OBJECTOR REFERENCE: TR010030 / M25J10-AP034

PARK BARN FARM ("PBF") – ALDERSON

RESPONSE TO SECRETARY OF STATE'S CONSULTATION LETTER DATED 4 NOVEMBER 2020

Abbreviations used below:

Highways England	***'HE'***
Park Barn Farm	***'PBF'***
Replacement land	***'RL'***
Replacement ratio	***'RR'***
Ronald Alderson	***'the Objector'***
Secretary of State	***'SoS'***
Special Category Land	***'SCL'***
Surrey County Council	***'SCC'***
Surrey Wildlife Trust	***'SWT'***

PRELIMINARY

1. The Objector's case against HE's plans for RL provision is documented fully elsewhere, and those representations still stand. This representation responds purely to the request for information contained at points 3, 4 & 7 of the SoS consultation letter dated 4 November 2020.

POINT 3: OBJECTOR'S COMMENTS ON REVISED RL PROVISION

2. Point 3 of the letter invites the Objector's comments on the impact of:

    a. Limiting the provision of RL for SCL proposed for outright acquisition to approximately 13.77ha
    b. Limiting the provision of RL to compensate for the permanent acquisition of rights to approximately 2.63ha

3. The SoS letter then seeks comment on the following specific proposal:

    a. The RL to be provided in connection with the Proposed Development should comprise a total of 16.4ha, comprising the whole of the sites identified by the

Applicant as PBF1 and PBF2 on Figure B.1 in [**REP12-004**] (together 13.45ha) and 2.95ha drawn from the southern part of PBF3, namely all of land plots 11/17i and 11/17j and part of the southern end of land plot 11/17h [**REP8-006**].

b. RL sites CF1 to CF4, HE1 and HE2, i.e. land plots 13/9, 13/9b, 13/12, 13/12a, 14/1, 14/1a, 14/3, 26/4, 26/4a, 26/5, 26/5a and 26/6 [REP8-006] to be excluded from the CA powers.

4. The resultant RR has not been supplied for this level of RL provision, however a combined total of 16.40ha would appear to represent a significant overall scheme-wide reduction in RL provision.[1] As such it is more closely aligned with the case which the Objector has put to the Examination Panel and, we surmise, must be a direct response to the Objector's accusation (because the point was not made by any other party) that HE's approach to RL acquisition is vastly overstated, and we say, fundamentally flawed.

5. This shift is to be welcomed, however the Objector would suggest that a further reduction is needed to conform to an overall RR of 1:1 for outright SCL acquisition, with no extra RL provision for rights to be acquired over SCL.

6. The specific proposal now mooted would see the residual target of RL made up exclusively from PBF with the other RL sites deleted: CF1 to CF4, HF1 & HF2. In our view this would represent a wholly disproportionate response to the Objector's case.

7. Firstly, focussing solely on RL provision at PBF would miss the opportunity of rectifying other identified deficiencies in the public access network (e.g. the north east quadrant).

8. Secondly, the Objector's case includes specific human rights grounds (loss of residential amenity, personal impact on health, and blight), none of which are considerations applying to the proposed compulsory acquisition of the other identified RL sites. These considerations generally militate towards finding other RL solutions in preference to PBF.

9. Most importantly in this context, the legal requirement for 'equivalence' in terms of the overall weight of public benefit (RL -v- SCL) does not make it necessary to seek out the best possible public advantage – 'just enough' will do. That test is satisfied here by acquiring the other RL sites instead (CF1 to CF4 and HF1 & HF2).

[1] We are critical that HE's handling of this issue is opaque due to the piecemeal responses it has given throughout the Examination without ever collating the relevant data in one accessible place. This makes the job of making direct comparisons more difficult. One is left to consult a series of documents which has not been possible in the time available.

10. HE has not set out (with relevant evidence) a *compelling case in the public interest*[2] as to why PBF should be the main target, or why these other RL sites would not achieve a minimum of equivalence in terms of the public advantages.

11. At the heart of our objection in this regard is a fundamental concern that HE's scheme documents did not assess two important matters in direct evidence[3], namely:

    a. the relative value of the existing SCL compared to the proposed RL in terms of the quality and usability of public access
    b. the relative value (in terms of public access) of different parcels of RL

12. Very late on in the Examination process the Panel did request comments from various parties on proposed alternative RL scenarios. In practice, however, this process involved no more than a statement of preferences, without requiring HE to plug the evidential gaps. This was ultimately then a limited, and unfair, consultation exercise in relation to matters of fundamental importance to this Objector in particular.

POINT 4: OBJECTOR'S COMMENTS ON BIODIVERSITY IMPACTS OF REDUCED RL PROVISION

13. Point 4 of the letter invites the Objector's comments on the impact of RL reduction on biodiversity measures.

14. This question is answered by the Objector in his previous representations to the Examination. Biodiversity mitigation has no place in respect of compliance with the statutory scheme for RL, and accordingly, a proposed reduction in RL should have no impact whatsoever in respect of the suitability of HE's proposed biodiversity mitigation and enhancement measures.

15. It has never been suggested that the land at PBF might be needed to perform an environmental function. If HE's wish was for the land at PBF to provide an ancillary benefit of that type it should have stated its case to the Examination on that specific basis. It did not do so and so naturally the Objector's case has been put solely in response to HE's contention that PBF is required pursuant to the legal requirements for RL.

POINT 7: OBJECTOR'S RESPONSE TO HE SUBMISSIONS RECEIVED AT DEADLINE 12

(REP 12-028)

[2] Section 122(3) of the Planning Act 2008.
[3] It was HE's adherence to 'scheme precedent' which caused it to make this error.

16. HE has introduced some new points which should not have been left to the end of the Examination at deadline 12. The mere fact that they were introduced at such a late stage highlights important deficiencies in HE's primary case which it is unable to correct sufficiently now. The points can easily be answered:

Extent of the residential "curtilage" of PBF **[2.1.3]**

17. Only now in its final deadline 12 submissions has HE sought to challenge the Objector's evidence that PBF1, PBF2 and PBF3 together comprises the domestic curtilage of PBF. Contrary to what it has stated therein HE does **not** and has never resisted the Objector's blight notice on such grounds.

18. HE's comments do not rely upon any specific evidence now, and it is contended there is no reasonable basis for them. The only statutory declaration evidence before this Examination is sufficient, precise and consistent in terms of what it shows: see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630, where it was held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

19. We also make the point that lawfulness for the purposes of the 1990 Act does not depend on obtaining a lawful development certificate pursuant to a section 191 application.

Specific human rights considerations **[2.1.4 – 2.1.5]**

20. Further, whilst there is disagreement between the parties (in relation to the blight notice proceedings) regarding the effect of severance of the curtilage in terms of the amenity value of the Objector's retained land, HE has never before put that point to the Examination.

21. In fact, we consider that HE has not justified this point in evidence to the Tribunal either. It has only stated that:

> *"the very large amount of retained land (amounting to approximately 50 acres) which will remain capable of use in connection with the amenity or enjoyment of the house and would therefore allow for the claimant to undertake all of the activities which an occupier of a property might reasonably be expected to undertake."*

22. This does not address the Objector's specific evidence which has already been placed before this Examination as to how the relevant land has been enjoyed in practice, and just why it is so highly prized.

Target ratios / blended ratios **[2.1.6 - 2.1.10]**

23. The Objector has answered these points elsewhere. HE puts a very high tariff on compensation for the acquisition of permanent rights in relation to the current scheme which has not been adequately evidenced and is simply not justified.

London Borough of Greenwich **[3.1.1- 3.1.2]**

24. The question of 'irrationality' is a live one because in administrative law fair judgment relies upon the availability of adequate or sufficient evidence. For all the reasons stated, this is a matter in respect of which there are serious doubts.

Statutory test / 'Bottom-up' approach **[4.1.1 – 4.1.12]**

25. HE appears to suggest that it has been the "*consistent*" view of HE, the local authorities and Natural England both that the current RL proposal is reasonable and that a reduction would not be welcomed, and also, that PBF site is the most important of the RL sites.

26. We have previously made the point that the stated 'preferences' of these consultees is not a proxy for the proper application of the relevant statutory test, which must have regard to a wider span of considerations (e.g. human rights impacts). For example, many of the consultee responses related to the overall size of the RL package, noting that PBF would form the largest single usable block, however this is not what has to be judged.

27. The Examination Question exercise is totally devalued because it attempted to assess <u>competing</u> merits in the absence of any underlying assessment by HE of the relative value of the existing SCL compared to the proposed RL, in terms of the quality and usability of public access. The clear error in HE's approach is neatly encapsulated in its remark at para 4.1.7 that the land at PBF "*… will serve a valuable public amenity function that would not be performed to the same degree by the other replacement land parcels.*" **[Nb. Please cross-refer to our comments at para. 9 above]**

28. There would be no error of "double-counting" in the circumstances described at para 4.1.10. This requires a fair and proper judgement to be exercised, as we have advocated all along. HE's argument means taking a mechanistic approach to these matters, which it has accepted is wrong.

(REP 12-021)

29. As will be obvious from our earlier remarks we consider the glib statement made at para. 3.2 that PBF should be retained is not underpinned by a transparent process of evaluation and assessment.

30. It is common ground that a discretionary judgment is required but HE has still hung its hat on the value of 'precedent'. In that regard the Oxleas Wood scheme [para. 3.7] makes a very unfavourable comparison to the way in which the current RL package has been conceived.

31. No written evidence was provided in relation to the Hindhead and A244 Walton Bridge schemes [paras 3.8-3.9] and so any comparison is unfair, and also meaningless, for reasons which have already been explained.

32. The calculation at para. 4.3 is spurious and irrelevant. It is not important to take account of the 'unburdened' SCL as this is wholly outside the statutory test.

KEYSTONE LAW

On behalf of Mr Ronald Alderson

19.11.202