

FAO Rob Davis
Common Land Casework Team
The Planning Inspectorate
3/A Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

By Post & By Email:
commonlandcasework@planninginspectorate.gov.uk

Dear Sirs

**THE CORNWALL COUNCIL (ST AUSTELL TO A30 LINK ROAD) COMPULSORY
PURCHASE ORDER 2020
SECTION 19 ACQUISITION OF LAND ACT 1981
APPLICATION FOR CERTIFICATE**

1 We act for Cornwall Council (the '**Council**') which is promoting the St Austell to A30 Link Road (the '**Scheme**') and the associated Cornwall Council (St Austell to A30 Link Road) Compulsory Purchase Order 2020 (the '**Order**').

The Scheme

2 The Scheme comprises the St Austell to A30 Link Road, along with associated highway improvements. It consists of 3.85 miles (6.2km) of new single carriageway with 4.3 miles (6.92km) of off-road cycle paths and bridleways and a further mile (1.61km) of new footpath in the County of Cornwall.

3 The Scheme is designed to address two key problems:

- **Transport problems.** There is no direct link from St Austell to the A30 and so there is a significant amount of public support in terms of boosting accessibility. In addition, the local road network experiences congestion through and around the villages of Roche and Bugle, especially during peak periods and along the A390 in St Austell. Seasonal traffic also exacerbates this as traffic on the network increases by 15% during the summer. There is limited scope to increase capacity on the current local highway network as adjacent developments severely constrain this; and
- **Economic problems.** A series of key economic problems have been identified, including an inability to replace employment lost as a result of the decline in traditional industry, a relatively 'low wage, low skills' local economy,

with low levels of productivity and negative perceptions of the area's accessibility on the part of investors; all of which means that there is low take-up of land for development. The Scheme is predicted to provide an annual boost to the Cornish economy of circa £350 million. It will bring opportunities to the area including: improving economic growth by upgrading links to St Austell from the rest of the United Kingdom and improving access to Cornwall's growing employment sites.

- 4 The background to the Scheme is described in detail in the Statement of Reasons that supports the making of the Order and which is enclosed with this application at Tab 6.
- 5 As will be seen from that background, extensive consultation has been undertaken in relation to the Scheme, including initial scoping in 2015, public exhibitions in 2016, review and refinement of route options in 2016 to 2018. As the Scheme design has progressed, options for the acquisition of common land and exchange land proposals have been developed and discussed with stakeholders as described below.
- 6 Michelmores LLP wrote to affected landowners in January 2019 (the '**January Letter**'), circulating statutory requests for information served under powers contained in section 297 of the Highways Act 1980 and section 16 of the Local Government (Miscellaneous Provisions) Act 1976. Michelmores LLP sent a chaser letter in September 2019 to affected landowners who had failed to respond to the January Letter. Further statutory requests for information were sent out to affected landowners in September, October and December 2019 as a result of changes in the Order plans. These provided the opportunity to ensure the Order Schedule is accurate and up to date.
- 7 The Council have been liaising directly with affected landowners to seek to acquire the land required for the Scheme by agreement. In parallel with seeking such agreement the Council have been preparing the Order. Negotiations with affected landowners are ongoing at the time of writing. Nonetheless, the Council has made the Order in order to provide certainty and reassurance in relation to acquisition and, therefore, the delivery of the Scheme. The making of the Order also confirms the seriousness of the Council's intentions.
- 8 Planning permission for the Scheme was granted by the Council on 4 April 2019 (reference PA18/11986).

Tresayes Down and Hensbarrow Down CL492

- 9 Part of the land to be acquired pursuant to the Order forms part of the Tresayes Down and Hensbarrow Down (the '**Common**'). Cornwall Council is the Commons Registration Authority for the area. The Common is registered under number CL492. It extends to approximately 966,000m² of open moorland and past clay workings. It is owned by Imerys Minerals Ltd ('**Imerys**'). Of the 966,000m², approximately 81,336m² will be permanently acquired for the delivery of the Scheme.
- 10 The land to be acquired for highway development from Hensbarrow Down runs through the centre of the Common, from the south (approximately at the point that the existing B3274 enters the Common) to the north (where the existing road from Nanpean enters the Common). It will be used for the main highway.

- 11 The land to be acquired is presently open moorland and is predominantly used for public access and recreation. The land is fenced alongside the existing highways. The land is very uneven and the grass tussocky.
- 12 The land to be acquired is designated as other/non-agricultural due to its rocky nature, shallow soils, coverage with scrub/gorse and non-accessibility or a combination of these factors.
- 13 The predominant soil type across the area to be acquired is of the Manod Association and the soils are generally free draining, fine loamy soil over Palaeozoic mudstone, siltstone or slate. The soils have shattered rock within 80cm depth and permeable clay loam with dark topsoil over ochreous subsoil, usually with granular or sub-angular blocky structure.
- 14 The soils are permeable and well drained (Wetness Class I) but because of the climate, the soils remain moist throughout most years. If the land was to be assigned an agricultural land classification grade then it would be Subgrade 3b at best, due to climate and soil wetness limitations. In practical terms, however, the rock outcrops, hollows and undulations render the land more likely to be Grade 5, which better fits the definition of land '*with severe limitations which restrict use to permanent pasture or rough grazing*'.

Rights exercised over the Common

- 15 There are eleven Commoners with rights over the Common. All have rights of stocking with cattle, turbarry (the taking of turf) and common in soil (the taking of stone). These rights are shown on the extract from the register held by the Commons Registration Authority and enclosed with this application at Tab 4. However, there is no record or evidence of the Commoners exercising these rights in recent times. None of the Commoners who responded to the consultation indicated that they exercise their rights of Common or have any intention to do so.

Use of the Common by the public

- 16 The Common is also included as public access land under the Countryside and Rights of Way Act 2000. This public right of access is only for the purposes of open-air recreation on foot (or invalid carriage) and does not include any right of access riding or leading horses or with a vehicle, including a pedal cycle. The land to be acquired is crossed by four public rights of way all of which are designated as public footpaths, restricting users to access on foot only. Based on the consultation carried out by the Council, a review of the Common and site visits, the use of the Common is principally as an area of general recreation by the public.

Requirement for Exchange Land and Application for S19 Certificate

- 17 Land which is a common and is to be acquired under a compulsory purchase order is subject to a special parliamentary procedure unless the relevant Secretary of State provides a certificate in accordance with section 19 of the Acquisition of Land Act 1981. There are three sub-sections in section 19(1) which set out the grounds on which the Secretary of State may be satisfied that special parliamentary procedure need not apply. In this case, the relevant ground for the Secretary of State to consider is that contained in section 19(1)(a).

- 18 Before granting a certificate under section 19(1)(a), the Secretary of State must be satisfied that:

'there has been 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, and that the land given in exchange has been or will be vested in the person in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attached to the land purchased'.

- 19 The Council therefore applies to the Secretary of State under section 19(1)(a) of the Acquisition of Land Act 1981 for a certificate confirming that the Order will not be subject to special parliamentary procedure. The same 'test' applies in relation to the application of Schedule 3, paragraph 6 of the Acquisition of Land Act 1981, which also requires that the compulsory acquisition of rights over land forming part of a common, open space or fuel or field garden allotment common land be subject to special parliamentary procedure unless the Secretary of State is satisfied that the 'test' is met.

- 20 The application is made on the basis set out in the paragraphs below.

Consultation on Exchange Land

- 21 The Council has consulted with stakeholders extensively throughout the development of the Scheme. The Commoners were informed of the proposals in 2018 and consulted (by letter or home visit) on their current and intended use of the Common and the proposed exchange land. The Common land to be affected by the Scheme and the proposed exchange land was included at the public consultation events which took place between September and October 2018.
- 22 A number of the Commoners were also visited in 2018 by Reading Agricultural Consultants for the purpose of gathering information for the production of the Common Land Report that accompanies this application (at Tab 5). As part of those visits, soil samples were collected and discussions took place regarding the Common land to be acquired and the proposed exchange land.
- 23 The discussions with the Commoners revealed that none were actively exercising their Rights. Nor did they plan to in the future. Moreover, they were entirely satisfied with the proposed exchange land. It was therefore considered that the proposals for the proposed exchange land were suitable and appropriate.
- 24 The planning process has also facilitated extensive public consultation and engagement as the areas of Common land were identified in the planning drawings.
- 25 No objections were received from the Commoners as part of the initial discussions or the subsequent public consultations.
- 26 Nevertheless, as a result of the outcomes from the public engagement exercise and extensive consultations with landowners, part of the proposed exchange land has been varied to mitigate the effects of the land acquisition whilst still meeting the relevant 'test' under s.19(1)(a) as described below.

Proposed Exchange Land for the Common

- 27 The proposed exchange land is shown coloured green on the Exchange Land Plan (ref: 'Common Land Replacement' 2073 P02). Four parcels have been identified to the north and west of the Common:
- to the north-west, an area of agricultural land extending to 6,226.39m² owned by Imerys and rented to Mr Gummoie (CPO Plot Reference 03/12 and 03/25);
 - to the west and north, an area of agricultural land extending to 36,955.69m² owned
 - by Imerys and rented to Mr Manhire (CPO Plot Reference 03/14);
 - an area of existing scrubland extending in total to 39,168.31m² owned and managed
 - by Imerys (CPO Reference 03/07 and 03/24); and
 - three small strips of land extending in total to 1,036.90m², owned by Imerys and
 - rented to Mr Thomas (CPO Plot Reference 03/08, 03/22 and 03/23).
- 28 Insofar as the Common is extensive (966,000m²) and 11 commoners have rights over the whole of the Common, the physical location of the exchange land is not critical, save that the fact that all the proposed exchange land is contiguous with other parts of the Common is clearly advantageous.
- 29 Fences that presently separate the parcels of proposed exchange land would be removed (other than highway fencing) to ensure ease of passage across the new common. Likewise, where steep gradients (or ditches) lie between the existing Common and proposed exchange land there will be an engineered solution to ensure ease of passage across the new common. Such a solution will be the subject of detailed design in due course in order to ensure its suitability from a public access perspective.
- 30 The agricultural land that is proposed as exchange land (CPO Plot Reference: 03/12, 03/25 and 03/14) is moderate quality Subgrade 3b land (downgraded due to climate and wetness limitation) and the plots have all been commercially managed in recent past for either grazing cattle and/or sheep, or for fodder production.
- 31 CPO Plot References 03/07, 03/24, 03/08, 03/22 and 03/23 are classified as other/non-agricultural land due to the rocky nature of the land, shallow soils, coverage with scrub/gorse and non-accessibility (or a various combination of these factors). As with the Common, if it was to be assigned an agricultural land classification grade then the land would be classified as Subgrade 3b at best, due to climate and soil wetness limitation. However, the terrain would render the land Grade 5.
- 32 It is considered that the proposed exchange land meets the test set out in paragraph 16-18 above as follows:

- the **area** of land proposed as exchange land exceeds the area of Common to be acquired by 2,051.29sqm;
- the **quality** of the agricultural land proposed as exchange land is the same or better than the land to be acquired;
- the **quality** and **nature** of the soil on the other/non-agricultural land at CPO Plot References 03/07, 03/24, 03/08, 03/22 and 03/23 is similar to that found across the Common and it will produce similar herbage for rough grazing. It is, therefore, equally advantageous in these respects;
- the land will be accessible by livestock and is suitable as rough grazing (as is the Common). Therefore, it will be equally advantageous for **stocking with cattle**. Given the extent of proposed exchange land, it will also be equally or more advantageous for the commoners because a greater area of land will be provided;
- **turbary** – the land to be acquired is covered with tussocky grass and the proposed exchange land is a mixture of tussocky grass and moderate quality agricultural land, all of which could be used to harvest turf. Therefore, it is equally advantageous in this respect; and
- **common in soil** – the proposed exchange land could be used to harvest soil/stones and is, therefore, equally advantageous in this respect.

33 With regard to CPO Plot References 03/02R and 03/01R, where a right of access is sought, the area of common over which these rights are sought forms a very small part (3,505.62 m²) of the overall common (extending to 966,000m²). Moreover, the common over which these rights are sought will still be available for use by the commoners at all times for rights of common, save for the occasional and temporary instances when the right of access is being exercised.

34 The proposed exchange land will be designated common land and will be accessible to the public. As such, it will be eligible for recording on the maps of access and register of common land when they are revised and will then become subject to a public right of access. Further, it will in practice be open to the public. Subject to the undertaking of any necessary works to facilitate public access, it will be either indistinguishable from, or easily accessible from, the adjoining existing common land; the public will, therefore, regard it as being open to pedestrian access for the purposes of open-air recreation.

35 Overall, those with rights of common will not be disadvantaged by the provision of the proposed exchange land, or the acquisition of minimal rights.

Public Access for the Proposed Exchange Land for the Common

36 The Institute of Public Rights of Way and Access Management (IPROW) has recently published a guide to appraising access for the purposes of environmental impact assessment (dated 5 August 2020). The guide includes IPROW's advice as to assessing the suitability of exchange land for access. It recommends that the following aspects should be considered:

- the exchange land should not already be legally accessible to the public (i.e. the land must offer new access);

- the exchange land should not be available by reason of its ownership (e.g. Forestry Commission, National Trust or Woodland Trust land);
- the exchange land should be of as similar a character as possible to the lost land;
- the exchange land should be of similar size or larger;
- the exchange land should have sufficient parking provision, cycleway or footpath access to enable continuation of previous visitor travel habits;
- the exchange land should offer similar or better levels of accessibility;
- the exchange land must be reasonably convenient to the main centres from which current visitors to the common land to be acquired originate; and
- the exchange land should be close to the land to be acquired (where 'close' refers to travelling time for visitors to the land to be acquired).

- 37 The proposed exchange land is not presently crossed by any public rights of way and is not designated as Access Land. Searches on the Defra MAGIC website confirm that the land is not designated as a Town or Village green, Doorstep green, Millennium green, Country park, registered common, or s.15 CROW land or Access Land. Furthermore, it is not part of a Community Forest and is not in Countryside Stewardship, Environmental Stewardship or the England Woodland Grant Scheme. The proposed exchange land is not already legally accessible to the public.
- 38 The proposed exchange land is privately owned and so is not available to the public through owners' access policies. This land has very little, if any, public use.
- 39 Although the character of the proposed exchange land is presently dissimilar to the lost land (being enclosed and with a history of relatively intense grazing), it will revert to a more similar character (i.e. scrubby, tussocky) as it becomes uncultivated.
- 40 The proposed exchange land runs to 83,387.29m², which exceeds the total area of common land that is to be acquired (81,336.00m²).
- 41 The common land that is to be acquired has very poor access. Currently, there is no formal parking provision along the B3274 and access from this busy road is difficult. Although both sides of the B3274 are designated as Access Land, the land to the east of the road is continuously fenced, entirely separating the two areas from a public access perspective. Therefore, no parking or other transport opportunities will be lost with the proposed exchange.
- 42 The common land to be acquired is very tussocky and difficult to access. There is a low level of access across the Common and access is mainly along the peripheral vehicular routes.
- 43 All available information suggests that accessibility for the public (including less able-bodied walkers) will be significantly improved with regards to the proposed exchange land in comparison with the common land to be acquired.

- 44 In terms of accessibility, there is no evidence as to where the (infrequent) visitors to the Common originate. The proposed exchange land is nearer to the small population centres of Higher Trezaise, Coldvreath and Pentivale than the land to be acquired, but is about 800m further from the towns of Stenalees and Bugle. Residents of towns to the west, such as St. Dennis, would have a shorter journey to the proposed exchange land than to the land to be acquired or to the common generally. Given the localities of the small settlements, it would appear that journey times to the exchange land will generally be no greater than those currently made to the land to be acquired.
- 45 Overall, the low levels of current access; lack of continuity of access across the B3274; lack of parking; and poor accessibility of the existing Common land, suggest that the proposed exchange land, being of similar size and close location with better accessibility than the land to be acquired, would be no less advantageous to the public.

Retention of Rights of Commoners and Public

- 46 The Order provides for the Commoners' rights to apply to the proposed exchange land. Given that the proposed exchange land and the existing Common Land is currently in the same ownership, the Council has agreed with Imerys that following acquisition of the land required for the Scheme by the Council, then the proposed exchange land will be transferred back to Imerys.

Summary

- 47 We enclose in support of this application a copy of the Order as sealed by the Council on 24 September 2020 the Order Map (comprising seven plans (being six plans plus one key plan), the associated Statement of Reasons and the Exchange Land Plan, which shows the respective locations of the common land required for the Scheme and the proposed exchange land. We also enclose an extract from the Cornwall Council Commons Register relating to the Common, along with a plan produced by Cornwall Council which shows the current extent of the Common.
- 48 We understand that the Secretary of State will now consider this application, and that arrangements are likely to be made for the order and exchange land to be inspected and/or appraised. We trust that you will liaise directly with the Department for Transport with regard to timescales, particularly with regard to the timing of any notice of intention to grant a certificate. We note that any objection to the grant of a certificate will need to be heard at any CPO inquiry, so sufficient time will need to be given for any representations to be submitted before any CPO inquiry commences.

49 If we can be of any assistance in making these arrangements, or if you require any further information, please do not hesitate to contact us. Otherwise, we look forward to receiving confirmation that this application has been received and accepted as valid.

Yours faithfully

Michelmores LLP

MICHELMORES LLP

Email: callum.o'doherty@michelmores.com

Direct Dial: +44 (0) 1392 687517

Encs: Order and Order Map (**Tab 1**)
Exchange Land Plan (**Tab 2**)
Extract from Cornwall Council Commons Register, including Map sheet 85 & 100-extract) showing the full extent of the registered Common and Supplemental Map identifying particulars of the land to which rights of common are attached (**Tab 3**)
Replacement Common Land Report by Reading Agricultural Consultants (**Tab 4**)
Statement of Reasons (**Tab 5**)