

IN THE MATTER OF
THE A47 NORTH TUDDENHAM TO EASTON DEVELOPMENT CONSENT ORDER

SUBMISSIONS ON BEHALF OF
THE OWNER OF THE [REDACTED]

A. INTRODUCTION

1. These written representations have been prepared on behalf of the freehold owner of the [REDACTED] Honingham, Norfolk ('the Estate'), Mr Anthony Meynell ('the Owner'). The Owner is an objector to the application by National Highways ('the Applicant') for development consent for the dualling of the A47 North Tuddenham to Easton ('the DCO') and has been registered as an Interest Party following submission of a Relevant Representation¹.
2. As set out in the Introduction document (ACM 01), the Owner's Written Representations comprise a series of documents including the Statement of Mr Anthony Meynell (ACM 03), Transport Report of Neptune Transport Consultancy (ACM 04) and Woodland Appraisal by AC Coombs (ACM 05) ('the Other Statements').
3. The purpose of these submissions (ACM 02), which also form part of the Owner's Written Representations, is to identify the implications of some of the matters set out in the Other Statements for the Applicant's proposed DCO. They do not repeat the content of the Other Statements, nor draw attention to every point relevant to the ExA's consideration, and those documents must be read in full for that purpose.
4. In summary, these submissions conclude that the DCO should not be made on the basis of the application scheme ('the Proposed Scheme'). The Applicant's pre-application

¹ RR-075.

consultation was fundamentally flawed. It has, as a consequence, failed to grapple with a number of important issues in its assessment of the environmental and other implications of the Proposed Scheme. It has failed to comply with the most basic requirements of compulsory purchase law and policy, and has promoted a scheme that has far greater adverse effects than reasonable alternatives, which have not been considered, would have. It cannot make out a compelling case in respect of the Owner's land (in the case of either the permanent or temporary acquisition sought).

5. The Owner's case is that consent could acceptably be granted in respect of reasonable alternatives requiring no or less acquisition of land from the Estate², which the Applicant has failed to consider.

B. STRUCTURE

6. The remainder of these submissions are structured as follows:
 - a. **Consultation:** Section C summarises the law relating to adequate consultation in the DCO context and explains why the Applicant's consultation has failed to meet these requirements.
 - b. **Impact of the Applicant's proposals:** Section D summarises the impacts upon the Owners' property which the application has failed to take into account or appropriately respond to.
 - c. **Compulsory acquisition:** Section E describes the relevant law and guidance relating to compulsory acquisition and describes how the Applicant has failed to comply with the same. This includes in particular commentary upon **reasonable alternatives** - their relevance, those which exist and would be preferable, and the Applicant's failure to take these into account.
 - d. **Owner's requirements:** Section F describes the outcomes that are sought by the Owner.

² These alternatives are described in the Transport Report (ACM 04). They are the subject of live discussions between the Owner's consultants and those of the Applicant.

- e. **Conclusion:** Section G sets out the conclusions in relation to the principle of the DCO and in relation to land acquisition.

C. CONSULTATION

Planning Act 2008 requirements

7. Applications for development consent are subject to strict pre-application consultation requirements, set out in Part 5, Chapter 2 of the Planning Act 2008 ('PA 2008'). The consultation is required to be about "*the proposed application*", which s.41(1) defines as the application for which the Applicant proposes to seek development consent.
8. By virtue of s.42(1) PA 2008 the persons whom the Applicant is obliged to consult about the proposed application include *inter alia* each person who is within one or more of the categories set out in s.44 PA 2008, being persons with an interest in land ('PILs'). This includes the Owner.
9. Section 47 PA 2008 further obliges the Applicant to consult people living in the vicinity of the land about the proposed application in accordance with a published Statement of Community Consultation ('SOCC').
10. The SOCC produced for the 2020 statutory consultation³ expressly stated that the consultation would provide the opportunity for the community to give feedback on the proposals, which were described as including a site compound, storage areas and temporary vehicle parking located within the scheme boundary⁴. It was also said that they were in particular consulting on the proposed junctions, and environmental assessments and potential environmental impacts⁵.
11. Guidance on compliance with the statutory pre-application requirements is given in the Planning Inspectorate's *Planning Act 2008: Guidance on the pre-application process* ('the Pre-Application Guidance'). This states, at [20] that:

³ These submissions focus on the 2020 statutory consultation as the 2017 statutory consultation related to different scheme proposals not including the Wood Lane junction, and plainly would not have satisfied the requirements of PA 2008 in relation to the application ultimately made.

⁴ SOCC 2020, p.3.

⁵ SOCC 2020, p.4.

“Experience suggests that, to be of most value, consultation should be:

- based on accurate information that gives consultees a clear view of what is proposed including any options;*
- shared at an early enough stage so that the proposal can still be influenced, while being sufficiently developed to provide some detail on what is being proposed...”*

12. It further states⁶ that consultation should be *“thorough, effective and proportionate”*, and that:

“To realise the benefits of consultation on a project, it must take place at a sufficiently early stage to allow consultees a real opportunity to influence the proposals. At the same time, consultees will need sufficient information on a project to be able to recognise and understand the impacts”.

13. The Pre-Application Guidance recognises that where a change to the project arises following consultation, further consultation may be required where the changes would materially change the application or its impacts. This may be targeted consultation if the issue is localised in nature⁷.

Common law requirements

14. Quite apart from the statutory requirements set out above, the law recognises that wherever consultation is undertaken, it must be legally adequate. The classic exposition of the law is set out in R v North East Devon Health Authority ex parte Coughlan [2001] QB 213:

“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate

⁶ Pre-Application Guidance, [25].

⁷ Ibid, [75]-[76].

decision is taken: R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168 (per Lord Woolf, [108]).

15. Sufficient information in this context is information which tells the consultees “*in clear terms what the proposal [is] and exactly why it [is] under positive consideration, telling them enough to enable them to make an intelligent response*”: R (Bard Campaign) v SCLG [2009] EWHC 308, [98].
16. The Pre-Application Guidance at [20] (referred to above) is a reflection of these common law obligations.

Consultation in this case

17. The consultation in this case has not complied with either the statutory or common law requirements. The particular deficiencies relate to the proposals for the temporary works compounds and/or storage bunds which give rise to the majority of the requirement for temporary land take on the Estate⁸ (and which in turn arise from the junction location addressed below at [20] onwards), the proposal to cut off access to the A47 without replacement, and to the consultation in relation to the Wood Lane Junction.

Temporary works

18. Prior to the making of the application for development consent, the Applicant **failed entirely** to consult the Owner about⁹ the proposal to locate the temporary works compounds and/or storage bunds upon his land, resulting in the loss of the majority of his three arable fields for the duration of construction. It is the loss of these arable fields (discussed further below and in Mr Meynell’s Statement¹⁰) that will contribute to the cessation of the agricultural enterprise currently carried on at the Estate.
19. As Mr Meynell confirms¹¹, he was only informed about these proposals above in December 2020, some 8 months after the close of the statutory consultation in April 2020. His views were not sought upon them by way of targeted consultation.

⁸ See the Applicant’s Land Plans (Vol 2, 2.3), Sheet 9.

⁹ More detail about the history of consultation undertaken with the Owner is included in ACM 03 at Section VI, [201] onwards, which should read together with these submissions.

¹⁰ ACM 03, Section B and in particular #IMP 1 (see [126] onwards).

¹¹ ACM 03 [207] onwards.

A47 access

20. At the time of the February 2020 statutory consultation, the Applicant did propose to prevent access to the A47 from the private driveway to the north of the Estate. However, it was instead proposed that access to a highway would be maintained. The Junctions and Side Roads Strategy Report stated that:

“Access to the properties and land to the south of the A47 would be achieved via the new connection discussed above in section 5.4.6”¹².

21. However, when the application was made in January 2021, it showed, for the very first time, the stopping up of the A47 access without any replacement whatsoever. It is the loss of this access that will preclude HGV access to the Estate.

Wood Lane junction proposals

22. In relation to the grade separated Wood Lane junction, proposals for this were first publicly presented for consultation in the February 2020 statutory consultation¹³. That consultation included the Junctions and Side Roads strategy, which described there having been consideration of at grade and compact grade separated options in addition to the full grade separated option ultimately selected¹⁴. However, there was not (and at no time subsequently has there been) any consideration or presentation of:

- a. Any alternative grade separated designs, other than the two dumbbell roundabout option which forms the subject of the application;
- b. A location for the two dumbbell roundabout option (or alternative grade separated junction) other than that which is the subject of the application.

23. No explanation was given in any of the consultation materials as to the reason why the design of the Wood Lane junction was as it was, why it was where it was, and why no alternatives were under consideration (either in relation to design or micro location).

24. The suggestions made by the Owner that consideration be given to an alternative that located the junction on less sensitive land further north off the Estate (which suggestions

¹² Junctions and Side Roads Strategy Report at [5.4.7].

¹³ ACM 03.11. The plan was shown to Mr Meynell at a meeting 3 weeks prior to that.

¹⁴ Ibid.

are identified below) have either not been responded to by the Applicant or dismissed on the basis that the red line for the Proposed Scheme was already fixed¹⁵.

Compliance with the legal requirements for consultation

Compliance with the PA 2008 requirements

25. As set out above, the Applicant was required to consult both PILs and persons living in the vicinity of the Proposed Scheme, the latter in accordance with the published SOCC. It was required to consult them about the proposed application.

26. In relation to the Owner, this requirement was not met. The application, so far as it related to land within his ownership, differed materially from that consulted upon by virtue of:

- a. the inclusion of Plots 8/5a, 9/1a, 9/1c, 9/1d, 9/1j, 9/1l and 9/1m for the temporary possession of land; and/or
- b. the stopping up of his only access capable of accommodating HGV movements without replacement.

27. The scale of the change means that the application should have been but was not the subject to further consultation with the Owner, on a targeted basis.

28. Further, in relation to the temporary possession land, the consultation cannot have been carried out in accordance with the published SOCC (as required by s.47) because that SOCC stated that the Applicant was consulting upon site compound and storage areas, when no such areas were actually identified within the consultation materials in order to facilitate meaningful consultation.

Adequacy of consultation as a matter of law

29. Further and in any event, the consultation that was carried out was not legally adequate having regard to the threshold set by the common law.

30. **In relation to the absence of consultation upon the temporary works areas:** Although the February 2020 statutory consultation said that it was consulting upon site compound, storage areas and temporary vehicle parking located within the scheme boundary, it failed to identify anything about Applicant's proposals for the same, including their likely or

¹⁵ ACM 03, Section VI, in particular [215].

intended scale and location. The failure to provide any information at all meant that both the Owner and the wider community subject to the s.47 consultation were deprived of the opportunity to provide any or any meaningful comments about the implications of the compounds. In particular, the Owner was unable to provide any feedback about the implications of the proposals upon the Estate, including both its statutory designations, the farming enterprise, or environmental matters.

31. Given that:

- a. the Applicant considered the proposals for such temporary works areas (etc) to be sufficiently important to have been expressly included within its SOCC as a matter to be subject to statutory consultation; and/or
- b. the proposals for the same are directly relevant to the extent of temporary possession required to be taken and thus to the extent of the Order Limits; and/or
- c. the works compounds were plainly capable of giving rise to environmental effects and required to be subject to environmental assessment,

the failure to carry out an adequate consultation was not a trivial omission or oversight. Consultation on the same could have led to feedback about the unsuitability of the chosen locations that would have informed a revised design for the Proposed Scheme. At the very least, there is no certainty that the chosen design would have remained the same.

32. **In relation to the grade separated Wood Lane junction:** Although the February 2020 statutory consultation expressly stated that it was consulting upon the junctions, it was explained that consideration had been given to at grade and compact grade separated options for the Wood Lane junction, there was no consultation upon alternative grade separated options for the Wood Lane junction, either in terms of design or location. Further or alternatively, no information was provided explaining why the grade separated junction proposed at Wood Lane was required to be in the form proposed, and/or in the precise location proposed. There was therefore no or no meaningful opportunity to comment upon the choice of junction design and location, or for views expressed to be taken into account in the final junction design. What the Owner (and the wider public) were presented with was a fait accompli, arrived at absent any input from them.

33. Again, given that:

- a. the Applicant considered the proposals for the junction to be sufficiently important to have been expressly included within its SOCC as a matter to be subject to statutory consultation; and/or
 - b. the proposals for the same are directly relevant to the extent of permanent land take and temporary possession required to be taken and thus to the extent of the Order Limits; and/or
 - c. the junction design and location were plainly capable of giving rise to environmental effects and required to be subject to environmental assessment,
- the failure to carry out an adequate consultation was not a trivial omission or oversight. Consultation on the same could have led to feedback about the unsuitability of the chosen design and location that would have informed a revised design for the Proposed Scheme. At the very least, there is no certainty that the chosen design would have remained the same.

Conclusion on consultation

34. For either or both of the above reasons, the consultation undertaken was neither compliant with the basic statutory requirements, and/or not legally adequate as a matter of law.
35. In the absence of a genuine willingness by the Applicant to reconsider its proposals for both the junction and/or the temporary compounds (etc), and to change its scheme (including withdrawal and resubmission/an application for a material change and re-consultation) in light of that consultation, which its statements to date have indicated that it is not, there is no scope for remedying the deficiencies in the pre-application consultation.
36. Any decision to grant a DCO based on the current proposals (arrived at by reference to the flawed consultation) would be vulnerable to legal challenge.
37. The Owner reserves the right to respond to any submissions made in relation to this issue by the Applicant.

D. IMPACT OF THE APPLICANT'S PROPOSALS

38. The Owner's Written Representations, including in particular the Statement of Mr Meynell (ACM 03), identify a number of matters impacting upon or relevant to the Estate which the Applicant has:

- a. Failed to identify and take into account at all;
- b. Identified but failed to appreciate or underestimated the implications of; and/or which it has
- c. Failed to identify any mitigation for.

39. Matters falling into **Category (a)** include:

- a. The Estate's designation by the Treasury under the Inheritance Tax Act 1984 ('IHTA') as being of nationally significant, outstanding scenic and historic Interest¹⁶;
- b. That the Applicant's proposals for compulsory acquisition would authorise the permanent acquisition of every access/egress to the Estate, leaving the Owner and others without any property right to access or egress the Estate¹⁷.
- c. That the Applicant's proposals for temporary possession would result in the loss of the Estate's silage clamp, the operation of which is essential the agricultural (beef farming) enterprise¹⁸.

40. Matters falling into **Category (b)** include:

- a. The implications of the closure of the A47 access (the 'Old Back Drive'), namely the resulting inability for HGVs including refuse lorries, farm vehicles and timber lorries to access to the Estate (and, potentially fire engine)¹⁹;
- b. The implications of the above for the farming and forestry businesses²⁰;
- c. The implications of the extent of both the temporary land take for the farming business (including use of the dairy building), namely that the taking of the majority of all three arable fields and their use for works purposes and the loss of

¹⁶ ACM 03.5/1 and available for public inspection on www.hmrc.gov.uk/heritage/lbsearch.htm

¹⁷ Land Plans (Vol 2, 2.3) Sheet 9.

¹⁸ ACM 03 [76]-[78].

¹⁹ ACM 03 [161]-[163] and #IMP4.

²⁰ ACM 03 at #IMP1 [126] onwards.

the silage clamp is likely to result in the cessation of the beef farming business at the Estate because of the significance of both to the system of farming operated²¹;

- d. The implications of the permanent land take for the farming business²²; and
- e. The significance of the effect of the Proposed Scheme upon the arboricultural interest of the Estate, having regard to the increased quality and sensitivity of that interest as compared to that identified in the Environmental Statement²³.

41. Matters falling into **Category (c)** include:

- a. Any measures (falling short of the Owner's preferred options of relocation or redesign of the Wood Lane junction) to preserve the historic and scenic interest for which the Estate has been designated;
- b. Continued access to the Estate throughout construction and operation, including by HGVs;
- c. Continued access to the silage clamp²⁴;
- d. The continued use of the Estate's private reservoir, the criticality of which to the farming enterprise the Applicant has explicitly recognised, but which is proposed to be permanently acquired and where no alternative has been proposed²⁵.

42. For the facts relating to the above matters, the ExA is referred to Mr Meynell's Statement, the contents of which are not repeated here. What the below does is seek to identify the implications of the matters for the ExA's consideration and determination of the application.

Category (a) matters

The Estate's designation

²¹ ACM 03 at #IMP1, table at [127a].

²² Ibid, table at [127b].

²³ ACM 05.

²⁴ The absence of mitigation for this is addressed in the part of these submissions dealing with the Category (a) matters.

²⁵ ACM 03 [79]-[84].

43. As first identified in the Owner's Relevant Representations, the whole of the Estate has been subject to designation by the Treasury as being of "outstanding historic and scenic interest". The designation has been in place since 2003 and was confirmed in 2011, following the death of the Owner's father²⁶.
44. The designation is made by the Treasury pursuant to s.31(1)(b) of the IHTA. The application process is described in the Statement of Mr Meynell²⁷. The primary purpose of the designation is to confer conditional relief from certain taxes e.g. inheritance tax and capital gains tax, on death or in the event of certain authorised disposals (e.g. to a member of the family or to a heritage body such as the National Trust). The purpose of the designation, however, is to ensure the continued management and maintenance of qualifying property in private hands, and the creation of more public access to the assets, so that they may be secured and conserved for the benefit of the public as part of the nation's cultural heritage. Consequently, although a private benefit accrues as a result of the existence of the designation, the designation is one that is conferred for public interest reasons, in the public interest. It will be noted that reasonable public access is required to be secured pursuant to the designation, and this has been provided at the Estate for the last 18 years²⁸.
45. As noted in the Relevant Representations²⁹ there are fewer than 350 such designated national heritage properties or estates in the whole of the UK. Other well-known examples include Blenheim Palace, Chatsworth House, Bamburgh Castle, the Holkham and Houghton Estates in Norfolk, and the Syon Park Estate in west London (the last being the only designated asset in London). These examples give the ExA an indication as to the quality required of qualifying property.
46. The Statement of Mr Meynell refers to and exhibits the reports that led to the IHTA designation at the Estate. These should be read for their full effect, but certain of the characteristics identified as justifying designation have particular relevance to the issues

²⁶ ACM 03.6

²⁷ ACM 03 Section II A – F inclusive.

²⁸ Ibid, Section II F.

²⁹ RR-075.

the ExA has to decide. In particular, attention is drawn to the recent views expressed by Natural England that³⁰:

“3.3.2 The landscape of the [Estate] comprises elements typical of the Mid Norfolk Countryside Character Area, including small scale fields bounded by hedgerows, woods, parkland and brick and flint vernacular buildings. Its history as an area of land associated with a former vicarage means that it is on a smaller, almost miniature scale giving it an added attractiveness.

3.3.3 The estate is largely complete in that it has been unchanged for the last century, with much of the field pattern and other landscape elements documented as in place in the mid nineteenth century.

*3.3.4 **The landscape is incapable of substitutability** (the replacement of features lost with an acceptable and appropriate substitute that provides the same benefits.” (emphasis supplied).*

47. And that³¹:

“3.3.8 The designation of [REDACTED] and the Ice House as listed buildings for their architectural and historic importance affirms their national importance.”

48. The National Networks NPS (‘the NPS’) is the NPS having effect for the purposes of s.104 PA 2008. The NPS notes that the construction and operation of national networks infrastructure has the potential to result in adverse impacts on the historic environment³². It categorises as heritage assets those elements of the historic environment that hold value to this and future generations because of their historic, architectural or artistic interest and states that heritage assets may be buildings, sites, places, areas or landscapes³³. The sum of the heritage interests that a heritage asset holds is referred to as its significance, which derives not only from a heritage asset’s physical presence but also from its setting.

³⁰ Appendix 6 at ACM 03.6/4

³¹ Ibid, at ACM 03.6/5

³² NPS, [5.120].

³³ NPS, [5.123].

49. It is in that context that the NPS goes on to state *“the applicant should describe the significance of any heritage assets affected, including any contribution made by their setting”*³⁴. The level of detail should be sufficient to understand the potential impact of the proposal on their significance.
50. These paragraphs apply whether the heritage asset is designated³⁵ or non-designated.
51. The Secretary of State is required to assess the particular significance of any heritage asset that may be affected by the proposed development (including by development affecting the setting of a heritage asset) taking account of the available evidence from a range of sources³⁶. In considering the impact of any proposed development on a heritage asset, the Secretary of State is required to take into account *“the particular nature of the significance of the heritage asset and the value they hold for this and future generations. This understanding should be used to avoid or minimise any conflict between their conservation and any aspect of the proposal”*³⁷.
52. The Secretary of State is then further required to:
- a. take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities – including their economic vitality; and
 - b. when considering the impact of a proposed development on the significance of a heritage asset, give great weight to the asset’s conservation³⁸.
53. In the present case it is beyond doubt that the Estate is a heritage asset. It is a landscape designated pursuant to statute as being of outstanding scenic and historic interest and includes within it a further designated property – the Grade II listed [REDACTED] and curtilage structures (a designated heritage asset in its own right)

³⁴ NPS, [5.127].

³⁵ As defined in [5.123]. The list does not include IHTA designations, though it is suspected that this is by accident rather than design, given that the designation is an ‘official’ (i.e. statutory) one of the kind referred to. This also contributes to the weight that should be attached.

³⁶ NPS, [5.128].

³⁷ NPS, [5.129].

³⁸ NPS, [5.131].

54. Its significance depends on all the factors mentioned in the reports leading to the 2003 HMRC designation and its 2011 confirmation. This includes:
- a. The above explicit expression of national importance and non-substitutability by Natural England;
 - b. The fact that the Estate also comprises two designated heritage assets³⁹; and additionally,
 - c. the very limited number of locations in the UK conferred this special status.
55. Its significance is maintained and enhanced by the continuing sustainable agricultural unit and the sustainable woodlands around it, which together make a positive contribution to sustainable communities, including their economic vitality.
56. Furthermore, the designation of the Estate for its scenic qualities renders it a high valued landscape for the purpose of the NPS⁴⁰.
57. The ExA will be required to determine the Application having regard to these policies.
58. As noted by the Owner, the Applicant failed to follow the directions of Natural England in their letter to the Planning Inspectorate of 18 Oct 2019 (appended to the Scoping Opinion) to search the list of HMRC designated heritage assets⁴¹ and failed again so when subsequently notified by the Owner on four occasions⁴². In consequence they failed to make any further enquiries or to investigate the significance of the Estate as a heritage asset in its own right.
59. In consequence of these failures on their part the Applicant (quite apart from its failures in consultation) failed then to take any account of the significance of the heritage asset when planning the location of the Wood Lane Junction. As a result of that failure, they failed to consider any alternatives for the location or design of the Wood Lane Junction that would have conserved the significance of the heritage asset when it had the opportunity. As a result of these failures, they cannot have properly applied the above policy context.

³⁹ The Grade II listed [REDACTED] and the Grade II listed Ice House.

⁴⁰ NPS [5.156].

⁴¹ ACM 03 at [39].

⁴² Ibid, Section VI.

60. The Owner has noted the ExA's request for further assessment of the effect of the proposals upon the wider Estate⁴³. The Owner has not therefore submitted its own assessment of the implications of the Proposed Scheme for the designation at this stage, but will, more proportionately, review and comment upon that undertaken by the Applicant following its submission at Deadline 2.
61. It is however noted that the ExA's request appears (being located within the cultural heritage section of EXAQ1) to relate to only the heritage element of the designation. As the designation also relates to the landscape significance of the Estate, it is respectfully suggested that the ExA's understanding of the implications of the Proposed Scheme upon the designation will be incomplete if no landscape assessment is also provided. In this regard, the ExA is requested to ask the Applicant to provide such an assessment, which can then be reviewed and the subject of the Owner's comment.

Access/egress to the Estate

62. As matters stand, every access/egress point to the Estate (on the Front Drive, New Back Drive and Old Back Drive) is the subject of powers of permanent acquisition. There is no provision within the Order, and no private proposals have been made, for the grant back to the Owner and other occupiers of the property rights that would enable them to lawfully access the Property. At this stage, therefore, the application fails to take into account the total severance/landlocking of the Estate that would result. The DCO should not be granted without removal of these parcels from the land subject to acquisition, or alternative and equally effective and secure mitigation of this issue.

Loss of the silage clamp

63. The beef enterprise upon the Estate is served by an earth walled silage clamp (or store), located on the southern boundary of Plot 9/1a, just to the east of the A47 access, the Old Back Drive.⁴⁴
64. Mr Meynell's Statement (ACM 03) explains the purpose of the silage clamp and why the beef enterprise would not be able to operate without this.

⁴³ EXAQ1 (18 August 2021), Q9.0.19.

⁴⁴ See the Applicant's Land Plans, Sheet 9. The silage clamp is the oval area depicted in the location described above.

65. Given the location of the clamp close to the edge of Plot 9/1a, it readily could and should be excluded from the area over which temporary possession is sought.⁴⁵

Category (b) matters

Stopping up of the A47 access

66. The application recognises that the A47 access into the Estate ('the Old Back Drive') will be stopped up and that this will have an adverse effect on the Estate⁴⁶. It does not however recognise that this access provides the only HGV access into the Estate. This includes the access for refuse vehicles for the domestic and farm waste, for farm deliveries including feed, and for the timber lorries that serve the forestry enterprise⁴⁷.

67. The stopping up proposed means that the Proposed Scheme would leave the farming and forestry businesses unable to be serviced by feed and fuel, and without the ability for timber to be taken away, and the residential dwellings without refuse collection.⁴⁸

68. Of further concern is that it may potentially leave the Estate⁴⁹ unable to be accessed by a fire engine. It is not known whether such a vehicle could access the Estate via the New Back Drive⁵⁰ and the Applicant should be expected to satisfy the ExA in this regard. The Estate must not be deprived of emergency service accessibility.

69. These known and potential very significant adverse effects have not been taken into account by the Applicant, either in determining what its proposals should be, or in assessing the impact of the DCO upon the business enterprises (currently assessed as 'low' during the operational phase).

70. No mitigation is secured through the Order, or has otherwise been proposed. There is no existing alternative on site HGV access, and there is no material scope for widening the New Back Drive to accommodate such traffic (which is in any event proposed to be subject to temporary possession during the construction period, and the access/egress to which

⁴⁵ This would not obviate the other impacts on the farming enterprise caused by the temporary possession; see further Category (b) matters.

⁴⁶ Chapter 12 Population and Human Health (Vol 6, 6.1) at [12.10.44].

⁴⁷ ACM 03 at [161]-[163] and #IMP1.

⁴⁸ Ibid.

⁴⁹ Save the front part of the Hall.

⁵⁰ ACM 03 at [180].

is being acquired as set out above) because of its proximity to other residential buildings, and listed structures, including the crinkle crinkle wall.

71. As matters stand, it does not appear that the farming or forestry enterprises could practically operate without such access.

Implications of temporary and land take

72. The Applicant has purported to assess the implications of the construction and operation of the Proposed Scheme for the farming enterprise (referred to as Holding 10) within its Environmental Statement⁵¹. This was done without the benefit of any information from the Owner about the nature of the agricultural operation undertaken on the Estate.

73. The sensitivity of the holding has been assessed as very high⁵², and the impacts as a result of the Proposed Scheme as being:

- a. Moderate, during construction⁵³; and
- b. Minor, during operation⁵⁴.

74. This is said to give rise to construction and operational phase effects which are large adverse and slight adverse respectively⁵⁵.

75. The absence of any proper information to inform the above assessments, and a failure to acknowledge a number of matters (whether properly or at all) as described, has however meant that these assessments materially downplay the likely implications of the Proposed Scheme for those operations at each stage.

76. Mr Meynell's evidence includes two tables which describe the likely implications of the Proposed Scheme, including the temporary and permanent land take, based on actual knowledge of the operations undertaken⁵⁶. These tables indicate that the proposals as submitted are likely to result in the loss of the farming enterprise; certainly for the construction phase, and likely into the operational phase.

⁵¹ Chapter 12 Population and Human Health (Vol 6, 6.1) at Table 12.4.

⁵² Ibid.

⁵³ Ibid, [12.10.44].

⁵⁴ Ibid, [12.10.64].

⁵⁵ Chapter 12 Population and Human Health (Vol 6, 6.1) at [12.10.44] and [12.10.64].

⁵⁶ ACM 03, #IMP1 - Tables at [127a] and [127b].

77. The impacts cannot in the circumstances be properly described as ‘moderate’ or ‘minor’ and there has consequently been a serious underassessment of the implications of the proposal for the agricultural holding within the ES.

78. This is not just a matter sounding in socio-economics. As evidenced in Mr Meynell’s Statement (ACM 03), the continuation of the sustainable farming enterprise is a key objective of the approved Heritage Management Plan (‘HMP’), compliance with which is monitored by Natural England for the purposes of ensuring the continuation of the IHTA designation. So far as relevant, the overall objectives are described as follows⁵⁷:

“To maintain the viability of the farming practices on the estate, whilst retaining, protecting and, where possible, enhancing its scenic and historic qualities.

4.4.6 To further the aims of sustainability, the approach to farm management adopted by the estate should be environmentally sensitive and the policies and practices followed and work done should aim to conserve the wildlife and related environmental qualities of the estate. The estate’s adopted policy should:

1 by good management, restrict the application of pesticides, fungicides and artificial fertiliser to a level which minimises their use (but may seek to optimise crop yields insofar as it is not inconsistent with Aim 1 of this plan) by the adoption of integrated crop management, or similar techniques, and

2 seek to enhance the nature conservation qualities of the estate.

In adopting the above practices the estate is expected to keep abreast with and adopt best practice crop husbandry techniques where they have wildlife and/or environmental benefits.

The estate and its tenants are encouraged to take advantage of all relevant CAP or other subsidy or grant-aid schemes which have wildlife and/or environmental benefits (and which do not cause offsetting environmental damage).

Specific Objectives

...

4.4.8 To manage and, where possible, create field margins for the benefit of estate agriculture, wildlife and landscape.

⁵⁷ ACM 03.3 at p.25 (manuscript pagination).

...” (original emphasis).

79. The Proposed Scheme would by its temporary and permanent land take directly compromise the fulfilment of this objective of the HMP.

80. Similarly, the HMP includes as an overall objective, in relation to field boundaries⁵⁸:

“Overall Objective

4.5. 7 To ensure the long term conservation of the existing ditches, hedgerows and hedgerow trees on the estate for the benefit of the landscape, wildlife and the historical integrity of the field pattern.

In addition to the above main objective the estate will also aim:

4.5.8 To enhance, where appropriate the existing field pattern through the establishment of hedgerows along historically or visually important boundaries for the benefit of the landscape, wildlife and farm management”. (original emphasis)

81. The Proposed Scheme would by both its temporary and permanent land take also directly compromise the fulfilment of this objective of the HMP.

Arboricultural interest underassessed

82. Mr Meynell is himself considerably experienced in forestry, managing as he does the woodlands present on the Estate, which are noted to have attracted considerable local and national interest. He has set out his views on the implications of the Proposed Scheme for the carefully managed woodland that he and his father have cultivated over many years. He also exhibits letters from, amongst others, the Chairman and Chief Executive of the Royal Forestry Society expressing concern about the impact of the Proposed Scheme upon the arboricultural interest of the Estate⁵⁹.

83. In addition, he has sought the views of his arboricultural consultant upon the assessment of the trees upon the Estate that was undertaken by the Applicant. His report is provided as ACM 05. Whilst reference should be made to that report for its full terms, it describes:

⁵⁸ ACM 03.3 at p.28 (manuscript pagination).

⁵⁹ ACM 03.9.

- a. the “exceptional” nature of the “well-stocked” woodlands⁶⁰;
- b. the inappropriate (downgraded) classification of the trees within the Applicant’s assessment as ‘trees of low quality’⁶¹; and
- c. observes that, had the trees been correctly classified according to the British Standard, they would (according to the same BS) have been “*deemed worthy of retention and are normally retained and protected at the design stage and throughout construction*”⁶².

84. He concludes:

*“The key finding of this brief report is that the two woodland areas are eminently worthy of preservation and should be graded as B2 in terms of BS5837. They contain a range of species including sufficient native broadleaves to form mature native woodland with many of the features of ancient woodland. They have been very well managed and are some of the best examples of grant aided woodlands in the area”*⁶³.

85. These conclusions are fundamentally at odds with the approach taken to the woodland by the Applicant. Anecdotally, it would be surprising, if the Owner’s woodlands really were populated by Category C (low quality) trees, that they would have attracted the interest they have by the RFS and others with a serious interest in forestry.

86. Attention is also drawn to the requirements of the HMP in relation to woodlands. The overall objective is said to be:

“To conserve the important landscape, wildlife and historic qualities of the woodlands and to avoid any reduction in the area of woodland.”⁶⁴ (original emphasis)

87. Yet again, the Proposed Scheme would by both its temporary and permanent land take directly compromise the fulfilment of this objective of the HMP.

⁶⁰ ACM 05 at pp.3-4 (manuscript pagination).

⁶¹ Ibid, p.6 (manuscript pagination).

⁶² Ibid.

⁶³ Ibid, p.7 (manuscript pagination).

⁶⁴ ACM 03.3 at p.30 (manuscript pagination).

88. The Owner notes that he is unclear as to the nature, extent and detail of the proposals for the retention and replacement of woodland within the areas identified temporary and permanent land take (beyond the graphical Environmental Masterplan⁶⁵). He would welcome discussions with the Applicant in this regard and reserves the right to make further representations in light of those discussions.

Category (c) matters

Measures to preserve the outstanding historic and scenic interest

89. At this stage, because of the Applicant's failure to take into account the historic and scenic interest of the Estate, and its failure to identify the impacts of its proposals upon it, no measures have been identified to preserve the features of interest. The Owner reserves the right to comment upon any measures proposed (or the absence of the same) following the completion of the Applicant's assessment.

90. Given, however, the view expressed by Natural England that the landscape is incapable of substitutability, and the tone of all reports leading to the designation, which is that it is the 'intact' nature of the Estate that gives it its significance, the Owner has grave reservations as to the in principle capability of any mitigation measures (short of relocation – see 'Alternatives' below) to be effective. This is further emphasised by the (non-exhaustive) above noted inability to comply with a number of the key objectives within the HMP. The Owner will comment upon this further follow receipt of the Applicant's further assessment based on the IHTA designation.

Access

91. The Applicant has not identified any measures to enable access, both by occupiers and visitors, in light and HGVs, to continue (both lawfully and practically) to access the Estate during construction and operation. This has been addressed in greater detail above.

The private reservoir

92. The Applicant's Environmental Statement expressly notes the existence of the Estate's private reservoir; that it is proposed to be permanently acquired; and the risk of severance

⁶⁵ Doc 6.8.

that exists. It also notes the essential need for a water supply to the farming enterprise⁶⁶. The importance of this is addressed further in the Statement of Mr Meynell⁶⁷.

93. In spite of this express recognition, the Applicant has failed entirely to identify if and how it proposes to remedy this issue. It is not clear that any technical solution exists given the gravity fed nature of the supply and the need for that to be located on the highest ground (as at present). If it cannot be addressed, this would be fatal to the farming enterprise.

94. On a related matter, Mr Meynell's Statement identifies the fact that the temporary land take also covers areas where he has his land drains. The Owner has been unable to identify any information on the implications of the Proposed Scheme for these drains. Presumably there has therefore been no environmental assessment of this matter, or related consideration of mitigation. This is in spite of the requirement of the Scoping Opinion identified in Mr Meynell's Statement - a further deficiency in the Environmental Statement⁶⁸.

Conclusion on impacts

95. It will be apparent that the Proposed Scheme has a wide range of profound impacts, both environmental (upon the IHTA heritage/landscape asset and the woodland) and upon the existing enterprise located on the Estate (which is not only an economic consideration, but of central importance to the maintenance of the heritage/landscape asset as described), and that these have either been ignored or significantly underestimated in the Applicant's application materials. This is unsurprising given the wholly inadequate consultation that was carried out in relation to the Estate: it has prevented many of these entirely avoidable issues being flushed out at a formative stage of scheme design (as proper consultation requires).

96. As matters stand, the ExA does not have all the environmental information he requires in order to make a decision on the application. The application would have materially worse impacts upon the Estate than asserted, and the balancing exercise (specifically in relation to the compulsory acquisition case) carried out by the Applicant is therefore deficient.

⁶⁶ Chapter 12 Population and Human Health (Vol 6, 6.1) at [12.10.44].

⁶⁷ ACM 03 [79]-[84].

⁶⁸ Ibid, [67].

97. **All of the above issues would in principle be capable of being avoided through the adoption of any of the alternative junction design proposals set out in the Owner's Transport Written Representations (ACM 05).**

98. The failure of the Applicant to consider these reasonable alternatives is addressed further below, in Section E: Compulsory Acquisition.

E. COMPULSORY ACQUISITION

Law and Guidance

99. A person's right to the peaceful enjoyment of their possessions is a qualified right protected in law by virtue of Article 1 Protocol 1 of the European Convention on Human Rights ('A1P1') and the Human Rights Act 1998. Any interference with that right must be in accordance with the law and necessary in the public interest.

100. Section 122 PA 2008 provides that a DCO may only authorise the compulsory acquisition of land where:

- a. the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange under section 131 or 132 PA 2008; and
- b. that there is a compelling case in the public interest for the compulsory acquisition.

101. The statutory application of the 'compelling case' test reflects the same common law requirement⁶⁹ that applies in all other compulsory purchase cases.

102. Compulsory acquisition may be on a permanent or temporary basis.

103. The Planning Inspectorate Guidance *Planning Act 2008 : Guidance related to procedures for compulsory acquisition of land* (2013) ('the CPO Guidance') identifies the matters of which the ExA and Secretary of State will need to be satisfied in order to conclude that the statutory requirements (including the compelling case test) have been met. These include:

⁶⁹ R (Hall) v First Secretary of State [2007] EWCA Civ 612 at [15].

- a. That all reasonable alternatives to compulsory acquisition, including modifications to the scheme, have been explored⁷⁰.
- b. That they have a clear idea of how they intend to use the land which it is proposed to acquire⁷¹ and that the land to be taken is no more than reasonably necessary for the purpose for which it is required⁷².
- c. That the interference with the rights of those with an interest in land is necessary and proportionate⁷³. This involves being satisfied that the public benefits clearly outweigh the private loss⁷⁴.

104. The CPO Guidance is clear that Applicants should seek to acquire land by negotiation wherever practicable, and that as a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. It is also acknowledged that the CPO Guidance recognises that it may not always be practicable to acquire by agreement each plot of land in some cases, where long linear schemes are given as an example⁷⁵; however, the Applicant has not relied on this in this caveat instance⁷⁶.

105. The CPO Guidance is also clear that there may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. Specific examples given are where the Secretary of State is not persuaded that all of the land which the Applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme, or where the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition⁷⁷.

Compliance with the requirements

⁷⁰ CPO Guidance, [8].

⁷¹ Ibid, [9].

⁷² Ibid, [11] and [16].

⁷³ Ibid, [8].

⁷⁴ Ibid, [14]-[16].

⁷⁵ Ibid, [25]-[26].

⁷⁶ Attempts to acquire by agreement are covered further below.

⁷⁷ See [16].

106. The Applicant has failed to comply with the statutory and policy requirements relating to compulsory acquisition so far as relates to the Owner's Estate, and no compelling case can therefore be demonstrated in respect of it. In particular, and as set out further below:
- a. The Applicant has failed to consider reasonable alternatives to the proposed Wood Lane junction involving no or lesser compulsory acquisition upon the Estate, and resulting in no or materially reduced adverse impacts;
 - b. The Applicant has failed to demonstrate that it has sought to minimise the impact upon the Owner's land and, consequently, that the interference is proportionate; and
 - c. The Applicant has made no meaningful attempt to acquire the land it requires by agreement.
107. The Owner is considering the Applicant's assessment of land take required for compounds and reserves the right to comment on this aspect further if required.

Alternatives

108. As set out above in relation to consultation, the Wood Lane Junction was first introduced in the February 2020 statutory consultation. That supporting material for that consultation indicated that at grade and compact grade separated alternatives had been considered before a fully grade separated solution was chosen.
109. There has however been no indication that any other option or options had been considered for the fully grade separated solution other than the two dumbbell option included within the application. This contains twin roundabouts each of 100m diameter and a link road between them c.100m long (making a total lateral width of the junction at the crossing point of c.300m). Less than 10% of the space required for the proposed junction is situated on the Owner's sensitive land. The majority of the remainder of it, including the entirety of the mainline in the way of the junction, is located on less sensitive land to the north of the existing A47. The rest of the junction, apart from the small part located on the Owner's land, is proposed to be located on land currently taken up by the existing A47 public highway.

110. Having settled on a fully grade separated option for the Wood Lane Junction, the Applicant should reasonably have considered alternative fully grade separated options to that selected. These alternatives could have comprised alternative designs for the fully grade separated junction and / or adjustments to or alternative locations for that junction.
111. The Transport Written Representations (ACM 04) submitted as part of the Owner's Written Representation illustrate three primary alternative options that could and should have been considered (together with sub-options). These include⁷⁸:
- a. Retaining the existing dumbbell arrangement but making a minor adjustment to locate it northwards of the mainline of the proposed new dual carriageway at the point of the junction, so that all of the junction and its slip and approach roads fall on to the less sensitive land⁷⁹ further to the north on which the majority of them are already proposed to be located (Option 1);
 - b. Making approximately the same minor northerly adjustment of the mainline but instead of retaining the twin dumbbell roundabout arrangement proposed, using a single roundabout thus reducing the lateral width of the junction from 300m to approximately 160m and, as a result of the reduction in width, being able to locate the redesigned junction within the existing overall Order Limits but (by design) requiring a reduced land take and relocation of the temporary works compounds (Option 2); and
 - c. A variation on the existing dumbbell arrangement proposed for Option 1 adjusted northwards in a similar fashion to Option 1 but using, a smaller southern roundabout (Option 3).
112. At least two of these options (Options 2 and 3) would involve a lesser amount of compulsory acquisition (both temporary and permanent). In the case of Option 1, the compulsory acquisition involved would appear to be no greater and, critically, the small additional amount of land required to be taken to the north to compensate for the release of the Owner's land, would be of the same less sensitive land to the north of the existing

⁷⁸ ACM 04, Section 4.

⁷⁹ See following para for an explanation as to why the land is considered less sensitive.

A47 as that which is being taken already for the majority of the junction proposed by the Applicant. That land is properly described as being less sensitive because it is:

- a. Not within land designated for its outstanding historic and scenic interest;
- b. Not described as being “*incapable of substitution*”;
- c. Not within or affecting the setting of a Grade II listed building (which building also houses bats);
- d. Not subject to the same arboricultural interest;
- e. Part of much larger agricultural holdings which would not be adversely affected to the same scale and degree as the Estate’s small scale enterprise would be; and
- f. In a location where the field margins are not known to be managed to the same degree as the Owner’s land is, for biodiversity under the CSS Scheme⁸⁰.

113. All three of the proposals involve also retaining more of the existing highways and it is considered may therefore also reduce the amount of work that will be required in the relocation of utilities.

114. The relative unsuitability of the Estate land to accommodate development as compared to neighbouring land parcels would be apparent to even the untrained eye upon a site visit – including because it is wooded and sloping, in comparison to the additional small portion that may be required to be taken of the relatively flat and open land to the north.

115. It seems highly likely that the failure of the Applicant to consider fully grade separated alternatives has arisen from its failure to acknowledge the designations pertaining to the Estate, the extent of its interest, the nature of the farming enterprise, and from its fixing of the red line prior to having to design the junction or taking on board any of the above.

116. It is recognised that compulsory acquisition requires a balanced judgement to be taken. However, in circumstances where reasonable options have been identified which would in principle appear to materially reduce the land take requirements and/or to reduce the adverse effects arising on both the environment (historic, landscape and

⁸⁰ ACM 03 at [69]-[71].

ecological) and private interests, then the Applicant should be required to consider those fully and with an open mind, and to change its Proposed Scheme if (as appears likely) is appropriate. It should not be able to avoid doing so simply because it would be inconvenient or require time or other resource for it to do so.

117. Unless and until this has been done, the ExA should not be prepared to consent either the permanent or temporary acquisition of the Owner's land.

Disproportionate impact

118. The extent of the impact of the proposed temporary and permanent land take has already been well-rehearsed in these submissions, and is set out in detail in the Statement of Mr Meynell. These impacts are in addition to those which had not been omitted by the Applicant (such as the impact upon the Grade II listed [REDACTED]).

119. The burden that would be borne by the Owner in this case is disproportionate because it is avoidable, either wholly or in part, through a modest redesign of the Scheme. Even if (contrary to the above) the junction were not redesigned, the impact could and would have to be materially lessened through changes to the proposals for temporary land take and (if feasible) other mitigation of issues such as access. It should be emphasised that the latter course is not the Owner's preferred solution (because it does not address the fundamental failings of the Applicant in designing and consulting upon its Proposed Scheme in the first place), but it would be an absolute minimum that the ExA should require if they are to even contemplate conferring the compulsory acquisition (including temporary possession) powers sought.

Failure to seek to acquire by agreement

120. Finally, the Applicant has made absolutely no attempt to acquire the interests it requires, or engage about mitigation in the context of a voluntary acquisition. It may have sent a pro forma letter to all PILs indicating that it was willing to treat, but on neither of the occasions when it has met with the Owner has it raised or put forward any proposals in relation to voluntary agreement. This is the case for both the permanent and temporary land take.

121. This is contrary to the assertion made by the Applicant in its Statement of Reasons, where it seeks to describe the “*progress of negotiations*” (although it is fair to report that the “*progress*” reported does not actually suggest there have been any discussions).
122. It is acknowledged at this stage that the Owner’s objection is an in-principle one, but as was made clear in his Relevant Representations, he is willing to discuss all the issues with the Applicant, to see if a mutually satisfactory resolution that addresses the impacts that the Proposed Scheme would have upon the Estate can be achieved. These discussions are not bound to fail.
123. The Applicant’s failure to enter into any such discussions with the Owner prior to the raising of his objection and attendance at the Preliminary Meeting is unfortunately indicative of the high-handed approach to consultation and engagement that it has taken to date. It is to be hoped that such approach will change now that the examination is under way.

F. CONCLUSIONS

124. For all the reasons set out in the Owner’s Written Representations as a whole, the Owner concludes that:
- a. The DCO should not be granted on the basis of the Proposed Scheme, which:
 - i. is a result of a legally flawed consultation process;
 - ii. has failed to account for a range of profound environmental impacts upon the Estate and its occupiers; and which
 - iii. could and should be redesigned so as to avoid or substantially reduce those impacts.
 - b. Further or alternatively, absent an acceptable redesign of the Proposed Scheme in the vicinity of the Estate, the Applicant should not be granted powers of permanent acquisition or temporary possession in relation to the Estate land because:

- i. The Applicant has failed to consider reasonable alternatives that would involve lesser compulsory acquisition of land generally and/or result in materially reduced adverse public and private impacts;
- ii. The impact upon the Estate is disproportionate; and
- iii. The Applicant has failed to engage in relation to the voluntary acquisition of the land, including discussions as to mitigation of the identified adverse impacts upon the Estate.

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