

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

RESPONSE TO APPLICANT'S RESPONSE TO
WRITTEN REPRESENTATION OF CS PADFIELD,
S&J PADFIELD PARTNERS LLP AND S&J
PADFIELD ESTATES LLP

(Planning Inspectorate References: **20035860**;
20035861 and **20035864**)

**SUBMITTED ON BEHALF OF CS PADFIELD,
S&J PADFIELD PARTNERS LLP AND S&J
PADFIELD ESTATES LLP**

24 AUGUST 2023

Gateley LEGAL

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1. INTRODUCTION

- 1.1 This written response is submitted by Gateley Legal in response to National Highways' (the "Applicant"/"NH") response to the previously submitted Written Representations on behalf of Christopher Scott Padfield, S&J Padfield & Partners LLP and S&J Padfield Estates LLP ("Padfield"), owners of land located to the north and south of the A127 and to the east and west of the M25 at Junction 29, known collectively as the Codham Hall Estate and land at Street Farm.
- 1.2 We do not repeat here what was contained in those Written Representations.

2. LEGAL MATTERS RAISED IN WRITTEN REPRESENTATIONS

- 2.1 The law requires actual engagement by the land taker with each person whose land interest is desired to be taken and before it takes the step of moving to compulsory purchase of land. This is because it remains trite law that compulsory acquisition is a remedy of last resort and not first resort.
- 2.2 We attach at Appendix A the recent Secretary of State's decision in the Nicholson Quarter shopping centre CPO where such failure to engage resulted in the non-confirmation of the CPO sought in that situation. The same situation pertains in respect of Padfield and those with land interests within the extent of its own land interests. NH has not engaged with all persons interested in land within the Padfield land. It is no answer for the land taker to rely on a person whose land is being taken against their will as a proxy or substitute for what the law requires of the *land taker*. It remains the case that NH has failed to show that it has explored all reasonable alternatives, where 'reasonable' means evidence based and legally rational (as opposed to what NH may regard subjectively as Wednesbury basis and without evidence).
- 2.3 The Applicant has failed to engage and address the points Padfield has raised and advanced. It follows that it would be ultra vires section 122 of the Planning Act 2008 to confirm the CPO of the Padfield land and to purport to serve subsisting access and egress entitlements. Instead, the failure by NH to address Padfield concerns results in their transport assessment and analysis for this M25 Junction 29 and the purported benefits being unrealisable.
- 2.4 We note the Applicant's assertions in respect of highways access and that NH's position remains fundamentally misplaced, and in light of the deemed and actual knowledge that NH has in relation to the Junction access.
- 2.5 The Secretary of State has no power to remove the Padfield access.

3. NON BRENTWOOD ENTERPRISE PARK MATTERS

Existing access from the southeast quadrant of the M25 junction 29

- 3.1 It is not correct and misleading of the Secretary of State by NH to assert that the parties were unable to agree whether the current access has the required consents. The actual situation is deemed to be known to NH because they remain the relevant highway authority.

- 3.2 The Applicant has failed to explore all reasonable alternatives and in consequence, the CPO cannot be lawfully made by the Secretary of State. In its current situation, as it known to NH, the existing bridge over the A127 remains not a suitable nor viable alternative to maintaining the current access provisions without upgrading by NH (as the Padfield detailed plans for such alternative access show how this may be achieved).
- 3.3 Given the lack of real engagement by NH with Padfield and other occupiers on the access, it remains now for Padfield to draft protective provisions to ensure its access and detailed plans for the alternative accesses can be correctly and lawfully provided for.

Existing Occupiers at Codham Hall South

- 3.4 The law places the obligation to make enquiries and to serve statutory notices on those with a land interest squarely on the Applicant, NH, and it is absurd and unlawful for NH to seek to displace *its* legal obligations in relation to *its* desired CPO onto a party who is envisaged to have their land taken against their will.
- 3.5 We go so far as to contend that NH is grossly negligent to not discharge *its* obligations under the Act. As at the Nicholson Quarter CPO, the correct and lawful response of the Secretary of State in such circumstances is to refuse to confirm the CPO of any land interest within the Padfield land areas.

Land at Codham Hall North

- 3.6 The Padfields remain keen to ensure that the J29 Northern Access will not be interfered with by NH and that that access is always maintained and kept clear during the construction of the LTC project. This is critical. Given that NH appears unable to conceive how this may be done, it remains a matter that falls to be resolved by use of protective provisions that Padfield will draft in due course for incorporation to the DCO and using the detailed plans for the access improvements previously submitted with the planning application for the Padfield land.
- 3.7 The Padfield land remains employment land allocated under an up-to-date statutory development plan and has well established employment uses. It is actively used by several occupiers on a twenty-four seven basis not least of all by some servicing the motorways. It is critical to always maintain access to the various occupiers and business users of this land to avoid any losses and disruption to employment uses.
- 3.8 Padfield maintains strong objection to the desired taking of its land by NH and recognises that NH has no answer to its case.
- 3.9 Further, the Applicant has failed to address the need for the minimisation of impacts arising from the LTC project on the land at Codham Hall North, and the potential for the project to compromise or to have a sterilising effect on the future expansion of the existent employment land uses, having particular regard to the BLP allocation and further expansion of uses (as per Policy E10 of the BLP as set out earlier in this representation).

Land at Codham Hall West

- 3.10 We reserve our position on this matter and await further engagement on this by NH.

Land at Street Farm Ockendon

- 3.11 The Applicant's response is not correct. It remains unlawful for NH to acquire freehold land for the provision of rights over land for a footpath.

4. LAND USE AND PERMANENT LAND ACQUISITION

- 4.1 NH advances an outline DCO and is unable to descend to detail as a result. NH cannot simultaneously promote an outline DCO and rely on a detailed scheme that remains unseen to any and all objectors. NH references to an implementable scheme are misplaced and mere assertions by NH.
- 4.2 There remains no actual justification by NH for the land of Padfield that it desires to take. The Secretary of State is not in a position to know, in advance of evaluating whether to confirm the CPO desired by NH, whether or not the conditions of section 122 of the Planning Act 2008 can be satisfied. It follows that the Secretary of State cannot lawfully confirm the CPO of Padfield land.

5. CONCLUSIONS

- 5.1 Padfield maintains all current objections.

6. APPENDIX A - NICHOLSONS SHOPPING CENTRE, MAIDENHEAD CPO DECISION 3 JANUARY 2023

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