

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



Neutral Citation Number: [2018] UKUT 0160 (LC)

Case No: BNO/10/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

BLIGHT NOTICE - underground gas storage facility - rights acquired over driveway leading to house and buildings in rural location - wellheads to be installed in proximity to house - adjoining property sold without diminution in value - whether property blighted - s.150(1), 151(4)(c) and (g), Town and Country Planning Act 1990 - reference dismissed

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

MRS DERYN O'ROURKE

- and -

KEUPER GAS STORAGE LIMITED

Re: Brownhayes Farm,

Yatehouse Lane,

Byley,

Middlewich,

Cheshire CW10 9NS

22-23 March 2018

Martin Rodger QC, Deputy Chamber President and Mr P R Francis FRICS

Manchester Civil Justice Centre

Simon Charles, instructed by Monarch Solicitors for the claimant

Rebecca Clutten, instructed by Eversheds Sutherland (International) LLP for the respondent

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The following cases are referred to in this decision:

Caledonian Railway Co. v Turcan [1898] AC 256

Newcommen v Coulson (1877) 5 Ch.D. 133

Introduction

1.

The Holford Brinefield between Northwich and Middlewich in Cheshire has been used since the 1920s to extract brine for the production of rock salt and for use in the chemical industry by a process

known as solution mining. As a result of this process, a number of cavities or caverns have been created at a considerable depth below the surface. Since the 1980s these cavities have been used for the storage of natural gas. The Keuper Gas Storage Project (“the Project”) is intended to create an additional 500 million cubic metres of underground gas storage capacity deep beneath agricultural land on the fringe of the village of Byley, about 2 miles from Middlewich. The proposal to install means of access and other infrastructure required to service the new underground gas storage facility has given rise to this reference to the Tribunal.

2.

Keuper Gas Storage Limited, the respondent, is the undertaker of the Project, and the promoter of the Keuper Underground Gas Storage Facility Order 2017 made by the Secretary of State on 15 March 2017 (“the Order”). The Order authorises the construction of the proposed underground gas storage facility and associated development and confers compulsory acquisition powers on the respondent. In the exercise of those powers the respondent intends to acquire rights over a private driveway leading from Yatehouse Lane outside Byley to Brownhayes Farm.

3.

The claimant, Mrs Deryn O’Rourke, is the owner of Brownhayes Farm and the private driveway leading to it. On 10 November 2016 she served a blight notice on the respondent under section 150(1), Town and Country Planning Act 1990 requiring that it purchase Brownhayes Farm from her. The grounds of her notice were that her property was blighted by the acquisition of the rights over the driveway, and that she was unable to sell it even at a price substantially lower than that for which it might reasonably have been expected to sell had it not been blighted.

4.

On 5 January 2017 the respondent gave the claimant a counter notice objecting to her blight notice, and on 3 February 2017 the claimant referred the dispute to the Tribunal.

5.

At the hearing of the reference the claimant was represented by Mr Simon Charles of counsel, and both she and her former husband, Mr Peter O’Rourke, gave evidence. The respondent was represented by Ms Rebecca Clutten of counsel, and evidence was given on its behalf by its project manager, Mr Richard Stevenson. Expert evidence was given by Mr Ian Stanistreet FRICS of Scanlans Consultant Surveyors LLP for the claimant, and by Mr Neal Salomon MRICS of Bell Ingram, Chartered Surveyors, for the respondent.

The legal framework

6.

The respondent’s powers under the Order include the power to acquire “Class E Rights” over part of the driveway leading from Brownhayes Farm to Yatehouse Lane. Although they are expressed in extensive terms Class E Rights comprise, in summary: the right to enter land with or without vehicles and machinery at all times in order to use and maintain a road; the right to install and make use of electric access gates, security measures, non-conductive poles to a height of 6m, conduits, power lines and apparatus including monitoring equipment; and the right to retain ground and aerial marker posts, gates and other infrastructure (“the Rights”).

7.

The portion of the driveway over which the Rights are to be acquired extends for a distance of about 270 metres, about two-thirds of the driveway’s total length, coming from the junction with Yatehouse

Lane towards Brownhayes Farm, but stopping short of it by about 200 metres. The respondent also wishes to use the Rights to install underground conduits across the route of the driveway. The Rights over the driveway are the only rights which the respondent is authorised by the Order to acquire over the claimant's property. The land on either side of the driveway is not in the claimant's ownership, and when vehicles belonging to the respondent turn off the driveway they will enter the respondent's own land.

8.

It is not in dispute that the acquisition of the Rights is capable, in principle, of rendering Brownhayes Farm blighted land and of justifying the service by the claimant of a blight notice under section 150 of the 1990 Act requiring the respondent to purchase her interest in it.

9.

The respondent's counter notice objected to the claimant's blight notice on a number of grounds, but the only grounds relied on at the hearing were those in section 151(4)(c) and (g) (as modified in relation to the acquisition of rights by section 151(5)).

10.

Ground (c) applies if an authority proposes to acquire part only of a hereditament in the exercise of its relevant powers (or rights over part only), and does not intend to acquire any other part of the hereditament unless compelled to do so. Such an authority may be compelled to acquire the whole hereditament under section 8, Compulsory Purchase Act 1965 (which is made applicable to ground (c) by section 166(1)(b), 1990 Act) unless part only can be acquired without significantly disadvantaging the remainder. Ground (c) is supplemented by section 166(2), 1990 Act which provides that when the Tribunal determines whether or not to uphold an objection on this ground, it must consider whether:

(a) in the case of a house, building or factory, the part proposed to be acquired can be taken without material detriment to the house, building or factory; or

(b) in the case of a park or garden belonging to a house, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house.

If they cannot, the authority will be required to acquire the whole of the hereditament. The burden of proving the matters necessary to make out its case under ground (c) falls on the respondent.

11.

By reason of section 58, Land Compensation Act 1973, the question whether material detriment will be caused to Brownhayes Farm is to be judged by reference to the effect of the Project as a whole, and not simply the effect of the acquisition of the Rights over the driveway.

12.

If (as the respondent contends) the driveway is treated as being part of the claimant's house the parties agree that the relevant question is whether the Rights can be taken, as part of the Project as a whole, without causing material detriment to the remainder of Brownhayes Farm. They also agree that material detriment would be caused if Brownhayes Farm would be less useful or less valuable to some significant degree once the rights have been acquired, in light of how they may realistically be expected to be exercised.

13.

If (as the claimant says) the driveway is regarded not as part of the house, but as part of its “park or garden”, the relevant question is whether the acquisition of the Rights will cause the claimant a loss of amenity or convenience.

14.

We do not think it matters which requirement must be satisfied as the result will be the same in either event, but so far as it is necessary to make a distinction we prefer the submission of Miss Clutton for the respondent. Her submission was based on the decision of the House of Lords in *Caledonian Railway Co. v Turcan* [1898] AC 256, which treated the driveway to a house as part of the house itself for the purpose of the comparable regime of the Lands Clauses Consolidation Act 1845. Since the parties agree that the driveway comes within one or other of the two provisions we are satisfied that it is both consistent with authority and with the assumption made by both experts to treat it as part of the claimant’s house. In our judgment it would, additionally, be a misuse of language to refer to a farm track running through land belonging to a different party as being part of the “park or garden” of the claimant’s house.

15.

Ground (g) applies if the claimant cannot show that, in consequence of the fact that the driveway was, or was likely to be, comprised in blighted land, she has been unable to sell Brownhayes Farm except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of it were, or were likely to be, comprised in such land. Because the compulsory acquisition of the Rights is authorised by an order granting development consent, and thus falls within paragraph 24 of Schedule 13 to the 1990 Act, there is no requirement for the claimant additionally to show that she has made reasonable endeavours to sell her interest before (as would otherwise be required by section 150(1)(b) and 151(4)(g)).

16.

It is agreed that whether the claimant has been unable to sell Brownhayes Farm because of the Project is simply a question of fact which requires consideration of how real prospective purchasers in the market as it was before the material day (the date of the respondent’s counter-notice) had responded to the opportunity to purchase. It is also agreed that the price at which the property might reasonably have been expected to sell, had it not been blighted land, is to be ascertained by considering the response of a hypothetical prudent purchaser who, it should be assumed, would have made reasonable inquiries and been aware of such information as would have been disclosed.

17.

The respondent’s case under ground (c) is that it intends only to acquire the Rights, which will be exercisable over only part of Brownhayes Farm (the driveway), and that the exercise of those rights together with the impact of the Project as a whole will not cause any material detriment to Brownhayes Farm. The claimant’s case under ground (g) is that, by authorising the acquisition of the Rights, the Order has prevented her from selling Brownhayes Farm except at a price substantially lower than that which might reasonably have been expected had the Order not so provided.

Brownhayes Farm, the driveway and the locality

18.

Brownhayes Farm is no longer a working farm, having been separated from its surrounding agricultural land by 1992 when it and its original farmhouse were acquired from ICI by Mr O’Rourke. ICI was then the operator of the Holford Brinefield.

19.

Although they are now in separate ownership, the original farmhouse and the buildings formerly associated with it, are only about 30 metres apart. Today the farmhouse is known as Oak House, and it has been occupied separately from the farm buildings since it was transferred to Mr O'Rourke's brother a number of years ago. It was sold again to Mr Eamonn Smith and Ms Rebecca Conlong in July 2016, only four months before the service of the blight notice; because of the timing of the sale and the proximity of Oak House to Brownhayes Farm, that transaction provides important evidence in this reference.

The converted barn

20.

The whole of the claimant's property at Brownhayes Farm is the subject of the blight notice and of the reference. It comprises the former farm buildings and yard adjacent to Oak House together with the shared driveway providing the sole access to both. It extends in total to about 1.6 acres (including the driveway, which makes up about 0.5 acre).

21.

The principal building in the group is an "L" shaped brick built former barn, which was erected in the 1850s but converted in the 1990s by the claimant and her husband into an eight-bedroom house. In 2014 planning permission was granted to subdivide the house into two smaller units, one of four bedrooms, the other of three. So far the only steps which have been taken to implement that permission have involved the provision of a second kitchen and the blocking of access between the two parts. Those steps had not yet been undertaken when the respondent gave its counter-notice in January 2017. Mr O'Rourke explained that the limited subdivision had been to enable another family member to move temporarily into part of the house. The more substantial reordering of the accommodation contemplated by the planning permission, which will reduce the total number of bedrooms, provide additional bathrooms, and separate the common services, is yet to be undertaken. In their current state the larger of the two units comprises about 2,300 sq ft (213 sq m) (gross internal area), while the smaller is of 1,700 sq ft (158 sq m). There is also an enclosed garden of about a third of an acre at the rear of the converted barn.

22.

The converted barn was formerly Mr and Mrs O'Rourke's family home which they purchased in September 1992. The couple divorced in August 2016 and Mrs O'Rourke moved out in December of that year shortly after giving the blight notice.

23.

In its current condition the converted barn is a family home temporarily divided in two, and not being shown to its best advantage. Mr O'Rourke now lives in one of the two units with his adult son. The building as a whole was described by the experts as tired and we have no doubt that it would appear to any potential purchaser to be in need of, at least, significant redecoration and refurbishment.

The buildings

24.

The remaining buildings in the group are also former agricultural buildings. The largest of these is a modern implement shed, clad in profiled metal sheeting, which immediately adjoins the garden at the rear of the converted barn. In front of the converted barn, and roughly forming a horseshoe shape with it, stands an attached pair of traditional brick byres or workshops in a seriously dilapidated

condition. These have planning permission, granted in 2014, for conversion to residential properties, but in their current state they are incapable of any beneficial use.

25.

Two further insubstantial timber sheds complete the outbuildings, all of which stand beside a large yard with an uneven hardcore surface in poor condition, from which the Brownhayes Farm driveway leads off towards Yatehouse Lane. The yard and the modern implement shed are used by Mr O'Rourke in connection with a plant hire and skip repairing business which he initially conducted through a limited company, but which he has run since 2014 as a sole trader. A certificate of lawful development was granted in respect of this use in 2015.

The driveway

26.

The driveway from Brownhayes Farm to Yatehouse Lane is a stone-chip farm track in fair condition. In the parties' statement of agreed facts signed in July 2017 it was said to have a number of pot holes, but these seemed largely to have been filled in when the Tribunal undertook its inspection the day before the hearing. The surfaced part of the driveway is about four metres wide but including the verges on either side it is agreed that the whole is about 7 metres wide. It is about 500 metres in length from its entrance at Yatehouse Lane to Brownhayes Farm and Oak House where it terminates. It is used by the claimant, and those living at Brownhayes Farm, as well as by visitors and service providers such as postal deliveries or refuse collectors.

27.

The driveway is separated from the adjoining fields on its southern side by a hedge, but is open to the fields on the northern side. About two thirds of the way along the driveway from Yatehouse Lane, the fields to the right are separated by a hedge which abuts the driveway; there may formerly have been a farm gate across the driveway in this location, but none is present now. Nor is there any gate at the junction with Yatehouse Lane, a narrow country road onto which the driveway emerges awkwardly at a bend, allowing poor visibility to the left but a more open aspect to the right.

28.

The whole unit, including the driveway, is registered in a single title. The claimant also owns a small paddock of less than half an acre immediately adjacent to Brownhayes Farm; it is registered under a separate title and is not part of the property comprised in the blight notice.

29.

A number of users were entitled to rights of way over the driveway before the Rights were conferred on the respondent in 2017. In particular, in 1992 a right of way was reserved over the driveway by the conveyance of Brownhayes Farm by ICI to Mr O'Rourke. ICI owned other land in the vicinity which it mined pursuant to a planning permission granted in 1967 which is still extant. This land was referred to in the conveyance to Mr O'Rourke as the Retained Land in favour of which the rights of way were granted. The conveyance also reserved the mines and minerals below the surface to ICI together with rights to enable these to be worked; the working rights are noted on the claimant's registered title but they are not set out in detail and we were not told their extent.

30.

It is agreed that the respondent now has the benefit of the rights reserved by the 1992 conveyance for the benefit of the Reserved Land, and that they entitle it to pass and re-pass along the driveway with or without vehicles at all times and for all purposes.

31.

The respondent's tenant farmers also make use of the driveway to gain access to the surrounding fields.

32.

The owners of Oak House also enjoy a right of way over the driveway with or without vehicles, as do the owners of a paddock to the south.

The locality

33.

The landscape around Brownhayes Farm is generally flat, with hedgerows dividing grazing land into small enclosures. Mature trees appear at fairly regular intervals in the hedgerows or on the fringes of the numerous small ponds which dot the area.

34.

Apart from a field of about 7.5 acres which is now part of the garden of Oak House, most of the land surrounding Brownhayes Farm and on either side of the driveway is owned by the respondent, or its associated company INOVYN, as part of a much larger estate. The respondent's interest is in the use of the land below the surface for solution mining and gas storage. Except where the land is required for wellheads or other infrastructure the surface itself is let to agricultural tenants.

35.

The Holford Brinefield comprises about 4,000 acres over which there are currently more than 200 boreholes or brine wells. In 2004 gas storage facilities were created in 8 cavities near Byley, and consent was obtained for a further 28 in 2007. The respondent's expert, Mr Salomon, explained that much of the economy of the area between Northwich and Middlewich is centred around the salt industry and the successors to ICI, including the respondent and its associated companies, are well known local employers.

36.

The area around Brownhayes Farm itself is already scattered with enclosures or compounds containing wellhead installations. There are three within about 500 metres. Typically, these compounds are about 50 metres by 50 metres, securely fenced and protected from intruders by steel gates and cameras. They each contain a limited amount of above-ground piping and monitoring equipment, all at ground level, with few, if any, buildings. There are no derricks or other prominent structures and we were told that the compounds are unlit at night. From our own inspection of wellheads already operating in the vicinity these appeared to us to be almost completely silent (we assume these were no longer pumping brine, and are now in use for gas storage, but the impression we were given was that during the pumping phase of a well's life its operation is not audible at any distance).

37.

On close inspection the compounds have a distinctly industrial appearance which is at odds with their rural setting. They were said by the respondent in one of its own documents to be "somewhat intrusive and [to] detract from the rural character". Nevertheless, they are shielded from view by planting and, in some cases, by raised mounds or bunds. Longer views are also impeded by the strong hedgerow pattern in the area. Although we visited the site in mid-March, when hedges and trees were not in leaf, and when the hedges themselves had recently been cut, the presence of the compounds was not very obvious. We would expect that for most of the year little of the infrastructure would be

visible behind the soft landscaping which has been provided, except from a relatively short distance to someone who took the trouble to look closely. This is certainly the case from Brownhayes Farm, and we assume it also applies to views from Oak House, although it may be possible to see one of the existing facilities from the first floor of that building.

The respondent's intentions

38.

The Project involves the construction of 19 new wellheads and their associated compounds on land belonging to the respondent, or which it will acquire, extending to 350 hectares. The new wells will be used to extract brine and in doing so will create gas storage cavities at depths of between 450 and 850 metres below ground level. The intention is to create storage capacity for 500 million cubic metres of natural gas.

39.

Most of the new compounds are to be created within the general vicinity of Brownhayes Farm and four will be within about 500 metres of the claimant's house. The closest will be about 275 metres from the house and about 65 metres from the driveway.

40.

The construction phase of the Project as a whole will extend over some eight to ten years, and will begin with the creation in the first year of an internal road network linking the wellhead sites. This will be followed in the second year by the installation of brine and water pipelines in preparation for the solution mining of the cavities during years three and four. Once the new cavities have been formed further work will be required to install the equipment required for gas storage, but the respondent expects that work in the vicinity of Brownhayes Farm to be completed within a period of four years. Work in connection with laying pipelines will not be undertaken in winter months, and there are likely to be extended periods of inactivity during the construction phase. Once this phase has been completed the operational life of the storage facilities is expected to be 50 years. The Project is, as Mr Stevenson acknowledged, a substantial piece of engineering.

41.

The main entrance to the Project area is on King Street, some distance from Brownhayes Farm. A new road network and one-way traffic flow system required by the Order will mean that access to almost all the new installations will require the use of new tracks leading off the claimant's driveway. It was not suggested that hedges would be planted beside these tracks and that does not seem to be the practice on existing tracks serving the wellheads which we inspected.

42.

At a distance of about 170 metres from the claimant's house a new crossroad will be created on the driveway, at which two new tracks will intersect it. One will provide access to two new wellheads in fields to the south of the claimant's buildings (designated H501 and H510) and the other will lead north to a new well head (H502) and a much larger compound containing solution mining and gas processing plant (SMC3/GM3). The function of this processing plant, after the extraction phase, will be to enable gas to be transferred between the national gas transmission system and the storage cavities, and adjoining it will be a permanent office containing a control and maintenance facility. As we understand the proposal this will be the only building to be constructed as part of the Project.

43.

To extract the brine and create the cavities, and to connect them with the processing plant, the respondent intends to install a network of underground pipelines carrying gas, water, brine and nitrogen. Conduits to carry these pipelines will cross the route of the driveway (below the surface). During the construction phase of the Project the installation of these conduits will require the diversion of access to Brownhayes Farm for a period of up to a week, during which a temporary access will be provided. To provide power to the permanent installations there will also be an electrical supply connection and cables.

44.

The sites of the new wellhead compounds and the gas processing plant will be separated from Brownhayes Farm by at least one hedgerow, but the new track running north from the driveway to SMC3 and H502 will be visible from the windows at one end of the converted barn. We assume it will also be visible from the windows of any new dwellings created from the traditional buildings or on the site of the modern shed.

45.

The respondent intends to upgrade the driveway itself to provide a tarmac surface, improving the wear rate and reducing dust. It is undecided whether the new driveway will be widened from its current 4 metres to a proposed 5 metres, or whether it will remain the same width as now but with the addition of passing places. If the latter option is adopted there are likely to be two or three passing places between Yatehouse Lane and the new crossroad at which the tarmac surface will end (a distance of about 270 metres).

46.

The junction of the driveway with Yatehouse Lane will be reconfigured to provide visibility splays, in conformity with current highway safety standards. This will require the removal of a stretch of hedgerow (on land belonging to the respondent) and its replacement by a metal fence in a traditional Cheshire style still commonly seen in the locality. On the other side of Yatehouse Lane, directly opposite the junction with the driveway, a new road will be created to provide access to or from a group of at least eight additional wellheads to the south and east.

47.

The respondent proposes to install security measures to protect its new installations, comprising motorised security gates, an intercom system and cameras. These could be located either at the entrance to the driveway from Yatehouse Lane or on the respondent's own land on either side of the driveway, leaving it open. The respondent has given the claimant the choice of location for the proposed gates, subject to agreement with the other users of the driveway. At the time the respondent gave its counter notice in January 2017 the location of these works was not known, and at the time of the hearing it remained to be agreed.

48.

Overhead power cables currently cross the driveway at one point, supported by telegraph poles in the fields on either side. The respondent wishes to erect non-conductive red and white marker poles in two locations to warn construction vehicles of the presence of these cables and so to reduce the risk of accidents. This is considered best practice, although not essential, and the respondent has indicated that it is willing to reconsider this requirement and to replace the poles with signs. It is unlikely that marker poles would be required for more than a few weeks, while the resurfacing of the driveway took place.

Ground (c): Will the Project cause material detriment to Brownhayes Farm?

49.

The parties agree that we should consider whether the Rights can be taken, as part of the Project as a whole, without causing material detriment to the remainder of Brownhayes Farm. Material detriment would be caused if Brownhayes Farm would be less useful or less valuable to some significant degree once the Rights have been acquired, in light of how they may realistically be expected to be exercised.

50.

In his evidence Mr O'Rourke drew attention to the wide-ranging nature of the Rights and emphasised how difficult it had been for him to obtain information about the manner in which they would be exercised. Mr Charles cautioned that the assessment of anticipated detriment should be conducted as at the date of the respondent's counter-notice, and that it should not be open to the respondent to rely on information about its intended operations which it had not made available at that time.

Nevertheless, the parties agree that we should make a realistic assessment and we do not think it would be right to magnify the likely consequences of the exercise of the Rights simply because there are elements of the Project which had not been precisely defined when the counter-notice was served (some of which remain uncertain). If different measures may be required we should assess the impact which each may have, while recognising that their effect is unlikely to be cumulative.

51.

The factors relied on by Mrs O'Rourke as demonstrating that the respondent could not exercise the Rights without causing material detriment to her property were divided into long term factors which would be experienced during the 50 year operational phase of the Project, and the shorter lived but more acute disturbance and inconvenience which she anticipated during the construction phase of the works. The longer-term considerations were summarised by Mr Stanistreet as amounting to the "industrialisation" of the access to Brownhayes Farm. They included the proximity of additional installations and access roads and their visibility from the driveway and the house; the physical changes to the driveway itself, especially at the junction with Yatehouse Lane, including security measures; and finally the increased volume of traffic using the road network and the potential for obstruction of access.

52.

As we have already explained, the existing brine pumping and gas storage installations make only a limited visual impact on the locality and their operation is largely inaudible. We recognise that the addition of four new compounds housing three wellheads and the solution mining plant at distances of between 275 and 500 metres from Brownhayes Farm will represent an intensification in this locality, but each of the new sites will be screened from view by hard or soft landscaping. Views of the new compounds from the house itself or from its garden will be very limited, owing to the orientation of windows and the presence of the outbuildings, as well as the screening measures to be employed. Any new dwellings created in the outbuildings will have less interrupted sight lines to the north and east, but will still be separated from the new sites by existing hedgerows and additional landscaping. We are satisfied that within a relatively short period of completion of the installations and the planting of screening trees and shrubs the visual impact from within any building will be quite small. This would have been apparent to any prospective purchaser visiting the area and viewing the existing compounds in January 2017.

53.

From the driveway itself the presence of one of the wellhead compounds in the field immediately to the north of the route is likely to be the closest and most obvious evidence of the Project. The distance of this compound from the driveway at the closest point is likely to be about 65 metres, and not 15

metres as Mr Stanistreet suggested in his report. Having viewed similar compounds in the locality from that sort of distance we agree that it is likely to be apparent, for some time, that there is a security fence behind the new planting, but there will be no view of any pumping or monitoring equipment. In a locality where the presence of solution mining compounds is already a feature of the landscape we do not consider the introduction of further sites will cause material detriment to Brownhayes Farm.

54.

Mr Stanistreet agreed that the resurfacing of the driveway for more than half of its length would be an improvement rather than a source of detriment and that it would be acceptable to a purchaser. We agree. Whether the driveway is widened along its full length (which is unlikely to be necessary) or modified by the addition of passing places, the provision of a tarmac surface will be beneficial. The new surface will stop about 200 metres from Mrs O'Rourke's buildings, and to the extent that the rural character of the property is enhanced by being approached over an uneven stone track that character will be preserved in the immediate vicinity of Brownhayes Farm.

55.

Mr Stanistreet and Mr O'Rourke expressed greater concern at the prospect of a security gate and other works at the junction of Yatehouse Lane. The existing junction is hazardous owing to limited visibility to the left for vehicles emerging from the driveway. The relocation of a length of hedge (from land belonging to the respondent) and the widening of the road surface will improve the access considerably. Mr Stanistreet was reassured when he was shown a plan of the proposed works at the entrance to the driveway, which he had not previously taken into account, and it appeared to us that much of his initial concern had been over security arrangements which have never been in prospect. Mr Stevenson made it clear that the location of the security gate was a matter for agreement with Mrs O'Rourke and other users of the driveway. It was not necessary that it be at the junction with Yatehouse Lane, or even on the driveway at all. If Mrs O'Rourke would prefer the driveway to remain un-gated that could be accommodated, with the security gate being positioned on the respondent's own land.

56.

We think it unlikely that a gate will be positioned at the junction itself, but we acknowledge the current uncertainty. Wherever they are positioned an electrically powered gate and its associated security cameras will detract from the existing rural character of the area. If located on the respondent's land we consider that the gate will add somewhat to the visual impact of the Project on Brownhayes Farm as it is likely to be obvious both from the driveway and from any new dwellings created from the outbuildings (although not from the converted barn). If the gate is positioned on the driveway itself this visual impact will be greatly increased and will be both inconvenient to users of the driveway and give the impression that the claimant's property is part of the Project site. Some residents might welcome the additional security but others would regard the incongruity and inconvenience as too great a price to pay. But in either case we consider that the addition of a new gate will not make Brownhayes Farm less useful or less valuable to a significant extent (having regard to the evidence concerning the sale of Oak House which we deal with at paragraphs 84 to 92 below). The uncertainty which existed at the date of the counter-notice did not increase that adverse effect.

57.

There was some evidence from Mr Stevenson that, during the construction phase of the project, it may be considered necessary for an employee of the respondent to be positioned at the junction of Yatehouse Lane with the driveway and the new access on the opposite side of the Lane. The role of

this individual would be to prevent construction traffic from entering the Project road network in breach of the strict one-way route required by the Order. This individual may be provided with a small hut which we were told would be located on the opposite side of Yatehouse Lane. In our judgment the temporary presence of such a hut would not cause material detriment to Brownhayes Farm.

58.

Mrs O'Rourke's greatest concern was over the volume of traffic using the driveway, and the impact this might have on her own and her family's ability to come and go freely, especially in an emergency, and on service vehicles coming to Brownhayes Farm. Having considered Mr Stevenson's evidence we are satisfied that, after the construction phase, the increase in traffic will be very modest indeed and will involve no more than four to six additional vehicle movements per day. Most of these vehicles will be cars or light vans driving between the various compounds to perform routine checks. There might occasionally be a heavy goods vehicle but that will be very much the exception. We do not think there is any realistic prospect of the residents of Brownhayes Farm or their visitors being unable to come and go as freely as they do now. In the course of his evidence Mr Stanistreet accepted that there would be little to be concerned about during the operational phase of the Project.

59.

In summary we do not consider that the adverse impact of the respondent's works on Brownhayes Farm and the driveway will be significant during the operational phase of the Project. Looked at individually, or aggregated, the various features relied on as having an effect will not cause material detriment to the property or its users.

60.

During the construction phase of the Project the impact of the works will be intermittent. In the first and second years the various internal roads will be created, the driveway will be improved, and the pipelines will be laid to the new wellheads. This activity will cause noise, dust and increased traffic. By its nature the creation of roads and the laying of pipelines will move around the area and its impact will not be experienced continuously or for an extended period in any one location.

61.

With the exception of borehole drilling, work will be undertaken during normal working hours during the day. The drilling of each borehole is likely to take up to eight weeks and requires 24 hour continuous working during that period. The noise and vibration caused by these activities was assessed in the course of the public examination which preceded the making of the Order. There was found to be a risk that these will exceed the British Standard for construction noise before mitigation measures are taken into account and that, even with mitigation, the criteria might be exceeded to a small degree for a short period during road and pipeline construction.

62.

The additional volume of traffic using the driveway will be more significant during the construction phase of the Project. Mr Stanistreet considered that the use of the driveway by HGVs for up to seven years during the construction phase represented the greatest threat to Brownhayes Farm. We consider these fears to be exaggerated. At peak times there may be up to 20 extra vehicle movements with about three quarters being by HGVs. A more typical increase during the construction phase will be up to an additional 10 vehicles, half of which would be HGVs. The driveway is already used occasionally by agricultural vehicles to gain access to the adjoining fields, and is suited for that purpose. Except during the improvement of the road surface itself in the first year and the laying of conduits across the route of the driveway in the second year, almost all of these vehicle movements

will be vehicles in transit, rather than vehicles stopping on the driveway. For a short period (unlikely to exceed a week) while the driveway is dug up to lay conduits, or while resurfacing takes place, an alternative route will be provided over the respondent's adjoining land. With the provision of passing places or the widening of the driveway we are satisfied that the inconvenience likely to be caused to residents using the driveway will be small. We do not consider the temporary visual intrusion created by coloured poles warning of the presence of overhead wires to be significant.

63.

It is likely that much of the same sort of activity could be undertaken by the respondent under its existing rights, such as those reserved by ICI out of the 1992 conveyance of Brownhayes Farm. The grantee of a right of way is entitled in principle to make alterations to the way to improve it for the grantee's use (*Newcommen v Coulson* (1877) 5 Ch.D. 133, 144), so the resurfacing of the driveway may already be possible without the need to rely on the new Rights conferred by the Order. We are satisfied that it is not necessary to consider the respondent's existing rights in any detail because, disregarding them altogether, we conclude that the degree of inconvenience and disturbance which will be caused to Brownhayes Farm during the construction phase of the Project will be transient and on a modest scale, such that it will not amount to material detriment.

64.

We therefore find that the respondent has made out its case under ground (c). It follows that, unless the claimant can establish the matters necessary to make out ground (g), her claim will fail.

Ground (g): What has been the impact of the Project on the claimant's ability to sell Brownhayes Farm?

65.

Before serving the blight notice Mrs O'Rourke had been marketing Brownhayes Farm for about 17 months. She relies on the lack of success of the marketing exercise in support of her case that she has been unable to sell the property, because of the Project, except at a price substantially lower than it might reasonably have been expected to command if it had not been blighted. The respondent criticises the marketing effort as incoherent and over-priced, and argues that nothing of relevance can be inferred from its failure. The details of the marketing are therefore important to the respondent's ground (g) defence.

66.

Mrs O'Rourke told us that she first became aware of the Project in 2014, and knew of the intended use of the driveway about six months later. She had hoped to leave Brownhayes Farm before work of construction started, and that was the reason she and her husband put the property on the market. Although the couple divorced in August 2016 Mrs O'Rourke did not move out until December of that year and she was therefore able to speak from her own experience of the number of viewings which were arranged up to that time. Her recollection was that there were about a dozen viewings in the first year of marketing, of whom she had spoken to one or two.

67.

Mr O'Rourke told us he had been present on six or eight occasions when viewings had taken place, and that there had been at least twice that number in total since June 2015. He said he could distinctly remember that seven or eight of those viewing the property had been developers, while others were families, including some from London.

Bridgfords

68.

The whole unit, described as “sitting in a plot of around 2.5 acres of land and gardens”, was first marketed for sale through Bridgfords Estate Agents in June 2015 at a price of £1.1m. In her witness statement Mrs O’Rourke said that marketing began in April 2015; it may be that was when initial steps were taken to instruct an agent, but we take the date of commencement of marketing from the parties’ statement of agreed facts.

69.

The plot size quoted by Bridgfords seems to have been an error since the whole registered title extends only to about 1.6 acres (including the driveway, which makes up about 0.5 acre), to which the paddock adds another 0.35 acres. The property description referred to the potential to “reconfigure” the house itself, and to the inclusion of “two detached outbuildings ripe for conversion.” It is apparent from the detailed description that the reference to two outbuildings was to the traditional brick range, for which there was said to be planning permission for two dwellings, and to the modern implement shed, for which the outcome of an application for conversion was awaited. Nothing was said about the presence of the yard, and there were no photographs showing the condition of the yard or outbuildings, although those with experience of optimistic sales particulars would have drawn their own conclusions from the observation that the brick building “does require completing.”

70.

By mid-July 2015, the converted barn alone was offered simultaneously at a price of £650,000. We were told by Mrs O’Rourke that the decision to market the house alone, while continuing to market the whole unit, was made at her suggestion because initial market reaction had been poor. In her witness statement she suggested that the decision to market the property in this way was taken out of desperation, and only after Brownhayes Farm had already been on the market as a whole for a long time. That is no doubt how it appeared to Mrs O’Rourke who was obviously keen to sell, but a screenshot of the Rightmove website shows that the house was being marketed alone at £650,000 by 17 July. The agreed position is therefore that the property was on the market as a single unit for £1.1m for not more than about six weeks before the dual marketing strategy was initiated. The price differential between the two packages suggests that at that time the claimant’s agents considered that the development potential of the yard and outbuildings contributed about £450,000 to the value of the combined unit.

71.

Bridgfords’ sales particulars for the house alone describe it a substantial detached family home (which it is), “occupying a delightful idyllic rural location.” The property was again said to include large gardens and land of 2.5 acres, despite the removal of the yard and outbuildings from the offering. We note, however, that the Rightmove website entry refers to the property as having “large gardens and the option to purchase approximately two and a half acres”. No reference at all was made to the presence of the outbuildings with their potential for conversion, nor to the yard, and the rear garden flanked by the yard and modern implement shed was said to be “very private.”

72.

The person with responsibility for marketing the property at Bridgfords was a Mr Parsons. He subsequently left the firm but was tracked down by Mrs O’Rourke, to whom he wrote a letter on 9 August 2017 which she annexed to her witness statement. In his letter Mr Parsons recalled that “the lack of potential buyers and offers” caused them to separate the dwelling from the yard. He went on:

"We received a number of viewings but the general feedback that we received, and from speaking to potential developers, was that they cooled their interest on the property once they came aware of the gas plans as it was common knowledge in the local area. It then became apparent it was causing a problem in trying to sell the farm and would have been detrimental to the price of the property."

Mr Parsons was not called to give evidence, nor did he provide a witness statement. After six months Bridgfords' instructions were terminated.

Wright Marshall

73. In December 2015 new agents were instructed and Brownhayes Farm was offered for sale as a whole by Wright Marshall for £995,000. The property description was in similar terms to the previous agent's and referred to the site as including "large gardens extending to approximately two and a half acres" and as having "two detached outbuildings ripe for conversion."

74. An offer of £750,000 was received in around February 2016, apparently from a Mr Griffiths, which Mrs O'Rourke decided to accept. She told us that this decision was made "in desperation" and that she had considered the offer to be at least 25% below market value. Mr Griffiths seems to have come close to exchanging contracts but eventually withdrew his offer.

75. Mr O'Rourke had had no direct contact with the proposed purchaser, but he told us that he had known that he was a developer. The only other information about Mr Griffiths is contained in a letter dated 10 June 2017 from Mr Middleton of Wright Marshall. In it Mr Middleton informs Mrs O'Rourke that Mr Griffiths had been close to exchanging contracts when a local search by his solicitor "revealed the proposed extension to the gas works at Byley, in particular what would be occurring in the field to the front of your property." This was said by Mr Middleton to have been the reason for Mr Griffiths withdrawing from the purchase: "as he felt the works would seriously affect his quality of life if he were to purchase farmhouse and he was concerned that he would always struggle to sell the property if he ever decided to move." Those comments suggest Mr Griffiths may have intended to live at the property, and cast some doubt on his being simply a developer. Neither he nor Mr Middleton was asked to attend the hearing to give evidence or provide a witness statement.

76. It is not clear whether the property was withdrawn from the market while the offer from Mr Griffiths was progressed. Mr O'Rourke said in his witness statement that there had been a short period when the property was not on the market; he suggested that this may have been in November 2016, in which case it could not have been related to the proposed sale (although his recollection of other details was inconsistent with the statement of agreed facts). By June 2016 Wright Marshall were no longer instructed.

Reeds Rains

77. In June 2016 Reeds Rains Estate Agents began marketing Brownhayes Farm together with the outbuildings and yard, but without the additional paddock, at an initial asking price of £1.1m. This was subsequently reduced to £925,000. The new sales particulars referred to the subject as a "residential development" with "scope for either change or redeveloping something unique" and as "a blank canvas". The existence of planning permission to reconfigure the house into two units, and the permission to convert the "dilapidated" brick outbuildings were mentioned, as was the modern building which "subject to the relevant planning consent might be ideal for further dwellings." Land of approximately 0.5 acres was also referred to, which was said to be the site of the implement shed and probably also included the yard.

78. The property remained on the market at the same price with Reeds Rains in January 2017, when the respondent gave its counter-notice, and was still being offered on the same basis at the date of the hearing in March 2018. No offers were received during that period, although Mr O'Rourke told us there had been a number of viewings.

79. Further information about Reeds Rains' efforts to sell Brownhayes Farm is provided in two documents. The first of these is a letter to Mr O'Rourke dated 10 August 2017 from Ms Heywood, a negotiator with the firm. Ms Heywood expressed concern at the lack of interest in the property: in a period of 120 days (from approximately mid-April 2017) there had been 1847 on-line viewings of the details, but these had tailed off and only 886 of the total had been in the last 60 days. The last actual (as opposed to on-line) viewing had been on 16 June.

80. Ms Heywood suggested three reasons why the property was not performing as well as she would have anticipated. She felt that the permission for the "gas development" "may be one of the reasons" and said she understood from Mr O'Rourke "this now has made the boundaries of your entrance to your property unclear" which was "proving to be quite difficult when explaining to potential purchasers and can be seen to be deterring people." The second possible explanation was pricing. Ms Heywood suggested the property was in "a limited market" and potential purchasers viewing on line may feel that the price was not justified; for that reason she suggested a reduction in price to see if it might generate more interest. The third possible explanation was also related to pricing. Ms Heywood suggested that the planning permission for conversion of the outbuildings was a "hindrance" to some purchasers who were not interested in development, while the asking price of £900,000, plus the expenditure required to carry out the required works, wouldn't provide the return a developer would be looking for.

81. The second useful source of information from the period of Reed Rains' marketing is an email to Mrs O'Rourke of 8 November 2017, this time from a Ms Holden. She wrote to provide feedback from a viewing which had taken place on 13 October and said that the viewer had thought the property was "a bit far away from the main road and off the beaten track, [and] they were also put off by the upcoming proposal of the gas works and hadn't looked too much into it due to those reasons."

82. In the course of Mrs O'Rourke's evidence we asked her if she had received any other written feedback by email. She did not recall any and said that communication had mostly been by telephone, with the agents suggesting that "gas seemed to be an issue." She had only spoken to one or two viewers herself, and they had asked questions about the area and seemed to be aware of the presence of gas storage. Mrs O'Rourke said that she hadn't answered questions about the gas proposals and had not wanted to divulge what she was aware of. Mr O'Rourke seems also to have been unable to answer questions put to him by visitors, especially about the drive. He was asked to explain the comment by Reed Rains that there was confusion over the entrance to the property, and he said he had been unsure of the details and had told visitors that he believed the drive was going to change but he did not know how.

83. Neither Ms Heywood nor Ms Holden was asked to attend the hearing to give evidence or to provide a witness statement.

The sale of Oak House

84. The difficulties experienced by Mrs O'Rourke in finding a buyer for Brownhayes Farm are in contrast to the marketing and sale of two other local properties. The more significant of these is Oak House, the substantial residence with which Brownhayes Farm shares its driveway. This was sold in

July 2016 for £860,000 after a short period of marketing at “offers in the region of £875,000”. The property lies immediately to the west of Brownhayes Farm and is approached from the shared driveway by passing in front of the converted barn and its out-buildings. Oak House has been considerably modernised, improved and extended. The marketing particulars prepared in 2016 by Reeds Rains and our inspection from the front gate suggest the refurbishment was to a high standard, and the valuation experts agreed that it had been presented to the market in better condition than Brownhayes Farm.

85. The heavily beamed accommodation is centrally heated (oil fired) and has modern double glazing. The house is on two floors and comprises three reception rooms, a large kitchen/breakfast room, adjoining utility room and cloakroom, six bedrooms and two bathrooms. There is a landscaped formal garden of some 1.34 acres and a further 7.49 acres of land to the west comprising a large level paddock with a fishing lake and a summerhouse. The whole therefore extends to just under 9 acres. The driveway leads to a detached double garage/stables for which planning permission exists (with no occupancy restrictions) for conversion to a three-bedroom bungalow. The main house has a gross internal floor area (“GIA”) of 2,933 sq ft (272 sq m) making it slightly smaller than the converted barn at Brownhayes Farm. The sale price of the whole equated to £293 psf.

86. Once again, we received no live evidence concerning the impact which the Project, and the use of the driveway in conjunction with it, had on the behaviour of prospective purchasers of Oak House. Mr O’Rourke did obtain a letter dated 13 August 2017 (addressed “to whom it may concern”) from the new owners of Oak House, Mr Smith and Ms Conlong, in which they confirmed that they had been aware of the Project at the time of their purchase. They had spent some time in 2016 looking at rural properties in Cheshire, viewing 25 houses before purchasing Oak House which they said offered the land and space they required at a price which was affordable. Their experience had been that properties of similar size and location were for sale at prices more than £200,000 higher than the asking price of Oak House. They had proceeded with the purchase in the belief that the price reflected the proposed new well heads and in the belief that had the Project not been planned, Oak House would have commanded a much higher price.

87. While the purchasers explained in their letter that they had been aware of the Project when they bought Oak House, they also made a separate point that they had not been made aware “that the driveway would be purchased ... and used accordingly” as part of the Project. This had only recently been brought to their attention, and they considered that it would “inevitably have an impact on our lifestyle and the value of our home”.

88. Evidence was also given by Mr Stevenson of a conversation he had had with the purchasers of Oak House in March 2017 in which they had confirmed to him that they had proceeded, as Mr Stevenson put it, “with full knowledge of the proposed gas storage Project” and had raised no concerns about its impact on their lifestyle. The only record of this conversation is an email which Mr Stevenson sent to the respondent’s solicitors on the same day in which he described Mr Smith and Ms Conlong as “very relaxed about the project” and “fully aware of its existence (the project and access to the drive)”. Mr Stevenson said he was surprised that they had apparently written in the terms of the letter of 13 August 2017; he had written to them in September suggesting that they contact him if they had any concerns, but had not heard further from them.

89. The most significant evidence which we received about the sale of Oak House was from Mr Stanistreet. He had not been aware of the letter from Mr Smith and Ms Conlong when he had prepared his written evidence, but he was asked about it in cross examination. He first described the

purchase of Oak House as an “open market transaction” and then clarified that he meant by that that “it appears to be the case that it was sold at market value.” Neither Mr Stanistreet, nor his colleague Mr Beech (who had undertaken the valuation of Brownhayes Farm on which Mr Stanistreet relied) regarded the price at which Oak House had been sold in July 2016 as having been adversely affected by the acquisition of the Rights over the driveway or other aspects of the Project. Mr Stanistreet acknowledged that Oak House was right next door to Brownhayes Farm, shared the use of the same access and was subject to exactly the same benefits and constraints as a result of the Project. Apart from suggesting that the purchasers may have been unaware of the extent and potential impact of the project he could not explain why the value of Oak House had not been detrimentally affected by the disadvantages he perceived it to bring. Despite the contents of the purchasers’ letter Mr Stanistreet appeared to be entirely satisfied in his own mind that the property had not been sold at an undervalue.

90. We were troubled by the state of the evidence concerning the sale of Oak House, and we would have liked further information from the purchasers and to understand whether they had been advised before their acquisition that the driveway would be used to provide access to the Project area. Their reference to the driveway being “purchased” may simply have been a loose way of referring to the acquisition of the Rights, or it may reflect a mistaken belief that some additional transaction is planned. It is also unclear what the purchasers had been told about the use of the driveway which caused them to believe there would inevitably be an impact on their lifestyle. If, as we suspect may be the case, the source of the fears expressed in the letter was information provided by Mrs O’Rourke (such as she included in her own witness statement) we have already explained that we consider those to be too pessimistic.

91. We are also struck by the lack of interest displayed by Mr Stanistreet in the suggestion in the purchasers’ letter that rural Cheshire properties of similar size were for sale in 2016 at prices more than £200,000 higher than Oak House. If the letter could be taken at face value it would support a case that Oak House had been discounted to reflect the proposed new well heads to be constructed in the vicinity and that, otherwise, it would have commanded a much higher price.

92. Neither party asked Mr Smith or Ms Conlong to provide a witness statement nor were they called to give oral evidence. Given the unsatisfactory and contradictory state of the evidence we are not prepared to place weight on their letter. In view of the significance the letter might have had we will summarise why we are unable to rely on it. First, the authors of the letter have not been called to give evidence and to be cross examined. Secondly, we have received first hand evidence from Mr Stevenson of his own conversation with the purchasers (corroborated by his email) which, in part at least, contradicts the information contained in the letter. Third, we have been told nothing of the provenance of the letter, which is exhibited to Mr O’Rourke’s witness statement without any explanation of how he obtained it; the letter is typed and we infer that its author expected it to be relied on in these proceedings, yet it is signed by one only of those whose name it bears. It may be entirely genuine, but we cannot be wholly confident that it records the purchasers’ own views. Finally, and most importantly, the views of the claimant’s own expert witness are not consistent with the purchasers’ apparent belief that they paid significantly less for Oak House than they would have done but for the Project and the Rights.

The sale of Drakelow Gorse Farm

93. A second property in the immediate neighbourhood has been successfully sold while Brownhayes Farm has been on the market. Drakelow Gorse Farm, a dilapidated farmhouse with an

extensive range of buildings on a 10 acre site, is on the opposite side of Yatehouse Lane and only a short distance north of the Brownhayes Farm driveway. It was sold to a residential property developer for £600,000 in August 2016. Planning consent was then obtained for the demolition of the former farmhouse and its replacement with two substantial, high specification, detached four-bedroom dwellings with their own private drives off Yatehouse Lane. The substantial range of period brick built barns are now being converted to provide 5 terraced and semi-detached cottages. The development may include a shared tennis court and the option of shared ownership of grazing land and equestrian facilities, or permission may be obtained for two additional homes and a covered parking area.

94. We were told that by November 2017 the first completed property had been released to the market, and was sold subject to contract at a figure fractionally under the asking price of £625,000 within a week of release. A second property had been sold immediately 'off-plan' at close to the £650,000 asking price and there was considerable interest in the remaining three units of the first phase.

95. Mr Salomon believed that the developer, to whom he had spoken, was aware of the Project when he purchased Drakelow Gorse Farm in August 2016. Mr Salomon had been informed by the selling agents for the Drakelow Gorse development that any impact from the Project on sales had been negligible. A few potential purchasers may have been deterred, but not sufficient to have had any impact on the value of the completed units. Mr Stanistreet did not suggest that the sales at Drakelow Gorse were at a value discounted to reflect the Project. Mr O'Rourke confirmed that the same developer had also viewed Brownhayes Farm but had not made an offer.

96. Having inspected the development currently being undertaken at Drakelow Gorse it is clearly of a very high standard and when completed will form a most attractive residential enclave. The existing gas storage infrastructure (in particular wellheads H402 and H406) and some of the proposed new installations (in particular wellheads H503 and H506) and access roads are as close to Drakelow Gorse as the new installations around Brownhayes Farm (particularly wellheads H501 and H502). The development adjoins Yatehouse Lane and, unlike at Brownhayes Farm, no access is shared with the respondent. It is also true, as Mr Stanistreet emphasised, that Drakelow Gorse Farm was a pure development site, purchased with a view to the dilapidated farmhouse being demolished and replaced by new properties, with the farm buildings being converted. We agree that is a significantly different project from any available at Brownhayes Farm. In other respects, however, the sale of Drakelow Gorse Farm is instructive. It suggests that an apparently competent and successful developer did not regard proximity to the new wellheads, or the prospect of a 7 year construction phase in the locality, as sufficiently disadvantageous features to require that the site be avoided.

Discussion and conclusion

97. It is for the claimant to show that she has been unable to sell Brownhayes Farm except at a price substantially lower than that for which it might reasonably have been expected to sell if it had not been adversely affected by the acquisition of the Rights over the driveway. Although in this case there is no requirement for the claimant additionally to show that she has made reasonable endeavours to sell her interest, in practice Mrs O'Rourke's case has relied heavily on the marketing history of the property.

98. Mr Stanistreet's explanation for the failure of Brownhayes Farm to find a buyer since June 2015 was that no reasonable purchaser would purchase the property at or close to its open market value when faced with the prospect of living in such close proximity to a major construction site for seven years, after which they would be living in an "industrialised" area'. In order to support that case, it

was necessary for him to form a view of what the open market value of the property would have been had it not been blighted as he considered it had been. Mr Stanistreet did not himself carry out a valuation of Brownhayes Farm, but relied on the work of a colleague, Mr Derek Beech MRICS, whose report valuing the converted barn alone (and not the outbuildings or yard) was appended to Mr Stanistreet's own evidence.

99. Mr Beech, who was not called to give evidence, had been asked to value the converted barn as at the date of his inspection, 27 July 2017. No explanation was given why this date had been chosen (and not, for example, the date of the respondent's counter-notice), nor of why Mr Beech had not been asked to value the whole unit. One consequence of his instruction to value the property as he saw it was that Mr Beech assumed that the barn conversion was arranged as two separate units, each with four bedrooms and shared use of the rear garden, rather than a single unit of eight bedrooms. It will be remembered that the first steps to divide the property had been taken by Mr O'Rourke after the service of the counter-notice in January 2017. Mr Beech considered that the larger unit of 2,300 sq ft had a value of £500,000, while the smaller unit of 1,700 sq ft was worth £370,000 on 27 July 2017. He assumed a marketing period of six to twelve months and anticipated "a reasonable level of demand for owner occupation."

100. Mr Stanistreet attempted to use Mr Beech's valuation and the sale of Oak House to demonstrate that Brownhayes Farm had been marketed at an appropriate asking price. He applied the rate of £293 psf which Oak House had achieved to the net internal area of Brownhayes Farm House (4,004 sq ft), to produce a figure of £1,173,000. Accepting that Oak House was in superior condition, he added £300,000 to Mr Beech's aggregate valuation at £870,000 as an allowance to complete the division into two properties and to bring it up to an equivalent standard. In cross-examination Mr Stanistreet accepted that this exercise produced a figure that was in excess of Brownhayes' value at July 2017. Moreover, Mr Beech's valuation was of the house alone and excluded the outbuildings and commercial unit and yard while the unit rate for Oak House was based on the whole property including the garage with planning consent. We therefore found this aspect of Mr Stanistreet's evidence to be unconvincing.

101. Neither Mr Beech nor Mr Stanistreet had carried out a development appraisal to ascertain the value of the development opportunity presented by the outbuildings at Brownhayes Farm. Nevertheless, on the basis of the planning permission and drawings provided by Mr O'Rourke, and after discussion with colleagues, Mr Stanistreet's view was that the extra land and buildings added about £100,000 to Mr Beech's figure giving a total value for the combined unit of £970,000.

102. Mr Stanistreet's suggestion that the development potential of the site represented only £100,000 is in marked contrast to the expectation implicit in the early marketing of the property. It will be recalled that in mid-July 2015 the converted barn alone was offered to the market at a price of £650,000, while at the same time the whole unit was available for £1.1m (as it had been for some six weeks or so). The price differential between the two packages suggests that at that time the claimant's agents considered that the development potential of the yard and outbuildings contributed about £450,000 to the value of the combined unit. If Mr Stanistreet is right, the previous agents' expectations would appear to have been wholly unrealistic.

103. On behalf of the respondent Mr Salomon disagreed with Mr Stanistreet's opinion that Brownhayes Farm was blighted by the respondent's acquisition of the Rights over the driveway. In his view the claimant's case completely disregarded the sale of Oak House within a short period of coming to market at a fraction under its asking price. That factor alone, Mr Salomon believed,

demonstrated that there was still a healthy market for properties in the immediate vicinity of the Project. The response of the same market to the properties now being developed at Drakelow Gorse Farm provided further evidence that proximity to new gas storage installations, and the prospect of further similar installations arriving over a period of years, were not significant obstacles to successful undiscounted sales.

104. We agree with Mr Salomon's assessment. In our judgment, despite the views expressed in correspondence by some of the claimant's agents, the sale of Oak House proves that the Project is not the reason for the failure of Brownhayes Farm to sell. In terms of location, that property cannot be bettered as a comparable. It sold while Brownhayes Farm was on the market and within a few months of the relevant date for the purposes of this reference, when circumstances were not materially different (as Mr Stanistreet agreed). It was subject to the same rights and encumbrances in terms of location and environmental factors as Brownhayes Farm and access to it over the shared driveway will be subject to the same Rights, yet it sold quickly and without difficulty. The evidence produced by both parties shows that the purchasers were aware of the Project when they bought Oak House and there is no reason to assume that they were poorly advised about the extent of the Rights or that what they were told put them off or caused them to reduce the price they were prepared to pay.

105. There are of course significant differences between Brownhayes Farm and Oak House, not the least of which is that the latter was presented in very good order and could be occupied immediately. The development element at Oak House (i.e. the potential to convert the garage building to provide an additional residential unit) was also much more straightforward than the prospects at Brownhayes. The two properties would undoubtedly, in our judgment, appeal to very different markets. Mr Salomon's valuation of the whole of Brownhayes Farm including the outbuildings as at the relevant date was £675,000 (supported by a valuation undertaken on behalf of the respondent by Whittaker and Biggs, Chartered Surveyors, in December 2016). Bearing in mind what the purchasers of Oak House got for their £860,000, namely a well-presented period property with significant grounds and potential for development, that figure seems to us much nearer to the mark than the values spoken to by Mr Stanistreet, or those at which Brownhayes Farm was marketed. Mr Salomon's view is also more readily reconciled with the offer of £750,000 for the whole property which Mrs O'Rourke accepted in February 2016, than the much higher figures which Mr Stanistreet considered appropriate. A lower valuation is also consistent with the advice of Ms Heywood of Reeds Rains in August 2017 that the asking price should be reduced in an attempt to stimulate interest.

106. We find further support for the view that the Project is not the reason for the failure to sell Brownhayes Farm in the limited evidence we received concerning the sale of a number of comparable properties in Byley and the surrounding area between July 2016 and September 2017. We were not assisted by the attempt to analyse the sale prices of such diverse properties, some with development potential, on a comparative basis (from £126 psf for a four-bedroom detached house of an average standard on a half-acre plot, to £319 psf for a five-bedroom house of a good standard on a much larger site). What the evidence of such sales did provide was confirmation that Brownhayes Farm is, and always has been, overpriced.

107. At the date of the hearing Brownhayes Farm was being marketed as a whole at an asking price of £925,000. That sum would have been almost enough to purchase Church House, Byley, an imposing six-bedroom, period house of 5,000 sq ft (464 sq m) with outbuildings, a detached cottage, garaging and 3.5 acres, which was sold subject to contract in August 2017 for £950,000. The Old Rectory, Byley, a fine 1867 detached four-bedroom character house in 1 acre could have been acquired for £730,000 in August 2017. Although smaller at 2,500 sq ft (232 sq m), the property was agreed to be in good

order and was said to be more attractive than Brownhayes Farm. Highfield House, Lach Dennis, a double fronted detached house of 3,300 sq ft (307 sq m) on a 2.25 acre plot with a paddock and stable block in a rural location and in good order sold for £810,000 in December 2016.

108. The difficulty of marketing Brownhayes Farm seems to us to have been well understood by Ms Heywood and Ms Holden of Reeds Rains in their advice to Mrs O'Rourke. They advised, in effect, that the current marketing efforts had fallen between two stools. As a family home Brownhayes Farm was burdened by excessive development potential, which distorted the asking price and put off residential purchasers. As a development prospect it was marketed at an unrealistic level allowing little room for profit.

109. The main house, partially converted to two separate dwellings, has the disadvantage of a modest, shared garden and very close proximity to the two outbuildings with planning permission for residential conversion. Before the partial conversion into two units the property was over-provided with bedrooms. It was not well presented, with the unsightly light industrial 'tin shed' and its associated buildings and yard clearly visible from the approach and from parts of the main house. Without extensive further work to both the house and to the barns and tin shed, the property would not have the same appeal as a single unit as any of the comparables (including Oak House) and did not justify the figures being sought. As it stands, we think it would only appeal to a residential purchaser prepared to undertake a large scale and potentially expensive renovation, who would expect the anticipated effort and risk to be reflected in the selling price. We also think it is unfortunate, and damaging to the claimant's attempts to sell, that the property was incorrectly described in marketing particulars as having an area of 2.5 acres when the true area is agreed to be 1.1 acres (plus the driveway). Even if the paddock of 0.35 acres formed part of what was being offered to the market, the whole still comes in at less than two acres. A potential purchaser lured to view the property in the expectation of finding much more extensive gardens and grounds than exist would be likely to go away disappointed.

110. It does seem to us that Brownhayes Farm holds further development potential over and above the additional units which are currently permitted. We see no reason why it should not appeal to a residential developer, well advised by an imaginative and sympathetic architect, if the sales effort and price were properly directed towards that market. Many of those who have viewed the property have been developers, but they have taken their interest no further. Although neither party has prepared a development appraisal, Ms Heywood's advice that the asking price (then of £900,000) plus the expenditure required to carry out the required works, wouldn't provide the return a developer would be looking for, fits well with the marketing history. If Mr Stanistreet is correct that the development potential adds £100,000 to the existing residential value, it is obvious why no developer has made an offer close to the asking price.

111. For these reasons we cannot accept the claimant's case that she has been unable to sell Brownhayes Farm, except at a significantly discounted price, because of the impact of the Rights acquired by the respondent over the driveway. In our judgment Mrs O'Rourke has been unable to sell her property because it has been marketed at a price significantly in excess of its unblighted value. Moreover, the evidence of the sale of Oak House, which the claimant's own expert considers to have been at a price unaffected by the acquisition of the Rights, shows that a sale at full value was achievable, despite the uncertainty and potential disruption created by the Project. Evidence which might have supported the claimant's case is missing or insubstantial and unable to be tested. In those circumstances we conclude that the claimant has not made out her case under ground (g) and the reference is dismissed.

Martin Rodger QC

Deputy Chamber President

Paul Francis FRICS

15 May 2018