]
Sent: 09 July 2020 13:15
To: Ben Garbett <Ben.Garbett@keystonelaw.co.uk>
Cc: CHALLIS Mark <MarkCHALLIS@bdbpitmans.com>
Subject: RE: Submissions at Deadline 11 - REP11-011 (URGENT) [BDB-BDB1.FID10513989]

Dear Ben,

Thank you for your three emails of yesterday and this morning which I have now discussed with the project team.

I have set out our reply to the points raised in each email below.

Email 1 – 8 July 2020 at 14:55

As to the differences between the figures stated in paragraph 6.4.4 and Table 6.2 of the Common Land and Open Space Report (REP8-015), the differences are explained by the fact that the figures in paragraph 6.4.4 *also* include the area of temporary possession of special category land in addition to permanent acquisition and acquisition of rights (as is noted in paragraph 6.4.4). The areas of special category land subject to temporary possession are set out in table C.6 in appendix C to the report. The information in Table 6.2 is therefore correct and the differences between the totals in Table 6.2 and the figures provided in paragraph 6.4.4 is explained on that basis.

In relation to the figures provided at paragraph 6.4.4, Highways England has noticed that the figures quoted for "affected land" in respect of Wisley Common and open space do not take account of the very minor adjustments to special category land requirements which form part of the scheme changes made during the course of the examination. The differences may be seen by comparing table C.6 in the earlier version of the report (AS-005) and the current version (REP8-015). The relevant figures for the areas of affected land at Wisley Common (CL350 and CL 447) and open space are respectively 12.80 ha (not 12.66 ha as stated in REP8-015) and 13.36 ha (not 13.33 ha as stated in in REP8-015). The updated figures will be included in a revised version of the Common Land and Open Space Report to be provided at deadline 12, together with some cross references to the tables in appendix C as additional explanation of where the numbers have come from.

As to the last point in your email, the figures for replacement land referred to in paragraph 6.4.6 of the Common Land and Open Space Report represent the totals from the relevant parts of the replacement land columns in Table 6.2. The figures for replacement land areas in Table 6.2 are derived from Table C.5 of the Common Land and Open Space Report which is in turn derived from the Book of Reference.

Email 2 – 8 July 2020 at 16:42

The headings of the tables in appendix C of the Common Land and Open Space Report will be updated at deadline 12 to reflect the typographical errors referred to in your email.

Email 3 – 9 July 2020 at 08:15

In relation to the information referred to in the first paragraph of your email, including the extent of special category land acquired/subject to acquisition of rights, replacement land areas and applicable ratios, we do not accept that the information has not been provided. It is all contained in Table 6.2 of the Common Land and Open Space report (currently REP8-015). That information has been before the examining authority and interested parties throughout the examination.

At paragraph 7.3.5 of REP11-011, the reference to paragraph "79.4" should be to paragraph 7.3.4.

The point made at paragraph 7.3.5 of REP11-011 is that reliance on the "blended" ratios referred to in paragraph 7.3.4 would be misplaced because, as is stated in paragraph 7.3.5 of REP11-011 (and at para 6.4.6 of REP8-015), the "blended" ratios compare on the one hand the *total* area of replacement land to be provided (i.e. the replacement land to be provided for both permanent acquisition of special category land and permanent acquisition of rights) and on the other hand *only* the area of special category land subject to *permanent acquisition*. By omitting the areas of land subject to acquisition of rights from one side of the equation, the unsurprising effect is that the resulting "blended" ratios are higher. The "blended" ratios do not however provide a complete picture of the effect of the acquisition of

permanent rights over some of the special category land which will impose a burden on it and which justifies the provision of replacement land, as is explained at 7.3.5 of REP11-011.

Please would you acknowledge safe receipt of this email.

Kind regards,

Oliver

BDB PITMANS

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T +44 (0)20 7783 3763
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For and on behalf of BDB Pitmans LLP

From: Ben Garbett <Ben.Garbett@keystonelaw.co.uk>
Sent: 09 July 2020 08:15
To: SPENCER Oliver <OliverSPENCER@bdbpitmans.com>
Cc: CHALLIS Mark <MarkCHALLIS@bdbpitmans.com>
Subject: Submissions at Deadline 11 - REP11-011 (URGENT)
Importance: High

Dear Oliver,

The Examining Authority has asked the applicant to provide base figures for RL provision, and the relevant ratios are obviously key to this. It was my lament during CAH1 (which prompted the ExA's request) that there is no single place I can refer for a clear exposition of the land areas (RL to be acquired -v- SCL land acquired / rights acquired) which shows how these ratios are derived. I am concerned that we still do not have this composite source of information, even at this late stage. Is there any reason why it has not been provided?

Section 7.3 of REP 11-011 does not refer to total RL provision (in sq. metres or hectares) at all, and you will of course note I raised questions about the accuracy of certain parts of the data yesterday where those totals have been supplied previously.

Please can you also explain to me the comments made at paragraph 7.3.5 of REP11-011:

- There is a reference to "79.4" – but which document do you mean, as I cannot find this anywhere?
- It is stated that the ratio does not take account of the acquisition of permanent rights over SCL, but para. 7.3.4 says just that, doesn't it? It says that the ratios cited there (3.4:1; 3.1:1 and 2.5:1) relate to the acquisition of title **and of permanent rights**.

I am happy to be corrected on all this, but in my view the information is not clear at all, and may contain a number of inaccuracies.

Please will you respond to this email as a matter of urgency, as well as to answer the points raised in my email yesterday. I may still have other comments to raise with you as I continue to wade through the details set out in the latest documents.

Kind regards
Ben Garbett

Ben Garbett

From: Ben Garbett <Ben.Garbett@keystonelaw.co.uk>
Sent: 08 July 2020 16:42
To: SPENCER Oliver
Subject: RE: Replacement land ratios - URGENT

Thank you Oliver. One other small thing:-

I presume that Table C.1 on page 100 is actually Table C.3, and Table C.1 on page 103 is actually C.4?

Kind regards

Ben Garbett | **Consultant Solicitor**
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KEYSTONE LAW

From: SPENCER Oliver <OliverSPENCER@bdbpitmans.com>
Sent: 08 July 2020 16:06
To: Ben Garbett <Ben.Garbett@keystonelaw.co.uk>
Cc: CHALLIS Mark <MarkCHALLIS@bdbpitmans.com>
Subject: RE: Replacement land ratios - URGENT
Importance: High

Dear Ben,

I acknowledge safe receipt of your email below which I have passed on to our client. I am out of the office today but will come back to you as soon as I am able to.

Kind regards,

Oliver

Oliver Spencer Associate

T +44 (0)20 7783 3763

[redacted]

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For and on behalf of BDB Pitmans LLP
One Bartholomew Close London EC1A 7BL

From: Ben Garbett <Ben.Garbett@keystonelaw.co.uk>
Sent: 8 Jul 2020 14:55
To: SPENCER Oliver <OliverSPENCER@bdbpitmans.com>
Cc: Ron and Jackie <parkbarnfarm@btinternet.com>; CHALLIS Mark <MarkCHALLIS@bdbpitmans.com>
Subject: Replacement land ratios - URGENT

Dear Oliver

In light of the ExA's request for you to provide base figures in relation to replacement land I am currently reviewing your latest submissions on behalf of the applicant alongside the data at paras. 6.4.4 and 6.4.6 (pp.80/81) and Table 6.2 (p.82) of Appendix C: Common Land and Open Space Report. From what I can tell, I do not think that information can be correct.

Please can you explain where the following figures come from:

- 5.87 ha (para. 6.4.6 /p.81)?
  Table C1 gives 5.04ha for area CL350 and 0.05ha for CL447 (i.e. 5.09 combined). Table 6.2. gives a figure of 5.82ha (CL350) + 0.05ha (CL447). Should 5.82ha in Table 6.2 not be 5.04ha? If so, para. 6.4.6 is wrong.

- Wisley Common: 12.66ha affected (para. 6.4.4 / p.80)?
  The combined total for CL350 and CL447 in Table 6.2 is 4.95ha. Is the correct figure 4.95 + 5.09 = 10.04ha? If so, para. 6.4.4 is wrong.

- Chatley Heath (CL446): 1.86ha affected (ara.6.4.4 / p.80).
  The combined total given in table 6.2 is 1.63ha so why is the figure quote higher than this?

- Open Space: 13.33 ha affected
  The total for rights is Table 6.2 is 3.02ha, so making a combined total of 9.76ha. If that figure is correct, then para. 6.4.4 is wrong.

If these figures are wrong, as I suspect they might be, then it appears that the replacement land ratios are considerably **higher** than quoted, and these would need to be re-calculated.

- At paras. 6.4.4 and 6.4.6 the totals given for land to be provided are:
  - Wisley Common, 19.85ha
  - Chatley Heath, 3.32ha / 3.31ha
  - Open Space, 16.62ha

Please can you provide me with some reassurance that these figures are also correct by indicating how you have arrived at those totals from the application materials?

This information is obviously critical to our case on behalf of the objector so please can you confirm the accuracy of the data / provide new data as a matter of urgency please, bearing in mind the deadline for comments is 10 July.

Please kindly acknowledge safe receipt.

Kind Regards,

Ben Garbett | **Consultant Solicitor**
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