

M54 to M6 Link Road TR010054

8.8 LIU(J) Draft Statement of Common Ground with Elizabeth Whitehouse & Stella Arblaster

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8.8 LIU(J) Draft Statement of Common Ground with Elizabeth Whitehouse & Stella Arblaster

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STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) Highways England Company Limited and (2) Elizabeth Whitehouse & Stella Arblaster.

Signed.....

Andrew Kelly

Project Manager

on behalf of Highways England

Date: [DATE]

Signed.....

[NAME]

[POSITION]

on behalf of Elizabeth Whitehouse & Stella Arblaster

Date: [DATE]

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Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground ('SoCG') has been prepared in respect of an application for a Development Consent Order ('the Application') under section 37 of the Planning Act 2008 ('PA 2008') for the proposed M54 to M6 Link Road ('the Scheme') made by Highways England Company Limited ('Highways England or HE') to the Secretary of State for Transport ('Secretary of State').
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available on the Planning Inspectorate website.
- 1.1.3 This SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.
- 1.1.4 **This SoCG has been drafted by Highways England based on correspondence with Elizabeth Whitehouse and Stella Arblaster during the development of the Scheme and records Highways England's current understanding of the matters agreed and not agreed.**
- 1.1.5 **A first draft of the SoCG was issued to Elizabeth Whitehouse and Stella Arblaster on 16 July 2020 but no comments have been received. This second draft was issued to the landowners on 30 October 2020 but as no comments have been received, is not an agreed position between the parties. Highways England will continue to work to finalise the contents of this SoCG at the earliest opportunity as the Application proceeds through the Examination process.**

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared by (1) Highways England as the Applicant and (2) Elizabeth Whitehouse & Stella Arblaster ('EW', 'SA' or 'Landowner').
- 1.2.2 Highways England became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing Highways England made provision for all legal rights and obligations of the Highways Agency, including in respect of the Application, to be conferred upon or assumed by Highways England.
- 1.2.3 Elizabeth Whitehouse & Stella Arblaster are the freehold owners of plots 5/23, 6/6, 6/32a, 6/32b, 6/32c & 6/36 as identified on the Land Plans [TR010054/APP/2.2] and in the Book of Reference [TR010054/APP/4.3]. These plot references are consistent across versions 1, 2 [AS-007/2.2] and 3 [AS-065/2.2] of the Land Plans. The plot numbers have not be altered with the acceptance of the Scheme changes on 29 October 2020.

1.3 Terminology

- 1.3.1 In the tables in the Issues chapter of this SoCG, 'Not Agreed' indicates a final position. 'Under discussion' indicates where points will be the subject of ongoing discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. 'Agreed' indicates where the issue has been resolved.
- 1.3.2 It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to Elizabeth Whitehouse & Stella Arblaster, and therefore have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to Elizabeth Whitehouse & Stella Arblaster.

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Record of Engagement

- 1.3.3 A summary of the meetings and correspondence that has taken place between Highways England and Elizabeth Whitehouse & Stella Arblaster in relation to the Application is outlined in Table 0-1.

Table 0-1: Record of Engagement

Date	Form of correspondence	Key topics discussed and key outcomes
22/02/2019	Meeting with EW & TB, SD & SB	<p>EW confirmed the field is used for grazing. Access is very important and will need to be retained if partially taken. Access to northern fields by J11 under M6 structure also needs to be retained. Field is locked, EW needs contacting for access.</p> <p>SB discussed proposals for upcoming bore hole/trial pit surveys and explained the rationale regarding licence agreements.</p> <p>EW advised that there is currently no land agent instructed, however, it is likely Bruton Knowles (BK) will be instructed.</p> <p>EW will be the main contact for the two landowners.</p>
23/05/2019	Letter pack from Gateley Hamer to EW & SA	S42 consultation pack. Included Land Interest Plans showing areas of land ownership and areas of land that may be required for the Scheme and the Order limits. The draft Environmental Masterplan was also made available online, indicating initial thoughts on areas required for environmental mitigation.
04/07/2019	Letter from BK to HE	Consultation response received.
06/09/2019	Meeting with EW and land agents EW, NWD, NB, SD, JH, TB & SB	<p>NB advised that his clients are closely associated with Nurton Developments, with the land being covered by an option agreement.</p> <p>EW requested a large-scale plan of the Scheme affecting their land. NB requested that it be also sent to Bruton Knowles.</p> <p>TB updated EW that there doesn't appear to be a solution to provide access into the field, and it would be likely the land will be acquired on a permanent basis. NB</p>

Date	Form of correspondence	Key topics discussed and key outcomes
		<p>advised he will need to discuss the implications with EW privately based on the new information. EW queried why the entire land was required, TB / SD confirmed it was mainly for essential environmental mitigation.</p> <p>EW confirmed the land was in good order following the ground investigation surveys.</p>
03/10/2019	Letter from Gateley Hamer to EW & SA	Land by agreement letter sent.
11/11/2019	Letter sent from Gateley Hamer to EW & SA	Supplementary consultation letter sent.
21/11/2019	Letter pack from Gateley Hamer to EW & SA	S42 consultation pack (in regard to unregistered land). Included Land Interest Plans showing areas of land ownership and areas of land that may be required for the Scheme and the Order limits. The draft Environmental Masterplan was also made available online, indicating initial thoughts on areas required for environmental mitigation.
11/12/2019	Letter from BK to HE	Consultation response received.
24/01/2020	SoCG introductory letter sent	Introductory SoCG letter addressing concerns raised within latest supplementary consultation response.
25/02/2020	Meeting with EW, representing land agents and project team (EW, IM, PH, SD, JH, RR, AK & SB)	<p>Meeting focused on consultation responses received from BK.</p> <p>Environmental Mitigation areas – IM stated that he believes the environmental mitigation to be excessive and questions why so much screening is required. RR explained that the environmental mitigation requirements in that area are not for screening purposes.</p> <p>PH questioned if the whole land parcel was required for the Scheme, SB clarified that the entire landholding was required for environmental mitigation, as discussed with BK at the two previous meetings.</p>

Date	Form of correspondence	Key topics discussed and key outcomes
		<p>EW raised the issue of the loss of Basic Payment Scheme should the land be acquired.</p> <p>IM requested information on the type of trees which are proposed for the environmental mitigation.</p> <p>IM raised that Nurton Developments have an option agreement on the land, and the impact the Scheme would have on the proposals. SD responded stating that compensation for any losses would take into consideration the local authority's position on the likelihood of the Scheme gaining planning permission.</p> <p>EW stated that should the land be acquired (approximately 14 acres), EW will struggle to find available land to purchase in the nearby area.</p> <p>PH requested information on compensation. AK advised the team would send the property and compensation guides following the meeting.</p> <p>RR concluded with the importance of statutory requirements for environmental mitigation indicating the proposals align with government guidelines.</p> <p>SB advised that a SoCG was currently being drafted to address concerns made within the consultation response and would be sent to both the landowner and agent.</p>
03/03/2020	Email from SB to PH	Compensation handbook and guides sent to PH as requested during previous meeting.
09/03/2020	Letter and Notice from HE to EW & SA and agent	Section 56 letter and Notice notifying persons of accepted application arrived with landowner.
17/04/2020	Letter and email from HE to EW & SA and agent	Updated Section 56 letter and Notice notifying persons of accepted application and extension of relevant representative period due to Covid19.
01/06/2020	Letter from HE to EW & SA	S56 – Additional relevant representation.

Date	Form of correspondence	Key topics discussed and key outcomes
16/07/2020	Letter and email from HE to EW & SA and agent	Draft SoCG and environmental mitigation approach report sent to landowner and agent.
28/07/2020	Letter from HE to EW & SA and agent	Notification of change request.
21/08/2020	Letter from HE to EW & SA and agent	Supplementary consultation consultee letter.
15/09/2020	Letter from HE to EW & SA and agent	Follow up letter sent to landowner and agent concerning land by agreement.
24/09/2020	Call from SB to PH	Call to advise that due to Covid-19 restrictions, some members of the project team would be dialling into upcoming meeting on 30/09/2020 and SB questioned if the meeting could take place online due to the requirement to review the previously issued draft SoCG rather than on site.
25/09/2020	Email from PH to SB	Email confirming clients wish for the SoCG review to take place on site with project team dialling in if required.
30/09/2020	Meeting with EW, IM & SB	Meeting with landowner and agent to discuss SoCG, environmental mitigation approach, scheme update and site inspection of bore hole.
30/10/2020	E-mail from TF to EW, SA and agent	Email providing second draft SoCG.

- 1.3.4 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) Highways England and (2) Elizabeth Whitehouse & Stella Arblaster in relation to the issues addressed in this SoCG.

Issues

1.4 Introduction and General Matters

1.4.1 This chapter sets out the 'issues' which are agreed, not agreed, or are under discussion between Elizabeth Whitehouse & Stella Arblaster and Highways England.

1.5 Issues

1.5.1 The table below shows those matters which have been agreed or yet to be agreed by the parties, including a reference number for each matter, and the date and method by which it was agreed (if relevant).

Table 0-1: Issues

Issue	Document (if relevant)	Landowner comment	Highways England Response	Status	Agreement likely (app) ¹	Agreement likely (IP)
Extent of land to be acquired	Landowners' representation taken from statutory consultation response dated 04/07/2019	The red line boundary in your consultation document contains the entirety of our client's landholding; however, you have not explained whether your Scheme envisages the land is to be acquired permanently or on a temporary basis.	The entire landholding is required permanently for construction of the new link road and environmental mitigation. More detail on the land requirements of each plot was provided to the landowner as part of supplementary consultation on revised Land Plans in November 2019 and in the DCO Application submitted on 30 January 2020.	Agreed (Landowner to confirm)	High	

¹ Indication on likelihood that the matter will be agreed by the close of the Examination period as rated by the applicant (app) and the Interested Party (IP). Dark green = agreed, Light green = high likelihood of agreement, orange = medium likelihood of agreement, red = low likelihood of agreement.

			Information on each land plot and future uses is provided in the Statement of Reasons [AS-016/4.1]. An updated version of the Statement of Reasons was submitted with a request for Scheme changes on 9 October but this does not alter the proposed uses of this plot.			
	Land agent's Relevant Representation – RR-036	The Project has an excessive area of land take for ecological mitigation with no justification provided.	<p>HE disagrees that the land take for environmental mitigation is excessive. HE considers all mitigation proposed to be essential mitigation and the minimum required for the Scheme. HE has provided information on environmental mitigation and the reasons behind it throughout the development of the Scheme.</p> <p>Mitigation and the justification for land required has been discussed at meetings and is provided in application documents, including:</p> <ul style="list-style-type: none"> • Works Plans [APP-009/2.4]; • Statement of Reasons [APP-021/4.1]; • Consultation Report, Annex P [APP-039/5.2]; • ES, Chapter 8 Biodiversity [APP-047/6.1]; and 	Under discussion	Medium	

			<ul style="list-style-type: none"> Case for the Scheme & NPSNN Accordance Table [APP-220/7.2]. <p>Further detailed information on land owned by Ms Whitehouse and Ms Arblaster was provided in documentation issued to the landowner on 16 July 2020. This Technical Note describes the rationale behind essential mitigation proposals in respect of the M54 to M6 Link Road (the Scheme) on land covered by an interest of Elizabeth Whitehouse and Stella Arblaster as proposed in Figures 2.1 to 2.7 of the ES [APP-057 to APP-063/6.2]. A mix of new woodland planting, hedgerows, species-rich grassland and amenity grassland are to be created on this land to mitigate the loss of ancient woodland and habitat at Brookfield Farm SBI and the loss of habitat for GCN and bats. Woodland planting and grassland is also required to provide landscape integration and improve visual amenity.</p> <p>The amount of land required for environmental mitigation would not change if the Scheme changes submitted on 9 October are</p>			
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			accepted by the Examining Authority.			
	Land agent's Relevant Representation - RR036	Our clients stand to lose all their land because of an area of existing 'ancient woodland' on their neighbours' property. The fact that ancient woodland had been identified in this location is a surprise to our client. Firstly, through their own local knowledge and secondly because this area is not designated as such on the Natural England website. We understand this area has only recently been designated ancient woodland through the course of consultation meetings between Highways England and Natural England. Such a decision with no input from our client, particularly given the impact this will have on them, is considered irresponsible.	Natural England's ancient woodland inventory only lists woodlands over 2ha in size. As such HE has assessed whether woodland blocks smaller in size than 2ha could be ancient and therefore warrant appropriate compensation. The assessment has been undertaken with close liaison and agreement with Natural England's Senior Forestry and Woodland Specialist and has included review of historical maps, and desk and field-based studies to record the characteristics of each of these woodlands. To compensate for the loss or damage of ancient woodland, it has been agreed with Natural England to plant new woodland at a ratio of 7:1 to compensate for the loss of woodland. The requirement to provide the compensation planting in connection with existing ancient woodland has limited opportunities to locate compensation planting. The woodland has not been 'designated' as ancient rather it has been identified as ancient by a fact of its characteristics and historic map regression and as such must be	Under discussion	Medium	

			<p>afforded consideration as required by the NPSNN any loss must be compensated accordingly.</p> <p>The Scheme changes submitted on 9 October 2020 reduce the impact on ancient woodland, but there remains an impact due to construction within the buffer areas around ancient woodland and due to air quality impacts. There is no reduction in the area needed for compensation on land owned by EW and SA.</p>			
Severed land	Landowners' representation taken from statutory consultation response dated 04/07/2019	If part of the land is to be returned to our client, the new road will sever access to that land and therefore the Scheme must provide for access to any land retained.	It is proposed to permanently acquire the entire landholding, therefore access to severed parcels of land will not be required.	Agreed	High	
Nurton Developments	Landowners' representation taken from statutory consultation response dated 04/07/2019	Our clients' land is included within an area of land being promoted for commercial development by Nurton Developments and it is important that the Scheme is developed in such a way as to be sympathetic to that proposal. We confirm that we are also supportive of the representations made by Nurton.	The land in question is not allocated in the Local Plan and does not benefit from planning permission. HE will continue to engage positively with Nurton Developments and the landowners and seeks to meet landowner requests where possible. However, where measures to develop sympathetically result in increased Scheme costs and environmental impacts, it would not be appropriate for HE to implement	Under discussion	Medium	

		In particular, the Scheme will potentially have an adverse impact in relation to the proposed employment site and the redevelopment of it. It is an established principle that in the event that any land with potential development value is severed, the density and/or timing of development on the retained land can be seriously and adversely affected.	changes given that the proposed development does not have planning permission, the land is in the Green Belt and is not allocated.			
	Land agent's Relevant Representation – RR-036	We understand that the Promoter feels (as our clients do) that there has been a singular lack of positive engagement, which is a pity in that constructive dialogue would be in everyone's best interests as well as use of the land.	HE has engaged with Nurton Developments Ltd throughout the process, including meetings and written correspondence. HE will continue to do so as appropriate. Please see SoCG with Nurton developments for more information [Application reference 8.8LIU(K)].	Under discussion	Medium	
Justification for land acquisition	Landowners' representation taken from statutory consultation response dated 04/07/2019	Woodland planting appears to be excessive given the land in question is at the motorway junction and is unlikely to screen residential or other properties from the motorway, hence it is requested that the woodland is minimised to facilitate a	As discussed above, woodland planting is not excessive and all comprises essential mitigation for the Scheme. HE understands the concerns raised, however, it is essential that the impacts of the Scheme are mitigated and the woodland	Agreed (Landowner to confirm)	High	

	Landowner's Relevant Representation – RR-016	larger area of land being returned to our client for agricultural use.	proposed is required for this purpose. The amount, location and type of mitigation planting has been extensively reviewed to ensure it is in line with approaches set out in policy, guidance and legislation. It has also been agreed with Natural England and re-reviewed following 2020 ecology surveys. The area required for mitigation would not change as a result of the Scheme changes submitted to the Examining Authority on 9 October 2020.			
Tree species	Question raised during landowner meeting on 25/02/2020	What types of trees are proposed within the environmental mitigation areas on client's land?	A native broadleaved woodland and shrub mix in keeping with the local area. The details of the final landscaping scheme, including the location, number, species mix, size and planting density of any proposed planting will be developed to discharge requirement 5 on the draft DCO [TR010054/APP/3.1], in consultation with the relevant planning authority.	Under discussion	Medium	
Loss of Basic Payment Scheme (BPS)	Question raised during landowner meeting on 25/02/2020	How will the landowner be compensated for the loss of rental income and BPS payments?	The right to receive BPS payments flows with the land and is reflected in its market value (be that capital or rental), just as is the case in a market transaction.	Under discussion	Medium	

payments and Compensation			Specific queries with regard to BPS should be directed to the Rural Payment Agency (RPA). Detailed advice with regard to BPS is available on the gov.uk website.			
	LEW Relevant Representation – RR-016	The compensation never covers the true amount lost and makes it impossible to purchase other land that come available.	<p>HE notes EW's concerns and is aware that she has instructed a suitably qualified agent to assist her in this process. Whilst EW has formal representation, we direct her to the Compulsory Purchase and Compensation: Compensation to Agricultural Owners and Occupiers Booklet 3 produced by the Office of the Deputy Prime Minister which can be found here:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/attachment_data/file/11489/147645.pdf</p> <p>This guidance sets out that the approach to compensation following a compulsory acquisition of land is based on the principle of equivalence. The effects of the compulsory purchase order on the value of the property/land are ignored when assessing compensation and the level of</p>	Under discussion	Medium	

			<p>compensation is directly related to the open market value of the property/land. Accordingly, Highways England disagrees with this view and considers that compensation will be proportionate.</p> <p>HE has offered to enter into negotiations to purchase land by agreement on 03/10/2019 & 15/09/2020 and are yet to receive a reply.</p>			
	Land agent's Relevant Representation - RR-036	<p>This ecological mitigation takes all our clients land which as Mrs Whitehouse confirmed in the meeting, will cause hardship, with a very significant impact on her farming business. Furthermore, given the location this land will be irreplaceable due to the fact that there is both limited alternative land for sale in the area and where land does become available there is a very high demand from non-farming interests.</p>	<p>The rights to compensation and methods and procedures for calculation of any compensation is set out within the Compensation Code (comprising principally Land Compensation Acts of 1961 and 1973 as well as Compulsory Purchase Act 1965). Guidance on compensation is set out in 'Compulsory Purchase and Compensation: Compensation to Agricultural Owners and Occupiers (Booklet 3), Office of Deputy Prime Minister (October 2004) which can be found:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/ads/</p>	Under discussion	Medium	

			<p>attachment_data/file/425148/M150005_Compensation_bookley_v3.pdf</p> <p>The guidance outlines that compensation following compulsory acquisition of land is based on the 'principle of equivalence'. Accordingly, no party should be worse off in financial terms post acquisition.</p>			
Engagement with Highways England	Land agent's Relevant Representation - RR-036	<p>We feel that there has been a lack of consultation with our clients by Highways England and we have not received any meaningful response to the issues in our Consultation Response Letters sent by us on the 3rd July 2019 and the 11th December 2019 other than a basic acknowledgement and an invitation to a meeting. This highlights the point we make in terms of a lack of proper engagement and why our clients feel that their opinions and concerns are of little importance to Highways England with delivery of the project being their sole priority. Given our clients concerns, at the very least</p>	<p>HE has met with EW, SA and their representatives on a number of occasions throughout the development of the Scheme.</p> <p>EW and SA were consulted as part of the statutory consultation in May-July 2019 and the supplementary consultation in November 2019. HE's responses to the consultation responses were provided in Annex P of the Consultation Report [APP-039/5.2] submitted as part of the application.</p> <p>In addition, HE issued a draft SoCG to both landowner and representative on 16/07/2020 addressing issues raised in both consultations.</p>	Under discussion	Medium	

		we expected Highways England to have prepared a detailed response in readiness for the meeting which was held on the 25th February 2020. However it soon became apparent during the meeting that the onus appeared to be on ourselves and the client to lead the conversation.				
Ecological surveys	Land agent's relevant representation – RR-036	Given that our clients have farmed this land for many years and have long term knowledge of this location, why have they never been approached to add value to the ecological/technical work that has been undertaken? This surely must be an oversight on the part of Highways England.	The assessments reported in the ES need to be informed by up to date data gathered through desk studies and field surveys to ensure that the assessment of potential impacts on important ecological features and the mitigation required to address these impacts is robust. Whilst HE appreciates that landowners will have knowledge of the land that they own, this does not replace the need to undertake these studies. Standard practice does not require landowners to be contacted to provide survey data.	Under discussion	Medium	
Articles and Requirements	N/A	N/A	The Applicant has not received any comments on the Articles or Requirements on the draft DCO from EW or SA.	Under discussion		

Appendix A: Details of personnel referenced in this Statement

Initials	Name	Role or Discipline	Organisation
AK	Andrew Kelly	Project Manager	Highways England
BK	Bruton Knowles	Land agency firm representing landowner	Bruton Knowles
EW	Elizabeth Whitehouse	Landowner	N/A
IM	Ian Mercer	Land agent	Bruton Knowles
JH	Jon Harvey	Stakeholder manager	Aecom
NB	Nigel Billingsley	Land agent	Bruton Knowles
NWD	Nia Wyn Davies	Land agent	Bruton Knowles
PH	Patrick Hackett	Land agent	Bruton Knowles
RR	Rob Ramshaw	Project Manager	Aecom
RW	Robert Whitehouse	Landowner' husband	N/A
SA	Stella Arblaster	Landowner	N/A
SB	Sam Blaize	Principal Surveyor	Gateley Hamer
SD	Simon Davis	District Valuer	Valuation Office Agency
TB	Tom Bennett	Previous stakeholder Manager	Amey