

**J Bunting & Sons oral representations to the Compulsory Acquisition Hearings of the A12
Chelmsford to A120 widening DCO proposal 1 March 2023**

Mr Michael Harman of Holmes and Hills LLP appeared on behalf of the Bunting Family trading as J Bunting & Sons (The Buntings') – a local farming partnership.

He made the following points:-

- J Bunting & Sons own 36 parcels of land across ref numbers 12,13,14,20 and 21.
 - It was disappointing that there has been inadequate engagement by National Highways with The Buntings, especially given the extent of the proposed land take; National Highways seek to acquire 220 acres of land which comprises approximately 31.5% of the landholding (and not 25% as indicated in one of the application documents). There have been some meetings, but despite these, there have been no offers/ heads of terms proposed; negotiations are apparently being stymied by the absence of detail.
 - A detailed representation (document RR-007) has been lodged on behalf of The Buntings. The main issue is whether the need case has been adequately established for the purposes of s 122 of the Planning Act 2008 – particularly in relation to Borrow Pit J (which is proposed to be created on land owned by J Bunting & Sons) also whether reasonable alternatives have been considered.
 - It is submitted that Borrow Pit J is not reasonably required for the reasons Mr. Garvey of Shoemiths touched upon in his earlier submission on behalf of Henry Robert Siggers and Parker Strategic Land. Borrow Pit J has apparently been included in the proposals as a failsafe or a backstop measure; there are clearly other quarries within the vicinity of the scheme which can provide the required materials. It seems that the proposal to put forward Borrow Pit J is heavily swayed by its central location in relation to the proposed scheme. On closer inspection, a comparison of Borrow Pit L and Borrow Pit J reveals that borrow Pit L performs better on certain impacts including groundwater, location relative to fill, air quality, heritage, cultural heritage, biodiversity noise and vibration, public rights of way etc and yet it is Borrow Pit J which is put forward.
 - Insofar as attenuation ponds are concerned (parcels 13, 14h and 13-3-C), The Buntings consider that there are other reasonable alternatives or indeed potential modifications to these attenuation ponds as set out in written representation RR 007 in more detail. Not only will these ponds have an unacceptable impact on the farm holding, but they will remove a large parcel of land which sits right on the doorstep of the main, operational centre of the farm. It also has impacts on what is referred to in the full written representation as The Pigeon housing scheme.
 - There are other more appropriate alternatives which could be used for a borrow pit and our client has been waiting for and inviting dialogue on that.
 - Clarification has been sought for the justification underpinning the Applicant's stated deficit of 600,000 cubic metres, but no definitive answer has been provided, which is unhelpful.
 - The severance of The Buntings' landholding will make their farming operations less sustainable and will ultimately be detrimental to their business enterprise.
 - Our client requires a detailed understanding of the mitigation measures being proposed, particularly as regards the proposed farm access arrangements. Many of these issues could be addressed through better engagement by/dialogue with National Highways
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A more detailed document, prepared to support the representations to be made at the Compulsory Purchase Hearing is attached to this summary.

BUNTINGS representations to the Compulsory Acquisition Hearings of the A12 Chelmsford to A120 widening DCO proposal

Executive Summary

Holmes and Hills LLP is instructed by the Bunting Family (trading as J A Buntings & Sons) a local farming partnership and owner of land within the Order Limits of the draft DCO proposal for the A12 Chelmsford to A120 widening ('The Road Scheme').

The inquiry is referred to representations made under reference nos RR-007 and REP2-113. The latter essentially refers to the earlier detailed representations and outlines, a common theme, the absence of meaningful engagement by the Promoter.

This representation primarily concerns registered title number EX382223.

The Buntings have objected to the Road Scheme on grounds which include:

- Section 122 of the 2008 Act has not been met, namely because:
 - o There has been a failure to consider reasonable alternatives in respect of attenuation ponds, borrow pits and ecological works
 - o The proposed compulsory acquisition is disproportionate
 - o There has been a failure to engage
- There are more suitable alternatives for the proposed attenuation ponds on 13/14h and 14/3c.
- Attenuation Ponds will unreasonably impact the Pigeon Scheme [housing development] and potentially render it unviable (or less viable at the least) – the ponds can be reduced in extent and without detriment to the Road Scheme
- Borrow Pit J is not reasonably required and there are other, more appropriate, alternatives to be used.
- In the alternative, Borrow Pit J should be restored and returned to the Landowner (i.e. a temporary use of land).
- There will be a severance of landholding which will render farming less sustainable and ultimately detrimental to the economic enterprise.
- Appropriate access for the farming enterprise needs to be secured and provided.

There has been no meaningful engagement to date on the part of National Highways with the Buntings.

Objection to compulsory purchase

1. Attenuation Ponds

The Buntings object on the basis that the attenuation ponds are excessive in the land take and that S3-OU7 and OU8A can be combined to negate the need for OU8. This will enable a larger block of land to be returned to the Buntings and back to the farming enterprise.

The Buntings aver that OU14 can be closer to the road, narrower and more linear. Again, this will reduce land take to the long-term benefit of the farming enterprise. It will also mitigate the impact upon the Pigeon Housing scheme.

The above strikes a fair balance in terms of the needs of the scheme and the public at large against the interference with the Buntings proprietary rights.

2. Borrow Pits

There is a dearth of analysis as to the impact of borrow Pit J on the farming enterprise. Indeed, its selection appears to be swayed heavily by it being “closer to the centroid of the proposed scheme”.

Indeed, such is borne out by a simple comparison against Borrow Pit L which performs better than J on:

- Groundwater
- Location relative to fill
- Air quality
- Heritage/cultural heritage impact
- Biodiversity
- Noise and vibration
- PROW impact.

A fundamental issue is the expected excess of matter 300,000m³ for the main works which also exactly correlates with the expected material to be excavated from Borrow Pit J at a depth of 7m. Further, it transpires that it is only the programme requirement to backfill Coleman Quarry which is driving the selection or need for Borrow Pit J.

The Buntings say that there are 5 or 6 alternative locations closer to the main fill areas at proposed junctions 21 and 22 which fall to be considered as reasonable alternatives (and haven't been). A closer location would be favourable in terms of reducing haulage, disruption and general environmental impact.

There is also the issue of missing information/documentation pertaining to Borrow Pit J. namely:

- Data that “sits behind” the borehole and trial pit logs – an FOI request has been denied.
- Ground investigation data for other locations which have been labelled as “unsuitable” without transparency as to the reasons for the same. In short, there is no ability to consider or “sense check” the rationale or rationality of the promotor in discounting locations for borrow pits which may be more favourable.
- Ground investigation data for other selected borrow pits – namely to, again, see whether they may be reasonably deepened, widened or lengthened to meet the scheme requirements and reduce the landtake for Borrow Pit J.
- An understanding as to why material has been deemed “unsuitable” for engineered fill and whether there are treatment or design solutions which may overcome this stated issue.

- The nature of soil and waste within Borrow Pit J given that it is a former quarry and has historically received waste materials.
- A proper understanding of dewatering and ground settlement issues if Borrow Pit J is to be excavated to 7m or indeed up to 14 metres.

However, borrow Pit J is chosen and there is no real explanation as to why other, reasonable, alternatives are not (see sections 30-35 of RR-0207). One inference may be that it is the fact that it is the ~25% land-take from the holding that sways the decision, namely the Bunting farming family are being penalised by virtue of owning other land within the vicinity and land which is an integral part of their farming enterprise.

In any event, there fall to be considered alternative options for Borrow Pit J itself. Such to include a shallower pit and a return to productive agricultural use thereafter.

The above is notwithstanding the absence of an assessment as to proportionality of the impact of the proposed Order powers in terms of nature or extent.

3. Lack of consultation

A common theme across representations is that there has been a failure to consult. The Buntings preference and reasonable expectation is that there would be engagement and negotiation – this has been absent. Instead, National Highways have simply sought to provide limited responses to consultation/representations and not engaged with the substance of the issues faced by the Buntings.

As above, and outlined in more detail in representations, there are a number of concerns as to the proposals in the current form but also options with alternatives that don't appear to have been considered appropriately or at all.

Matters are exacerbated by the fact that the issues are ostensibly unchanged and raised previously in the summer and winter of 2021.

4. Other issues

The Buntings/their agents have raised a number of other issues, each worthy items and to be considered in more depth as part of a legitimate expectation that consultation from National Highways would be substantive and not a mere “box ticking” exercise.

These issues include:

- Reservations as to the proposed access arrangements in the vicinity of Junction 24
- Specification of access (i.e. sufficient for safe access/egress of farm machinery)
- Ownership of access
- The removal and creation of new public rights of way – many of which are neither required for the scheme nor a proportionate interference with the Buntings rights and farming enterprise – to issues of public safety in proposed routes being close to a “shoot”

- Provision of services during the construction phase and thereafter. Essential not only for the farming enterprise but also for residential occupiers.
- The functionality of the proposed flood mitigation area – given that it is on higher land than the proposed road and it is accepted that water runs downhill.