

A47 DUALLING – NORTH TUDDENHAM TO EASTON

Scheme no. TR010038

SUMMARY OF SUBMISSIONS

At CAH2 (pm 3 Nov 2021)

On behalf of A.C. MEYNELL of the [REDACTED]

IP reference 2002/8353



ACM 11

12 November 2021

Infrastructure Planning – Planning Act 2008

The Infrastructure Planning
(Examination Procedure) Rules 2010
Regulation 10

The A47 North Tuddenham to Easton
Development Consent Order 202[x]

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SUMMARY OF SUBMISSIONS MADE ON BEHALF OF MR ANTHONY MEYNELL

COMPULSORY ACQUISITION HEARING 2

WEDNESDAY 3 NOVEMBER 2021 – PM SESSION

INTRODUCTION

1. This note summarises the submissions made on behalf of Mr Anthony Meynell ('ACM') during Compulsory Acquisition Hearing 2 ('CAH2'), held virtually on 3 November 2021.
2. The submissions related to:
 - a. The nature of ACM's Estate and the proposals for compulsory acquisition affecting it;
 - b. The nature of ACM's objection on compulsory acquisition grounds and ACM's understanding of the position reached with the Applicant to date; and
 - c. The outstanding areas of concern arising from the proposed compulsory acquisition and the responses of the Applicant to date.

SUBMISSIONS

Context

3. The Estate is immediately to the south of the proposed Wood Lane Junction. It includes not only a G2 listed building, Berry Hall itself (together with curtilage structures), but a landscape and other buildings designated by the Treasury (on the advice of Natural England) as being of outstanding historic and scenic interest (the boundary of which is identified in plans at ACM03.1, REP1-046).
4. For the purposes of the construction of the Wood Lane Junction, land within the Estate is subject to Articles 24, 27, 34 and 35 of the draft DCO. Land is proposed to be taken permanently, temporarily and temporarily subject to the acquisition of rights and the imposition of restrictive covenants. The land under discussion is shown on both Sheets 8 and 9 of the Land Plans (REP1-002).

5. On the Applicant's analysis, the permanent land take from the Estate is 3 hectares (7% of the Estate overall) and the temporary land take is 12 hectares (27% of the Estate overall). ACM's position is that the numerical analysis significantly underrepresents the impact that the acquisition will have on the Estate and should not be used as any guide to it (see ACM 03, REP1-045).

Objection to the compulsory acquisition provisions

6. ACM's objection to the compulsory acquisition of his land was made on the basis that no compelling case has been demonstrated for its acquisition, for two reasons:
 - a. The Applicant has failed to consider reasonable alternatives to the design or location of the Wood Lane Junction that would involve lesser compulsory acquisition of land and/or reduced environment impacts ('the overarching alternatives point'); and
 - b. The compulsory acquisition and temporary possession of his land would have a range of other unacceptable impacts upon the Estate and in particular the agricultural and farming business, which the Applicant has either failed to acknowledge or acknowledged but taken no steps to mitigate. In certain instances mitigation could be through the provision of reasonable alternatives to outright compulsory acquisition, other than the relocation or redesign of the junction.
7. In the circumstances described, the Applicant cannot have properly weighed the negative of those impacts in the balance, undermining its case for compulsory acquisition. Further, insofar as alternatives exist that avoid those impacts (be that alternative designs, alternative locations, or lesser rights), compulsory acquisition cannot be justified as a matter of principle.

The current position between the Parties

8. In relation to the overarching alternatives case, there have been discussions between the parties' technical experts in relation to the alternative junction designs suggested on behalf of ACM.¹

¹ Alternatives were the subject of discussion at ISH1 – see separate Summary and ACM's Deadline 4 Responses.

9. In relation to all other issues raised by ACM, including the points identified below, there has been no material engagement.
10. The exception to this was contact made by the District Valuer, seeking to discuss land acquisition and values. With the exception of emails relating to the identification of alternative surface water drainage and the carrying out of a topographic survey, the Applicant's project team have not sought to find out more about the issues identified or to discuss deliverable, secure solutions to those issues, insofar as they might exist.
11. ACM's knowledge of the Applicant's position on these matters is derived from the Response to Written Representations document (REP3-022, pp.3-7).
12. In that context, it is worth touching on the content of the compulsory acquisition schedule, an updated version of which was published by the Inspectorate last week (AS-020). The entry related to ACM in the Applicant's Compulsory Acquisition Schedule (AS-020, page 6) , which states that the Applicant is *'Engaging with representatives of landowner in process to resolve issues ahead of negotiation defining Heads of Terms'* remains inaccurate.
13. It was noted that the Applicant had however invited ACM to a meeting the day prior to the hearing, and a meeting was scheduled to take place following CAH2.²

Principal outstanding issues

14. Prior to identification of the principal outstanding issues, it was emphasised their potential (or otherwise) for resolution of his issues is without prejudice to ACM's primary argument that all identified impacts (together with the heritage, landscape and biodiversity impacts of the scheme upon the Estate) can all be avoided through the shifting of the Wood Lane Junction, which primary means by which ACM considers issues affecting the Berry Hall Estate ought to be dealt with.
15. The principal outstanding issues are:
 - a. Access;
 - b. Impacts on the farming enterprise;

² See separate joint correspondence from the Parties on this, submitted at Deadline 4.

- c. Drainage; and
- d. Forestry and the Christmas tree business.

Access

16. The Access issues arises in three ways:

- a. Permanently cutting off of all legal access to the Estate and buildings west of Berry's Lane;
- b. The permanent loss of HGV access to the Estate; and
- c. The possible preclusion of servicing by fire engines.

17. In relation to cutting off all legal access, the position is that the Applicant is seeking powers to acquire the freehold interest in every single vehicular access to the Estate and buildings west of Berrys Lane.

18. In each instance, the access is included within Plot 9/1b, which is the pink land accommodating the southern dumbbell and running along the existing A47 and down the west side of Berry's Lane all the way to the River Tudd.

19. In its Response to Written Representations (REP3-022), the Applicant has said (p.5) that it:

- a. *'requires rights'* to construct a permanent drainage system; and
- b. is not entitled pursuant to the order (Article 29) to close private accesses other than those in Schedule 4 (which includes the Old Back Drive³ only).

20. Re point (b), the author misunderstands the effect of permanently acquiring freehold to land over which access is taken or the powers that they are seeking. If the Applicant takes the freehold to any of ACM's land, ACM will have no legal right to enter on to that land and access is de facto precluded. Article 29 is irrelevant.

21. Re point (a), the Applicant appears to be saying that it does not in fact need to take freehold to the 9/1b extension. Temporary possession for construction with permanent rights for retention, maintenance etc. would be sufficient. If that is the case, accesses to

³ An explanation of the naming convention for the drives is contained in ACM 03 (REP1 – 045).

the Estate should not be included within the pink land; they should be excluded and included within the blue land.

22. In the absence of the Applicant voluntarily taking this course, ACM will invite the Examining Authority (without prejudice to ACM's other arguments) to require that the accesses to the Estate from Berry's Lane be excluded from the pink land and put into the blue land.
23. All accesses are also subject to temporary possession to a greater extent along their lengths. It is not clear how it is intended access to the Estate will be maintained consistent with that. It could equally prevent access to the Estate for the duration of construction, which would also be unacceptable.
24. The Applicant's response (REP3-022, page 5) is that they are working with ACM to clarify concerns and to explore means of maintaining access. That is not an accurate account of the Applicant's actions to date. ACM seeks a binding commitment from the Applicant to ensure that vehicular access to the Estate is maintained at all times.
25. In respect of permanent HGV access to the Estate (including fire engines), the evidence is that the Old Back Drive (with access from A47) is the only access capable of accommodating HGV movements, owing to the pinch points on the 'New' back drive and the front drive. Constraints upon the 'New' back drive comprise a sharp bend at the junction with the Old Back Drive, the presence of the crinkle crinkle wall and a large oak tree to the north. There is also a hedgerow between the crinkle crinkle wall and the access track, and on the western side there is the garden of a cottage. Access from the front drive is constrained by the wall of the listed house and outbuildings on one side and the retaining wall on the other side.
26. HGV access is necessary both for servicing the residential premises in terms of refuse collection, and more importantly for servicing the farming and forestry businesses (ACM 03, REP1-045 at [176], [177], [181]).
27. In its Response to Written Representations, the Applicant says it is: *'working with representatives of the Berry Hall Estate to clarify concerns regarding impacts on vehicular access to the estate from closure of the direct access to the existing A47 and, if required,*

explore means to maintain access to the Estate via Berrys Lane for private property, agricultural and forestry needs’.

28. This response rightly acknowledges that the prevention of access for HGVs is a problem that requires resolution. It is, however, simply inaccurate to suggest that there is any mutual working in this regard. It is acknowledged that the Applicant has undertaken a topographical survey but the results of this have not yet been received.
29. Before the Examining Authority was prepared to consent to any compulsory acquisition of the relevant land, the Examining Authority should require a secured commitment to the maintenance of permanent HGV access to the Estate. There remains however doubt as to whether this is practically possible on the application proposals. This would therefore also need to be demonstrated to the Examining Authority’s satisfaction.

Impacts on the farming enterprise

30. There are a range of impacts associated with both temporary and permanent landtake upon the farming enterprise. Unlike many business disturbance issues, these are not in this case a merely a private interest matter, ultimately to be dealt with by compensation, but also public interest one. This is because:
- a. the mere existence of a small scale sustainable farming enterprise is a key feature of heritage interest in this property, pursuant to its designation under the Inheritance Tax Act 1984 as of outstanding scenic and historic interest. In particular, the continuation of such an enterprise is a key aspect of the Heritage Management Plan to which the Estate is subject. The risk of extinguishment of that business therefore has wider implications for that heritage interest. It follows that when the Examining Authority ultimately comes to weigh the benefits of the proposals against the harms, it is not only public interest v private interest the Examining Authority will need to consider; the Examining Authority will need to consider the harm to the public interest that would be caused by compromising the maintenance of that outstanding scenic and historic interest; and
 - b. of the rarity of a sustainable farming business of this type in the East Anglia region. This was a matter evidenced by ACM in ACM 03, REP1-045 [85-86] and [122-126] and by DEFRA (REP1-055). This has not been challenged.

31. A further important point of context to the impacts noted below is the holistic manner in which the Estate operates. Again, that is a matter evidenced in ACM 03 , REP1-045 [105-107]. In short, all parts of the Estate – the meadows, the fields, the cattle buildings, the silage clamp, the water supply – are essential to the sustainability of the farming. Consequently, it is not enough for the Applicant to seek to mitigate effects on any one element; if harm persists in respect of another element, that is still likely to threaten overall viability. There is a need for a holistic response to the issues faced.
32. The principal issues giving rise to unacceptable impacts on the farming enterprise relate to:
- a. The private reservoir;
 - b. The silage clamp;
 - c. The cattle buildings;
 - d. The overall temporary landtake;
 - e. The meadow access; and
 - f. The permanent landtake for farming.

Private Reservoir

33. There is a private reservoir that serves the Estate located within Plot 9/1b (to the west of the Old Back Drive). This is currently subject to permanent acquisition. Without that reservoir, there will be no fresh water supply to the Estate’s dairy buildings and pasture.
34. The Applicant identified this in its pre-application work describing an uninterrupted supply of water was described by them as described as “necessary” for the agricultural operations. Notwithstanding this, no solution has been presented by the Applicant.
35. The Applicant’s Response to Written Representations says it will ‘*continue working with representatives of the Berry Hall Estate during the development of the Scheme’s detailed design to provide measures to maintain use of the Estate’s private reservoir or provide an alternative water supply*’. However there is no ‘continued working’ in relation to this issue.

36. Further, it is unclear whether detailed design is progressing now or will be developed post-consent. If it is the latter, that is too late. ACM, and the Examining Authority, need to know whether maintenance will be possible and if not what alternative water supply is possible. Otherwise, the Examining Authority will have to proceed on the basis that the farming business will be extinguished.

The Silage Clamp

37. The silage clamp is essential for producing silage that replaces grass in the diet of the cattle during winter months. The loss of the silage clamp (together with access) will prevent the farmer from keeping cattle in the dairy buildings.

38. The silage clamp is the 'lozenge' outline positioned below the 9/3c label on the Land Plans (REP1-002, Sheet 9). It is located on the very edge of the temporary possession area and its access is on its southern edge.

39. In its Response to Written Representations, the Applicant stated they '*will make sure access to and use of the building for the cattle and silage clamp will be maintained during construction of the Scheme*'. This offer is welcomed but not yet secured in any way and as such the Examining Authority cannot place reliance upon it.

40. Given the location, there is no obvious reason why the relevant area of land cannot be carved out of the temporary possession area. To the extent that such an agreement is not secured voluntarily, ACM will ask the Examining Authority to do this.

The Cattle Buildings

41. The Applicant has failed to address the suitability of housing livestock in a building which is so proximate to the boundary of a temporary compound and soil storage area, and suitability of that from an animal husbandry perspective. This is an area where, as a minimum, the Applicant should be seeking to draw back its temporary possession boundary to provide a more appropriate offset from these buildings.

The Overall Temporary Landtake

42. ACM considers that the a numeric approach to the overall temporary land take affecting the Estate belies its true impact. Although temporary possession affects somewhere in

the order of 1/5 of the Estate, it affects nearly all its arable land. The remaining arable land will not be able to be farmed during this period.

43. The temporary land take also results in the loss of areas of nature interest that ACM has noted do not appear to have featured in the biodiversity assessment. These include field margins that are managed under the Countryside Stewardship Scheme (“CSS”), the winter bird feeding ground, and the nectar mix area for bees managed under the CSS. This point is of obvious significance when the Examining Authority comes to consider the alternatives suggested by ACM, which shift some of the land affected by acquisition to the north.
44. The Applicant has indicated that it is willing to look to minimise the impact of temporary and permanent landtake. This is considered an obvious area for it to seek to do so.
45. Moreover, one can note that the Applicant has previously stated that the land identified is the minimum required for its construction needs. ACM has not been able to instruct an expert to verify this. The fact that the silage clamp was within the temporary possession area while the Applicant has indicated that this is not required for construction does however suggest that what is presented is not actually the minimum required. ACM would like to see more engagement from the Applicant in this regard.

Meadow Access

46. ACM raised the point about the implications of the scheme for use of the pasture in ACM 03 Table 2 (REP1-045, page 44). ACM’s points include access, water supply and the relationship with the availability of the dairy shed. It is helpfully suggested by the Applicant that *‘access to the meadows will also be maintained during the construction of the Scheme, avoiding the pastures degrading by lack of use. This would be addressed as part of a land agreement between the Applicant and Mr Meynell’*.
47. Again, this is a welcome indication, but is unsecured and could not therefore be relied upon by the Examining Authority. Furthermore, this would only work if the other issues are also resolved.

Permanent Landtake for Farming

48. ACM raised the implications of permanent landtake upon the middle field in his witness statement (REP1-045 at [70] and Table 3, page 47). In relation to this, the Applicant says that: *'The Applicant is working with representatives of the Berry Hall Estate to explore means to minimise the permanent landtake due to Wood Lane junction and associated drainage and landscaping west of Berry's Lane. No noise earth bund is required in this location'*.

49. ACM was unaware of any discussions about minimising permanent land take. The Examining Authority should require the Applicant to identify any specific proposals it has.

Drainage

50. The Examining Authority will be aware from the Applicant's Response to Written Representations that, as a result of ACM's representations, the Applicant became aware of a previously unknown (to them) drainage system on the east of Berrys Lane.

51. Their Response to the Written Representation states that they are *'currently working with representatives'* of Berry Hall Estate to explore the potential for connecting into this existing drainage system, which would avoid the need to impact upon the Estate west of Berrys Lane. Those discussions have been limited to asking questions about the drainage within the last two months.

52. ACM does not know anything about the stage or pace at which these investigations are proceeding, however, it appears that the use of the existing system may represent a reasonable alternative to compulsory acquisition on the west side of Berrys Lane (currently required for drainage). That being so, the Examining Authority should require the Applicant to report on the outcome of the investigations during the currency of the examination period so that the point can be resolved and further land excluded from the DCO if not actually required.

Forestry

53. In relation to forestry and timber, one of the main issues is access by HGV, which is a matter already covered above.

54. ACM will discuss with the Applicant the potential identified by it for rights to be granted that would enable ACM to continue managing the retained woodland.

FOR AND ON BEHALF OF MR ANTHONY MEYNELL

12 November 2021