

**The Metropolitan Borough of
Stockport (Hazel Grove (A6) to
Manchester Airport (A555
Classified Road) Compulsory
Purchase Order 2013**

**Application for a Certificate
pursuant to S19(1)(a) of the
Acquisition of Land Act 1981
Public Local Inquiry
September/October 2014**

Summary

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On behalf of:

Mr P Holmes & Mrs B Holmes (Objectors)

Land at Moorend Golf Club, Woodford Road,
Bramhall

8 September 2014

Contents

1.	Introduction	3
2.	Details of Objections and Scope of Evidence	4
3.	Justification for the Acquisition – The Key Tests	5
4.	The Lack of Justification for the Compulsory Purchase of the Exchange Land	7
5.	Summary of Objections and Remedy Sought	11

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8 September 2014

1. Introduction

- 1.1 I am Paul Nicholas Singleton and I appear at this Public Inquiry on behalf of Mr P and Mrs B Holmes of Moorend Farm, Woodford Road, Bramhall, who are objectors both to the Compulsory Purchase Order and to the application pursuant to S19(1)(a) of the Acquisition of Land Act 1981.
- 1.2 I hold the degrees of Bachelor of Science and Master of Arts and am a member of the Royal Town Planning Institute. I am a Director of Turley, a UK-wide planning consultancy and hold the position of the Company's national Head of CPO and Expert Witness services. I am a member of the Compulsory Purchase Association and am currently national Chairman of the Association for the 2013/14 year.
- 1.3 I have some 34 years' post-qualification experience of planning in both the public and private sectors and have advised local authorities and clients in relation to a wide range of development proposals. I have had an involvement in compulsory purchase projects throughout my professional career, advising acquiring authorities on the preparation and justification of CPOs under a range of different powers and advising the owners and occupiers affected by such orders. I have appeared at CPO Inquiries, both for objectors and acquiring authorities.
- 1.4 In this case I was instructed by Roger Hannah & Company, agents for Mr & Mrs Holmes, to provide planning advice in relation both to their objections to the CPO and to their potential land compensation claim, should the CPO be confirmed in respect of their land interests. I appear on behalf of Mr & Mrs Holmes in relation to their objections to the CPO and the S19 application.

2. Details of Objections and Scope of Evidence

- 2.1 Mr & Mrs Holmes are freehold owners and proprietors of the Moorend Golf Course at Woodford Road in Bramhall and also reside adjacent to the Golf Course at Moorend Farm on Woodford Road. The CPO includes various parcels of land in the ownership of Mr & Mrs Holmes and comprised in CPO plot references: 5/7 and 5/7A-M inclusive.
- 2.2 An objection to the CPO was lodged on behalf of Mr & Mrs Holmes by Roger Hannah & Company in a letter to the Secretary of State for Transport dated 30 January 2014. This letter (enclosed at Appendix 1) out a range of concerns with regard to the need and justification for the proposed link road, the funding for the scheme and whether in this case compulsory purchase was in fact, being used as a last resort. The objection expressly challenged the extent of the land take being sought from Mr & Mrs Holmes' ownership and requested, in the event of the Secretary of State being minded to confirm the Order, that land to the north and south of the actual new road alignment should be removed from the CPO. .
- 2.3 On 23 May 2014, Squire Sanders (now Squires Patton Boggs) wrote to the Secretary of State to supplement the grounds of objection in relation to Plots 5/7A and 5/7D which is proposed for acquisition as "Exchange Land". The letter is enclosed at Appendix 2.
- 2.4 On the same day (23 May 2014), Squire Sanders also submitted an objection (enclosed at Appendix 3) to the Acquiring Authority's application for a certificate in relation to the provision of Exchange Land in respect of the public open space to be lost as a consequence of the CPO, setting out the objectors' concerns as to the lack of justification for the acquisition of the much larger area of land and argued that this does not meet the principle of equivalence which is to be applied by the Secretary of State when deciding whether or not to issue a Certificate under S19(1)(a) of the 1981 Act. The letter requested that the Secretary of State should not grant a Certificate under S19(1)(a) of the 1981 Act in relation to the application. The Secretary of State has subsequently directed that my clients' objection to the S19 application should be considered at this Public Inquiry alongside their objection, and those of other objectors, to the compulsory purchase order.
- 2.5 My evidence therefore relates to the objections both to the S19 application and to the CPO. However, in respect of the CPO my evidence is concerned only with my clients' objections in respect of the proposed Exchange Land comprised in CPO Plots 5/7A and 5/7D.

3. Justification for the Acquisition – The Key Tests

3.1 In considering whether or not to issue a certificate under S19(1)(a) of the 1981 Act, the Secretary of State must be satisfied (inter alia) that:-

“There has been given or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public ...”

3.2 The “test” operates on the principle of equivalence, i.e. that the Exchange Land should be equivalent in area and of equal advantage to the public that enjoys the use of the open space which is to be lost.

3.3 The application of this principle of equivalence has been considered by the High Court and the leading judgment on this matter is that by Mr Justice Hutchinson in the London Borough of Greenwich & Others v. Secretary of State for the Environment and Secretary of State for Transport [1993 ENV. LR 344]. This judgment is enclosed at Appendix 4.

3.4 The judgment provides clear direction as to how the phrase “equally advantageous” should be interpreted and applied. The main points of note are set out within my proof of evidence.

3.5 The judgment also confirms that an assessment of the advantages and disadvantages of the Order Land and the Exchange Land for public recreation is required.

3.6 It is necessary that the compulsory purchase of any land, should be fully justified, having regard to the tests set out in legislation and in ODPM Circular 6/04 on the use of compulsory purchase powers.

3.7 The following principles should apply, both to the Acquiring Authority’s use of the powers and the Secretary of State’s:

- (i) The principle of equivalence should apply to the selection of the Exchange Land, both in terms of land area and its suitability as replacement open space.
- (ii) The “not less in area” test does not mean that a larger area of land cannot be given in exchange. However, if it is necessary to acquire that land through means of compulsory purchase, the proposed acquisition needs to be demonstrated to be proportionate and to meet the public interest test.
- (iii) The selection of the proposed Exchange Land should be made on the basis of a clear and transparent assessment of the potential options and alternatives.

- (iv) That assessment should involve a full and careful consideration of the relative advantages and disadvantages for public recreation use of both the land to be lost from existing open space use (the Order Land) and the proposed Exchange Land.
- (v) If the Acquiring Authority's selection of its preferred Exchange Land depends upon the balancing out of advantages and disadvantages, it should be clear where and how this has been done.
- (vi) All of the above works should result in a clear and robust justification for the compulsory acquisition of the land proposed as Exchange Land.

3.8 In this case, the Acquiring Authority has failed to meet any of these requirements or principles.

4. The Lack of Justification for the Compulsory Purchase of the Exchange Land

- 4.1 The proposed Exchange Land (Plots 5/7A and 5/7D) currently forms part of the “rough” within the overall layout of the Moored Golf Course situated at the northern edge of the course. This area of rough performs an important function (in safety terms) of separating the fairway from the gardens and houses of the adjacent residential properties on Albany Road. The CPO seeks the compulsory acquisition of other land in my clients’ ownership, to the south of the proposed Exchange Land, which is said to be required for the construction and operation of the proposed new road and is included in Schedule 1 to the CPO. However, the land comprised in Plots 5/7A and 5/7D which is proposed as Exchange Land (and included in Schedule 2 to the CPO) comprises all of my clients’ ownership to the north of the line of the new road.
- 4.2 The boundary of the CPO in respect of the Exchange Land has been drawn on the basis of what might be termed administrative convenience rather than on the grounds of what is reasonably required or appropriate to be taken as Exchange Land. This assertion is, supported by the absence from the Planning and CPO documentation of any explanation of why this land is considered to be either an appropriate or the most appropriate land to be used as Exchange Land and of any justification for its compulsory acquisition for this purpose.

Planning Documents

- 4.3 I have examined the planning application for the proposed road and the supporting documents including the Planning and Environmental Statements and the Statement of Community Involvement. From this review I note the following:
- i. Neither the planning application submitted to, or the decision notice issued by, Stockport Council includes any reference to the provision of public open space within the description of development.
 - ii. Notwithstanding the efforts to minimise the loss of open space to an area of 7,442 sq.m., the Planning Statement simply asserts that the loss of open space “shall be replaced” with a new area of 17,210 sq.m., bounded by the new road and properties on Albany Road. There is no explanation as to what site selection process has been followed or why this land is considered to either to be suitable or the most appropriate land to be used for Exchange Land and no justification as to why an area so large is required to replace the “minimised” land taken from the existing open space.
 - iii. The Environmental Statement (October 2013) does not address any of these issues and more importantly, gives no indication that any alternatives for the provision of Exchange Land have been considered.

- iv. The Statement of Community Involvement (October 2013) includes no suggestion that alternative sites for the Exchange Land provision have either been assessed or consulted upon. Indeed, insofar as any comments regarding the suitability of Plots 5/7A and 5/7D as replacement open space were recorded, these appear to have been negative, with residents of properties on Albany Road raising concerns that the use of this land as open space would present a security risk to their properties (Comment References 1251 and 1252 on p.16 of Consultation Response Report). However these concerns appear to have been overridden and the plans have been progressed notwithstanding the apparent lack of any positive public support to outweigh these concerns.

CPO Documents

- 4.4 The Acquiring Authority's Statement of Reasons (December 2013) includes a section which expressly deals with the Exchange Land. This section (paragraphs 29.3 and 29.4) includes no explanation as to how or why this land has been selected, or any justification either as to why the compulsory acquisition of any privately-owned land to meet this need is necessary or to why an area of land nearly three times the area of that to be lost as open space is required. The statement has different figures from those used in the Planning statement for both the area to be lost and the area to be acquired as Exchange Land. Indeed it is clear from the text that the person drafting the Statement of Reasons did not even know the location of the proposed Exchange Land, never mind what the justification might be for its acquisition. This is apparent from the question "where?" which has been left in the published text in paragraph 29.3.
- 4.5 The section dealing with the Exchange Land in the Statement of Case (May 2014) is largely unchanged from that in the Statement of Reasons. There is no explanation as to the selection process or justification for the acquisition of the land proposed as Exchange Land.
- 4.6 The detailed response to my clients' written objection to the CPO, set out in Appendix 27 to the Statement of Case, provides no further information on these important issues.

Extent of Explanation Received

- 4.7 The only response from the acquiring authority providing explanation and justification for the land take has comprised an undated and unsigned letter from John Hill of the Council's legal department and an internal email from another Council officer to John Hill which was copied (apparently in error) to Squires Patton Boggs. This is attached as Appendix 2.

4.8 The letter from John Hill is a response only to the objection to the S19 application and does not respond directly to the CPO objections. My reading of the letter is that such justification of the Exchange Land acquisition as is set out is an “after the fact” rationalisation of what is proposed rather than a record of what assessment and consideration actually took place before the CPO was made. Internal emails from Naz Huda of Stockport Council and Jamie Bardot of Morgan Sindall confirm that the Council could release part of the exchange land. However the Acquiring Authority then decide that they now need all the exchange land for the 'dual purpose' of POS and Great Crested Newts habitat including a 'couple of ponds.'

4.9 My comments on Mr Hill's responses are as follows:

Response 1

4.10 Whilst it may factually be correct that the loss of the land being acquired for the road will have the greatest impact on the operation of the golf course, this does not provide any justification for the compulsory acquisition of the Exchange Land.

Response 2

4.11 The response states that the Project Team considered the amount of open space being lost, confirming that there was no full and proper consideration of the advantages and disadvantages of the land for public recreation use or of those of the proposed Exchange Land.

4.12 The Council has failed to adopt a correct approach to the selection of a site which would most appropriately serve as Exchange Land.

(i) The Acquiring Authority has told us in the Planning Statement, the Statement of Reasons and the Statement of Case, that the loss of open space has been minimised so as not to impact on the use of the football pitches at Woodford Recreation Ground. Hence, there is no loss of functionality of the recreation ground in terms of formal sport and recreation and nothing of this nature that needs to be replaced.

(ii) It is apparent from the aerial photograph of Woodford Recreation Ground (Appendix 3) that the majority of the land being lost to the road is covered with mature trees that currently provide a landscape screen to the existing dual carriageway, their presence effectively preventing any actual use of this land for recreation.

(iii) What is being lost is a narrow strip of grass along which people might be able to walk in between the trees and undergrowth to the formal sport pitches/playing fields area to the north. At best this is an informal recreational/dog walking route and, although its users might currently “enjoy” views of the trees and, at some times, of football or other games taking place, the Council's proposal for the Exchange Land do not seek to replicate this context.

- (iv) If the larger area being taken for Exchange Land is considered to provide “*greater benefit*” to the residential estates, this clearly goes beyond the principle of equivalence.
 - (v) There is no assessment of the features that make the area to be lost useable and attractive for public recreation and no comparison or balancing exercise has been carried out.
 - (vi) It is simply incorrect for the Authority to say that the land comprised in Plots 5/7A and 5/7D is not currently used for the operation of the golf course.
- 4.13 The response argues that the acquisition of this land for Exchange Land is justified because if the CPO for the road land take is confirmed, “vehicular access to it would be limited”. If vehicular access is being lost as a consequence of the road CPO, the Council would need either to provide an alternative means of access or to compensate the owner for its loss. Even with a different or even reduced level of access, the land would still be capable of beneficial use, for example as grazing land., either on its own or in combination with the land to the east. Hence, the land would still have a value to my clients and I can see no good reason why they should be deprived of that value because it avoids the Authority having to put forward a full and robust justification for its acquisition.
- 4.14 The September 1st and 2nd email correspondence from Naz Huda of Stockport Council and Jamie Bardot of Morgan Sindall advises that the Council will now put forward the case that the land is required for a dual purpose of POS and as a relocation site for Great Crested Newts habitat. In the event, that the Inspector determines that part of the proposed exchange land is required for POS then I would consider that 2 additional ponds could be incorporated without the loss of the whole 17,000 sq m. This is evidenced on the plan attached at Appendix 4.

Response 3

- 4.15 The location of the Exchange Land was determined following the evaluation of land adjacent to the recreation ground. No evidence that such an assessment did take place and there is no reference in the application or CPO documents to the scope and finding of any such assessment. Despite a written request from Squires Patton Boggs, the Council has provided no information as to what alternatives were considered.
- 4.16 In terms of proximity to the active recreational facilities which are to be retained on the Recreation Ground, and any informal recreational use of the Order Land in connection with or conjunction with those activities, it is clear that the proposed Exchange Land is unsuitable by virtue of it being located on the other side of a major road and that land to the west of the recreational ground would be preferable as Exchange Land.

5. Summary of Objections and Remedy Sought

- 5.1 The Acquiring Authority has not provided any evidence to show that it has carried out a full and proper assessment of the advantages of the open space that has included in the CPO, for public recreation in order to come to an informed view as to the size and characteristics of land that would be suitable and appropriate as replacement land. Nor has there been any structured and informed assessment of alternatives.
- 5.2 The Authority has, in my view, failed to demonstrate that Plots 5/7A and 5/7D are appropriate as Exchange Land and has not met the key tests that would need to be applied and satisfied before the Secretary of State can issue a certificate pursuant to S19 of the 1981 Act.
- 5.3 As a consequence of the above failures, the Authority has not set out any reasonable justification as to:
- Why it is necessary to compulsorily acquire privately-owned land in order to meet the Exchange Land provision; or
 - Why it is necessary or appropriate to acquire some 17,000 sq.m of land when only c. 7,500 sq.m of open space is to be lost.
- 5.4 I would respectfully request that the Inspector accept my view that no compelling case for the acquisition of these plots has been made out and that the Order should not be confirmed with these plots included.
- 5.5 If the Inspector is satisfied as to the general location of the proposed Exchange Land, I would request on behalf of my clients, that the land take be reduced to an area more closely related to the area of open space that will be lost as a result of the road proposal and that the balance of my clients' land ownership be excluded from the CPO. Attached as Appendix 4 to my proof, a revised Exchange Land plan shows how an appropriate area of amenity space can be accommodated or an area of land broadly equivalent to that to be lost as open space.
- 5.6 This alternative scheme provides for all the amenity benefits that the Council's proposals for the Exchange Land would achieve.
- 5.7 The scheme does however, incorporate an access track through this amenity area to my clients' retained land which would allow them to use that land, for example, for grazing purposes and to continue to derive an income from the land. I therefore request that the Inspector recommend that Plots 5/7A and 5/7D be excluded from the Order and that a certificate should not be issued. In the alternative, and from my clients' perspective, as a least preferred option, I request that the Inspector recommend the exclusion of all that land not shown as new open space in the revised Exchange Land plan which I have put before the Inquiry.

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