

Application by National Highways for an Order granting
Development Consent for The Lower Thames Crossing

FURTHER WRITTEN REPRESENTATION IN
RESPONSE TO APPLICANT'S RESPONSE

(Planning Inspectorate Reference: **20035885**)

**SUBMITTED ON BEHALF OF STUART MEE,
RICHARD JAMES MEE AND A P MEE**

FURTHER WRITTEN REPRESENTATION IN
RESPONSE TO APPLICANT'S RESPONSE

24 August 2023

Gateley LEGAL

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1. INTRODUCTION

1.1 This Written Representation is submitted by Gateley Legal in response to National Highways' (the "Applicant") purported response to the previously submitted Written Representations on behalf of on behalf of Stuart Mee, Richard James Mee, and A P Mee ("**The Mees**" or "**Client**") in respect of land known as **Manor Farm, Hobbs Hole and South Ockendon**.

1.1 We do not repeat here what remains contained in the Written Representations and will address those points at the compulsory acquisition hearing. We welcome further engagement from the Applicant on matters at issue because the Applicant has not engaged with the matters raised by the Mees and instead has resorted to rhetorical arm-waving in place of legal analysis, fails to engage with the Mees case resulting in a legally erroneous purported compulsory acquisition of the Mees' freehold land, and is acting ultra vires in the acquisition of Mees land.

2. HOBBS HOLE – SPECIAL REPLACEMENT LAND/OPEN SPACE

2.1 The Applicant has failed to grapple with the Mees' objection to the compelled taking of Mees' land for the Applicant to then use as a substitute for land it seeks to simultaneously compulsorily acquire from a third party.

2.2 The Applicant's rhetorical arm-waving response is noted and so too is the Applicant's approach ("we have always done it this way and so it must be right"). The Mees note the waving arms and misplaced reliance on unlawful habit. The Mees note the irrational reliance on section 131 by which the Applicant purports to acquire Mees land under the Planning Act 2008. The Mees also note that the same legal flaw underlies other land also irrationally hoped to be acquired by the Applicant.

2.3 It remains the actual position that the Applicant has *never* received any proposal from the Applicant to purchase this land. It is clear that the Applicant has breached its duty to seek to acquire land by negotiation wherever practicable and that the Applicant has failed to use compulsory acquisition as a last (instead of a first) resort. In this respect, we note the recent refusal to confirm a compulsory purchase order in similar circumstances at the Nicholson Quarter CPO. See attached in **Appendix A** hereto.

2.4 The support of Forestry England of the acquisition of the Mees' land is not relevant to the absence of Mees' agreement to its use for substitute land for the Applicant.

2.5 The Applicant's survey does not contain information about the alternatives that the Applicant is required to consider under the relevant Planning Act 2008 guidance. As a result, the Applicant cannot show that it has explored all reasonable alternatives and, in turn, is unable to lawfully justify its compulsory acquisition of Mees land (and, by parity of reasoning, other plots under section 131). It remains the case that all alternatives remain unexplored and that the Applicant is using CPO as a first and not as a lawful last resort. See also the *Prest* and *Sainsbury's* cases and the law on CPO.

3. ECOLOGICAL AND ENVIRONMENTAL MITIGATION

Ecological and Environmental Mitigation

3.1 The Applicant is aware the Mees object to the permanent acquisition as a matter of principle and there remains no lawful need for the land to be controlled by the Applicant. CPO of such land and would be unlawful.

3.2 The Applicant is speaking with forked tongue: the Applicant previously suggested that the Mees maintain areas and is *now* saying that the Applicant is *now* to maintain such areas itself. There remains no need for the Applicant to control the land and the Applicant has failed to explore alternatives including the maintenance of land by the Mees (that was previously acceptable to the Applicant) as against the more recent volte face by the Applicant that it is not now acceptable. It remains the case that Mees maintenance remains an alternative. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

- 3.3** In addition, there is land (Location reference - 2.2 Land Plans Volume C (Sheets 21 to 49 of 49) Plot reference – 43-06 that has no designation for any offsetting in the environmental statement and yet is shown for permanent acquisition. The land is of a size, approx. 5 acres, which would be commercial to farm. The Mees maintain this land can be used on a temporary basis rather than permanently acquired and do not see justification for its acquisition.

Fishing Tenants

- 3.4** There remains no strategy agreed by the Applicant with the Mees in respect of fishing tenants.
- 3.5** They disagree with the general commitment being suggested by the Applicant as this will not cater for this situation and would be totally inadequate to deal with this matter.
- 3.6** We note that the Applicant has asserted that discussions are to continue as a matter of priority but also that this is mere arm-waving rhetoric by the Applicant so that it appears (untested) to be discussing matters with an objector notwithstanding in reality that it is not in fact discussing matters with the objector.

4. MANOR FARM SHOP

- 4.1** Until the requisite guarantees are provided, Mee's objection to the LTC project, on the ground that it will adversely affect the ongoing operation of Manor Farm Shop and affect his livelihood remains maintained. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

5. LAND AT STREET FARM SOUTH OCKENDON

- 5.1** The Applicant has failed to address the Mees objection as freeholder. Merely referring to the Applicant's response to Bellway as option holder is not acceptable.
- 5.2** Mr Mee does not agree with the desired permanent acquisition for the creation of rights *over* land in the form of footpaths in land instead of *over* land. There remains no need for freehold land underneath a footpath and the desired acquisition remains ultra vires the Planning Act 2008, section 122. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

6. HERITAGE ASSET

- 6.1** Whilst it is noted that measures are asserted to be taken to protect the asset, no terms have been advanced by the Applicant. The Mees will ensure that protective measures are put in place to avoid the wall being damaged during the construction phase of the project. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

7. FIELD DRAINS:

- 7.1** The Applicant has failed to address this matter.
- 7.2** A suitable detailed design solution which secures separate drainage systems for the fields in this location and the proposed LTC carriageway is needed and remains unexplored by the Applicant, as well as an objective plan for the management of the interface between the works to install both systems. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

South of the proposed LTC carriageway

Woodland Planting Proposals

- 7.3 The Mees are disappointed to see that this land continues to be desired for permanent acquisition and reiterates the points made above about the principles of stewardship such that acquisition remains unlawful and unjustified, with alternatives remaining unexplored by the Applicant.

The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

Severed Land

- 7.4 There remains no lawful need for acquisition. The Applicant has suggested a tripartite agreement which it has said would provide comfort to adjoining owners should there be any potential for future development of adjacent land which would affect the NMUs. However, Mr Mee does not agree with the principle and requires his freehold to be retained in all instances. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

North and South of the proposed LTC carriageway

Maintenance of Agricultural Field Access

- 7.5 There are several instances where *permanent* acquisition of Mr Mee's land is desired for *temporary* construction works in connection with the LTC project, and where such acquisition has the potential to prevent or compromise the ability to utilise existing agricultural field accesses.

- 7.6 Access remains absolutely priority especially in instances such as this where the Applicant is seeking to sever this farm in various places. The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

8. CONCLUSIONS

- 8.1 The Mees maintains Objection to the CPO aspects of DCO, and to the desire for related elements of the DCO on the basis that the overall reduction of the farm and further having to accept restrictions on access will fundamentally affect and reduce the viability of the landholdings.
- 8.2 The Applicant has failed to engage with the Mees and failed to show that acquisition is a last (instead of a first) resort.
- 8.3 The Applicant's approach to pressing a position statement or Statement of Common Ground (or equivalent document) is a device of the Applicant to seek, after the event of pursuing a CPO of land to rewrite matters to portray discussions in a different light to the before the event position and so make CPO appear as a last and not a first resort.
- 8.4 The matter remains now to be dealt with by Protective Provisions and Mees will draft these in due course for submission to the ExA and Secretary of State.

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