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

# SUBMISSIONS FOR DEADLINE 12 (10/7/20)

***Comments in response to REP11-006: 9.116 Written submission of Applicant's case put orally at the Compulsory Acquisition Hearings held on 16, 17 and 18 June;***

## Chapter 5AH Session 2, Part3 – Special Category Land and Replacement Land Matters (pp.23-31)

***Note**: References in square brackets correspond with paragraph numbers in the applicant's document.*

### 5.1 General case for Compulsory Acquisition, including Replacement Land

**[5.1.2]** There is a further key difference because not only is Mr Alderson the only objector, but PBF is a residential holding whereas the other Replacement Land ('RL') parcels comprise agricultural land. There are both highly material considerations which weigh against the inclusion of PBF as RL when assessing the overall human rights balance, and when evaluating whether the second statutory condition is satisfied: s122(3) PA 2008[1].

### Legal compliance: sections 131 and 132 Planning Act 2008

**[5.1.19]** The applicant's summary of what is needed to guarantee legal compliance with the statutory test is incomplete. As we have pointed out elsewhere in our representations, satisfying the simple definition of RL is only one half of the relevant equation. It is intermingled with additional important questions about whether the provision of RL is proportionate and/or necessary[2] for the purposes of satisfying the second statutory condition. We have explained this in detail in our post-hearing note on the "bottom-up" approach (part 3 of REP11-031 "*Application of the statutory test for the compulsory acquisition of replacement land under the PA 2008: the "bottom-up" approach*").

These criticisms are grave and serious because if one is to read through the key application documents – in particular the Planning Statement (APP-133) and Statement of Reasons, Appendix C, Common Land and Open Space report (REP8-015 & REP11-004) – one is not able to find that a proper balancing exercise[3] has been undertaken, in respect of RL, in this regard. This is a critical failing which goes all the way back to the setting of target ratios which shows that the applicant wholly or mainly relied upon what has been done in the past

[1] The requirement of a compelling case in the public interest for the compulsory acquisition of the land.
[2] See Compulsory Acquisition Guidance.
[3] i.e. one which is Human Rights Act compliant and which satisfies s.122(3) of PA 2008.

(it was "*Based on previous practice*"[4]) instead of applying a proper evidence-based approach.

**[5.1.21]** All that was needed was an evidence-based approach to be followed from the beginning. If the applicant had done this then it would now be able to demonstrate, with clear reasons, why the current advantages of RL far outweigh the disadvantages (arising from the direct loss of SCL and rights which are to be permanently acquired over it), when land is compared in equal proportions. This is the finding we urge the ExA to make now. In such circumstances there is no risk that Special Parliamentary Procedure would need to be invoked.

**5.1.35 Submissions relation to Park Barn Farm objections**

**[5.1.37 – 5.1.38]** The characterisation of Mr Alderson's objection as one which is focused on compensation is completely and utterly refuted. Disputes in relation to monetary compensation are for the Tribunal only. These suggestions are also totally inconsistent with the fact that Mr Alderson has sustained his objection (with detailed written submissions and actual participation at hearings) right through the full course of this Examination, at significant personal expense to himself.

At the heart of Mr Alderson's objection lies a matter of considerable substance and public importance, namely whether the use of statutory powers is justified. In our view, the manner in which the applicant has sought to engage powers of compulsory acquisition (under the PA 2008) amount to a direct abuse of those powers on the facts of this case.

**[5.1.39 – 5.1.40]** Fair and reasonable decision-making will always require a sufficiency of evidence. In this case the target ratios are not a proxy for an evidence-based approach, and so, contrary to the applicant's assertion, there must be significant doubts about whether a decision to confirm the Order for RL would now be lawful.

The applicant's assertion that it has only merely had regard to the RL ratios is not borne out by the evidence, particularly the manner in which it has explained its approach in Appendix C. In particular, expert evidence (Mr Shuttleworth) about the way in which specific SCL plots are used (a relevant factor to their overall value in terms of public access) was introduced only right at the end of the DCO process, in his oral evidence for CAH1, to the unfair disadvantage of the objector. These detailed evaluative judgments were not set forth before the Examination in detailed written evidence before CAH1 even though this was a central plank of Mr Alderson's objection right from the beginning: see, for example, our comments in REP1-035.

**[5.1.46 – 5.1.48]** The significance of the impact arising from the "loss"[5] of the buffer is vastly overstated: see para. of 3 (on p.5) of our submissions at deadline 11 [REP11-031] and para. 4 (on p.2) of our response for this deadline 12, "*Comments in response to REP11-011*.

The results of the User survey do not disclose any direct comments about the innate value of "buffer land". User comments support the view that there is plenty of land which can be

[4] Para. 7.2.6 of REP11-031.

[5] It would actually be replaced.

used for recreational purposes such that the loss of this 'buffer zone' would not be noticeable.

**[5.1.50]** The effect of this severance is an important aspect of Mr Alderson's objection, as discussed elsewhere in his submissions to the Examination. The noise area maps showed that the RL would generally be much quieter than the SCL, on a par with the levels experienced within the inner part of the Commons – this being a feature which users of the SCL did say they value highly. In terms of the applicant's comment about severance caused by the realignment of Wisely Lane **[5.1.48]**, this is very minor in comparison to what has occurred historically. In so far as the applicant might now be suggesting that severance by Wisley Lane is a reason for applying the target ratios, we disagree strongly, and would also point out that it did not specifically put its case that way prior to CAH1.

**[5.1.52]** It must be noted that Mr Shuttleworth's views have not been tested by cross-examination, but even his limited recognition by Mr Shuttleworth is good enough reason to discredit the applicant's use of the target ratios. In our view there is no plausible evidence to suggest that the M25 did not cause a very drastic change in the relative noise environment at the time it was built, notwithstanding the presence of the A3 dual carriageway route.

**[5.1.53]** It is a matter of considerable controversy as to whether the applicant's claim about "lower" ratios being used[6] is actually correct: see para. 35-29 & 43 of our comments in response to REP11-011 of this deadline 12 response. It all depends on how one chooses to present the evidence. In our view, however, it would be unrepresentative and misleading to discount the order rights land from the overall equation whilst also contending that the same historical ratios are an appropriate guide to total land provision (for RL) now. The requirement for 1:1 replacement for SCL burdened by order rights is, after all, one of the fundamental reasons why the applicant is now seeking to acquire RL at PBF.

Further, the applicant's statement that these matters have been "*carefully thought through, taking into account all of the circumstances of this scheme"* is pure assertion which is unsubstantiated by any fundamental analysis or by any prior written evidence.

**[5.1.59]** It was explained to the ExA that the objector is not fairly equipped to express views in relation to the merits (in public access terms) of individual plots of SCL. One can say with certainty however, that whereas the applicant's expert drew attention to features which underlie the usability of certain plots at present, the applicant's own assessment is that NMU routes round roads and junctions will be considerably enhanced on a scheme-wide basis.

**[5.1.63 to 5.1.64]** These paragraphs disclose that the applicant has muddled the relevant considerations, which is a fundamental error of legal approach. The narrow extent to which these biodiversity consideration are actually relevant to the evaluation of RL is set out elsewhere within our representations: see paras. 44-49 of our comments in response to REP11-011 of this deadline 12 response.

[6] Lower ratios than were applied to the original M25 scheme.

Biodiversity enhancements could only ever be a relevant deciding factor when the RL parcels are equal in every other way. This means equivalence not just in terms of the overall 'balance of advantage' assessment (for public access) but equivalence in terms of the human right interference when those different RL parcels are compared. The nature of the interference with private rights at PBF is an important distinguishing factor: see our comments at para 5.1.2 above. In essence, the opportunity for biodiversity improvements should be disregarded in the present case.

**[5.1.69]** No serious weight should be given to potential restrictions on movement in terms of likely disadvantages. These will not be frequent occurrences, and in any event, there is no evidence to suggest that this would be any different to what occurs now. The minimal degree to which order rights would actually be likely to cause any pronounced disadvantage generally is covered elsewhere within our representations to this Examination: For example, see paras. 7-33 of our comments in response to REP11-011 of this deadline 12 response.

**[5.1.72]** It is not accepted that the target ratios were just an appropriate starting point which did not heavily influence the scale of RL in the final reckoning. There is no clear evidence to suggest that the applicant choices were otherwise guided by a proper engagement with the evidence and the statutory test (including s.122(3) PA 2008). These points are covered fully elsewhere in our submissions for this deadline 12, and those which we have made previously.

**[5.1.73]** The A3 Hindhead and Walton Bridge schemes are neither precedents nor appropriate reference points from which to base considerations over RL provision for this Scheme. This would require a complex comparison with the evidence relating to those schemes, which for every good reason has not been placed put before this Examination.

**[5.1.76]** There is just a single option (i.e. Option 3 of Table 1 of REP5a-012 / REP8-044) which satisfies both this objection and the statutory test for RL, i.e. an overall scale of RL provision which has proper regard to the actual balance of advantage and which is not otherwise disproportionate, excessive and unnecessary having regard to private interests. The ratios for Option 2 (1.4:1 for common land and 1.3:1 for open space) are also excessive, but does avoid the worst direct interference with PBF land interests.

**[5.1.79]** We have set out the objector's case for applying an overall ratio of 1:1 in our previous submissions, including:

- REP11-031 (note on the "bottom-up" approach); and
- Reply to Rule 17 letter for this deadline 12.

We would like to reiterate that the 1:1 RL ratio applies solely to SCL that would be permanently acquired, with just a small incremental increase for permanent order rights that are acquired.

**KEYSTONE LAW**
**(ON BEHALF OF MR ALDERSON)**