



IN THE TRAFFIC AREA FOR THE WEST OF ENGLAND

WRITTEN DECISION OF

THE DEPUTY TRAFFIC COMMISSIONER

REDACTED VERSION TO BE SERVED ON THIRD PARTIES INCLUDING THE COMPLAINANT

OPERATOR

M P LIGHTBOWN & SON LTD

OH1112624

The licence

1. M P Lightbown & Son Ltd (hereafter referred to as Lightbown) is the holder of a standard national goods vehicle operator licence authorising 6 vehicles and 12 trailers. The directors are Wayne Lightbown and Susan Rowley.

The background

2. There are two operating centres. Merston Manor Farm, Chapel Lane, Merstone, Newport, Isle of Wight is the subject of this public inquiry. It was specified in January 2014 and authorises 3 vehicles and 8 trailers. There is plenty of parking space to accommodate this authority. Merston Manor Farm and Merston Manor are accessed from the busy main A3056 trunk road which connects Newport to Sandown. There is a public road that goes into the village of Merstone which becomes Chapel Lane from where vehicles can then access Merston Manor and Merston Manor Farm but at Chapel Lane the road becomes too narrow to accommodate large commercial vehicles. Consequently, the large 44 tonne vehicles operated by Lightbown gain access to Merston Manor Farm by a public bridleway which goes straight past Merston Manor. This bridleway is owned by the owners of Merston Manor Farm.
3. As a result, an undertaking is attached to the licence that authorised vehicles shall only enter and exit the operating centre via the private access road from the A3056.

4. Merston Manor Farm is owned by A E Brown and Sons and they have been farmers there for generations. The operator through Wayne Lightbown has built up a good customer relationship with the farm initially by servicing his farm product transport needs (asparagus, sweetcorn, winter vegetables and grain) and then by diversifying into other transport work. As the work has diversified so it has grown, and the number of vehicle movements has grown from the seasonal nature of crop transportation to the all year-round vehicle movements of general transport work.
5. There is no compliance history and I have previously stated in my directions that I am dealing with this matter on the basis that the operator is compliant. No objection was raised by any local residents at the time of the application to specify the operating centre.

The complaint

6. However, on 11th May 2016 Fiona Burns-Brannan who lives at Merston Manor which is approximately 15 metres from the operating centre lodged a complaint against the five-yearly renewal of the operating centre which can be summarised as follows
 - I. Vibration to her property when the commercial vehicles start up
 - II. It is in the middle of a residential area
 - III. The unsociable hours of operation and maintenance
 - IV. Failure to comply with the undertaking.
7. The then Traffic Commissioner for the area, Ms Sarah Bell, recused herself from the case as a local resident and tenant of Ms Burns-Brannan alleged conspiracy between the operator and the Traffic Commissioner and Ms Bell passed the matter to me to deal with. At the public inquiry hearing Ms Burns-Brannan stated that this individual has now left her property and that regrettably he suffered from mental health problems. Ms Burns-Brannan herself indicated at the public inquiry hearing that she has no issue whatsoever with either Ms Bell or me.

The decision to review the operating centre and call to public inquiry.

8. Having reviewed the matter on the papers I directed that a public inquiry should be convened to consider whether authorisation of the operating centre should be removed at the five yearly review stage pursuant to sections 31 and 32 of the Goods Vehicles (Licensing of Operators) Act 1995 as referred to in the call up letter to the operator (pages 6 – 9 of my briefing papers). The Senior Traffic Commissioner's Statutory Document No. 4 (hereafter referred to as SGD4) relates to operating centres and paragraphs 98 to 108 of the Directions deal with the review procedure when complaints about an existing operating centre are made. Paragraph 64 also provides useful guidance as follows: *"Whenever a traffic commissioner determines that an environmental review of an established operating centre is appropriate in order to consider the environmental impact of vehicle operation the reviewing traffic commissioner must carry out a careful balancing of the rights of the operator to continue to operate from an established site and the rights of local residents to quiet enjoyment of their property. This may require a detailed analysis of the evidence be undertaken to determine the precise nature of the complaints and to whom they should be directed"*.
9. I remind myself of paragraph 107 which states that *in conducting a review of an operating centre the traffic commissioner will consider*

- I. *whether the operating centre continues to be suitable for the purposes for which the operator's licence allows it to be used;*
- II. *on the basis that it is no longer suitable, whether conditions could be attached or changed which would make it suitable;*
- III. *or whether it is incapable of being made suitable by the imposition or changing of such conditions and paragraph 108*

Finally, I remind myself of paragraph 108 which states: *As this suggests, on review of an operating centre the traffic commissioner might attach conditions or vary existing conditions for environmental reasons, such as the times vehicles use the operating centre, or for non-environmental reasons, such as road safety. The traffic commissioner might also take account of any undertakings offered. The traffic commissioner can also remove an operating centre from a licence for environmental grounds, but only in limited circumstances on the grounds of the adverse effects of the parking of the operator's vehicles, or for non-environmental reasons.* These paragraphs provide very useful guidance which I refer to after my findings of fact.

10. Section 31 of the 1995 Act provides as follows -

(1) "If, after a notice has been served under section 30 in respect of a place specified in an operator's licence, a traffic commissioner determines that the place is unsuitable—

(a) on grounds other than environmental grounds, or

(b) on the ground mentioned in subsection (2),

for use as an operating centre of the licence-holder, he may (subject to subsection (3)) direct that it cease to be specified in the licence.

(2) The ground referred to in subsection (1)(b) is that the parking of vehicles used under the licence at or in the vicinity of the place causes adverse effects on environmental conditions in that vicinity.

(3) Where the only ground for giving a direction under subsection (1) is the ground mentioned in subsection (2), the traffic commissioner may not give such a direction unless during the period of review in question representations were made to him or another traffic commissioner —

(a) by such a person as is mentioned in section 12(2), or

(b) by a person who is the owner or occupier of any land in the vicinity of the place in question,

as to the unsuitability of the place on environmental grounds for continued use as an operating centre for vehicles used under any operator's licence.

(4) Representations made by a person such as is mentioned in paragraph (b) of subsection (3) shall be disregarded for the purposes of this section if, when they were made, any adverse effects on environmental conditions arising from the continued use of the place in question would not have been capable of prejudicially affecting the use or enjoyment of the land mentioned in that paragraph.

(5) Any representations under this section—

(a) shall be made in the prescribed manner; and

(b) shall contain particulars of any matters alleged by the person making the representations to be relevant to the issue to which they relate; but where a traffic commissioner considers there to

be exceptional circumstances that justify his doing so, he may direct that representations be treated for the purposes of this Act as duly made under this section notwithstanding that they were not made in the prescribed manner or within the period of review in question.

In this case lawful and valid representations were made by a person who is the owner or occupier of any land in the vicinity of the place in question, namely, Ms Burns-Brannan who lives in close proximity to the operating centre. Her representations were made in the prescribed manner and did, in my view, set out relevant particulars as referred to at paragraph 6a – d. Consequently, I have the power to direct, where appropriate, that it ceases to be a specified operating centre.

11. Section 32 of the 1995 Act provides as follows -

(1) If, after a notice has been served under section 30 in respect of a place specified in an operator's licence, no direction is given in respect of the place under section 31, a traffic commissioner may direct—

(a) that conditions (or additional conditions) such as are mentioned in section 21, 22(1)(c) or 23 be attached to the licence;

(b) that any conditions already attached to the licence under section 21, 22(1)(c) or 23 be varied.

(2) Any conditions attached to the licence under subsection (1)(a) shall relate or, in the case of conditions such as are mentioned in section 22(1)(c), shall only require a traffic commissioner to be informed of events that relate—

(a) only to the place referred to in subsection (1), or

(b) only to that place and any other places in respect of which the traffic commissioner giving the direction has power to attach conditions under that subsection.

(3) Any variation under subsection (1)(b) shall be such as imposes new or further restrictions or requirements—

(a) only in relation to the place referred to in subsection (1), or

(b) only in relation to that place and any other places in respect of which the traffic commissioner giving the direction has power to attach conditions under that subsection.

(4) Where a traffic commissioner gives a direction in respect of an operator's licence under section 31 or subsection (1)(a) above, he may also vary the licence by directing—

(a) that any vehicle cease to be specified in the licence;

(b) that any maximum number specified in the licence under section 6 be reduced;

(c) that a provision such as is mentioned in section 5(2) be included in the licence;

(d) that a provision such as is mentioned in section 6(1)(b) or (2)(b) be included in the licence.

(5) In this Act any reference, in relation to an operator's licence, to a condition attached to the licence under section 21, 22 or 23 includes a reference to any condition such as is mentioned in section 21, 22 or (as the case may be) 23 attached to the licence under subsection (1)(a) above.

This section therefore clearly gives me the power to attach conditions to mitigate any adverse environmental or road safety impact and was used as authority to attach the current condition. It is to be noted this was attached "on the papers" without the TC conducting a site visit. I also remind myself that paragraph 18 of SGD4 states that, "In reaching a decision the traffic commissioner is entitled to take into account any undertakings offered by the applicant or licence-holder and any conditions that might be attached to the licence in question, and may assume that any conditions so attached will not be contravened. Any decision must

be proportionate. The traffic commissioner may attach any conditions that he or she thinks necessary for preventing or minimising any adverse effects on environmental conditions arising from use of a site as an operating centre.”

12. The sections therefore clearly give me the power to review the operating centre on both road safety and environmental grounds and if appropriate to either remove the operating centre or to attach conditions to address the road safety or environmental concerns. In this case the reason for the review is as stated above - that authorised vehicles (being up to 44 tonnes in weight) can only go to and from the operating centre by using a public bridleway. It is an agreed fact that this bridleway is not a made up or adopted road, it is only wide enough for one vehicle at a time, it is regularly used by cyclists and horse riders and it is very close to Merston Manor which is a Grade 2* listed building.
13. When Ms Burns-Brannan, the owner of Merston Manor, lodged her complaint she did so on both road safety and environmental grounds. During the course of the public inquiry hearing I ascertained that there is another road to the operating centre which is perfectly adequate for large commercial vehicles to use. Having driven up and down that road when I conducted my site visit I was told at the public inquiry hearing it is privately owned and that the owner who is a local farmer is not on good terms with the farmer who owns Merston Manor Farm. When I drove up and down this road I noticed that a number of vehicles used it and that there were no signs whatsoever stating that it was a private road or that access was prohibited for any vehicles.

The call up to public inquiry

14. A call up letter (pages 6 – 9 of my briefing papers) was sent to the operator on 22nd March 2018 convening a public inquiry on 27th April 2018. The letter explained the nature and extent of my powers. Ms Burns-Brannan was also notified of the hearing. She indicated she wanted to attend the hearing to give evidence and was unavailable due to being out of the country and so a new hearing date of 27th June 2018 was arranged.
15. Traffic Examiner Lynne James had visited the operating centre on 12th September 2016 and as a result she prepared a written report dated 15th February 2018 (pages 43 – 69 of my briefing papers). In addition, Traffic Examiner Mark Riches conducted a further site visit on 15th June 2018 at my request so that I could have an up to date appraisal of the position. His report was attached to my briefing papers in addition to the report from TE James.
16. As stated above, the matter was listed for a full hearing on 27th June 2018. Wayne Lightbown attended represented by Mr. Philip Brown, solicitor (hereafter referred to as Mr Brown), as did Ms Burns-Brannan accompanied by her husband Mr Christopher Crofts. Mr Brown very helpfully provided me with some written representations dated 5th June 2018 prior to the hearing. Mr Ben Brown (hereafter referred to as Farmer Brown to avoid confusion with Mr Philip Brown, solicitor) also attended for part of the hearing. A vehicle examiner observed part of the proceedings but took no part. I heard detailed evidence from the operator and from the representor and some evidence from farmer Brown and I took full notes whilst the various witnesses gave evidence.

My site visit

17. Prior to the public inquiry I attended at the premises of the operating centre to see it for myself. The Senior Traffic Commissioner’s Statutory Document No. 4 gives helpful guidance about site visits by traffic commissioners and states at paragraph 64 that *“it is regarded as essential for a traffic commissioner to conduct a site visit before presiding over any public inquiry convened with regard to the suitability of the proposed operating centre”*. The site visit enables the presiding traffic commissioner to assess the suitability of the site for

themselves and to familiarise themselves with the relative locations of the operating centre and complainant's property or properties as well as driving to and from the operating centre along the different roads and visiting the surrounding area.

18. Consequently, I attended at the site on the morning of the public inquiry prior to the hearing of the evidence. I also attended there again that afternoon after I heard the evidence. Finally, I attended a third time by driving there and visiting at a time when I was not expected by either the operator or the complainant. I noted and took a photograph of a blue sign stating, "public bridleway only – no motor vehicles". This sign was at the top of the bridleway where it meets the main A3056 and was not referred to by either traffic examiner in their report. Having driven up and down the public bridleway a number of times my initial view was that it is wholly unsuitable for the traversing of heavy commercial vehicles. My initial view was that the evidence of the traffic examiners that the road surface is appropriate or that the manoeuvre going out of the bridleway on to the A3056 is safe is wholly wrong. When I attended the weather was warm and dry. I drive a 4 x 4 vehicle. I would not want to have driven up and down the bridleway in an ordinary car. One journey down the bridleway was sufficient to make clouds of dust billow up from my car as I drove down it. One journey was sufficient to cover my tyres and car in a layer of fine dust. The bridleway was **un made** up, bumpy and could not be negotiated at a speed of any more than a few miles an hour. The bridleway was narrow and there was not enough room for cars to easily pass each other safely let alone commercial vehicles. I saw some walkers using the track who had to move over next to the hedgerow when I drove past them. My initial view was that I considered the manoeuvre of exiting the bridleway onto the A3056 to be dangerous. I chose not to do it a second time. Whilst there I observed a 44-tonne vehicle coming down the bridleway. There was no room for any other vehicle to pass. Clouds of dust billowed from behind the trailer. It had to travel at a snail's pace to negotiate the bridleway safely.

The DVSA evidence

19. The evidence can be summarised easily. TE James had visited the operating centre on 20th July 2016 and her evidence was that the operating centre was suitable in terms of size and access in and out for the 3 vehicles and 8 trailers which are authorised at Merston Manor Farm. She stated in her written report that the lane which is maintained by the farm was in very good order. She also concluded that the access road (public bridleway) being used should be the only route in and out of the site and that, in her opinion, it was safe. The evidence of TE Riches was similar. He visited the site on 15th June 2018 and he referred in his report to the fact that the access is via a "private road" (his words not mine) marked by a no entry sign saying, "*no access to unauthorised vehicles*". It is to be noted that this sign is at the bottom of the bridleway and not at the top where it meets the A3056. He described the visibility at the point where the private road meets the A3056 as "extremely good in both directions". In my view neither TE properly dealt with the issue of the suitability of the bridleway. Neither report made sufficient reference to the issues identified by the complainant and by me during my site visit. Both TEs refer to the private road being narrow when close to the operating centre but say nothing more except that the main A3056 is a main road with plenty of room for large vehicles to pass one another with ease. With respect this is obvious as the A3056 is a major trunk road on the island and is obviously suitable for all traffic. That is not the issue here. The issue is the suitability of the bridleway which was erroneously referred to as a private road when it is not – it is a bridleway only. I was also surprised that TE Riches made no mention of the fact that the blue sign which I took a photograph of on my site visit had been erected since TE James had visited and he had not made any enquiry of the local authority about this.

20. I regret the reports of both traffic examiners do not assist me at all and I am extremely surprised at their observations and findings. As neither of them attended the public inquiry I was not able to question their evidence. I deal with my findings of fact in this regard below.

The evidence of the operator

21. The operator's case and evidence were simple. Wayne Lightbown has been in business as a haulier for many years having originally started a business relationship with farmer Brown by transporting his seasonal crops of asparagus, sweetcorn, winter vegetables and grain and over the years diversifying into other general haulage and transport work. His vehicles were originally visiting vehicles, but he applied in January 2014 to nominate the farm as an operating centre to save costs. A number of vehicle movements are refrigerated trailers moving early in the morning to catch the vehicle ferry to deliver to various supermarkets. No vehicle maintenance is carried out at the operating centre. Wayne Lightbown told me that he tried to reduce vehicle noise and vibration by parking at the far end of the farm away from Merston Manor House and that he only operated at certain times whereas agricultural vehicles such as tractors and spraying machines operated at the farm 24 hours a day 7 days a week.
22. Mr Lightbown through Mr Brown provided me with a document entitled "*Vehicle movements to and from the operating centre at Merston Manor Farm, Chapel Lane, Merstone, Newport, Isle of Wight between 1 May 2018 and 31 May 2018.*" It stated that it was compiled by the operator from data provided by the operator's drivers and verified through a check of the operator's tachographs. I regret that I found the data to be of very limited evidential value. There were no registration numbers; instead the document said that "*the statistics are drawn from a number of different vehicles operated by the company*" so I could not ascertain if they were vehicles based at Merston Manor Farm or from the Eastleigh depot. Out of 44 vehicle movements only 19 had any comment recorded against them. This comment was "farm delivery" in 16 out of those 19 comments and the other 25 movements were not properly explained. The text in the document stated that just under 20% of the vehicle movements by the operator related to the transport of agricultural produce or equipment and consequently it was put to Mr Lightbown that this meant that 80% related to non-agricultural work and that this work could and should be carried out from a different operating centre as there was no need for it to be based at the farm. I made a note of the operator's response when he said, "*it might be wrong*". My notes also record that he then said that it was wrong and that the figure was 50%. Mr Brown then tried to help but conceded that "*maths is not my strong point*". In fact, it was conceded (quite rightly in my view) by the operator and Mr Brown that this evidence was either inaccurate and/or flawed. I have therefore wholly disregarded it from my deliberations as it has no accurate evidential value.
23. Mr Lightbown also told me that the last week of July to the end of September is the busiest season and that while he had authority for 3 vehicles, 1 was a spare and he only operated 2. He told me there were only 1 or 2 vehicle movements a day from the authorised vehicles, but he also said that the 3 vehicles that were based at his Eastleigh depot also visited the farm about 3 times a week, but they did not park there overnight.
24. His persuasive evidence was that if I removed the authorisation of the operating centre the vehicles would still have to visit the farm to collect the farm products in any event and so there would be more vehicle movements than at present. In addition, another operator, Imphouse Ltd, also has its operating centre at the farm but its vehicles do not exceed 7.5 tonnes in weight and there is a condition on its licence to this effect. His evidence was that the nuisance which Ms Burns-Brannan is suffering is not just brought about by Lightbown

vehicles but by visiting vehicles to the farm which are not, in any way, connected with Lightbown. He stated that it was difficult to find suitable commercial vehicle parking on the island and that in any event Lightbown vehicles would still have to visit the farm as much as they do at present.

25. In answer to my questions Wayne Lightbown did concede that he had not recently looked at the availability and cost of an alternative operating centre as his solicitor had apparently told him there would be no problem with continued authorisation. He also told me there had never been any accidents or collisions or road traffic safety related incidents of any kind on the bridleway in all the years his vehicles had used it. (This fact was confirmed by the traffic examiner in her report).
26. When Mr Lightbown was questioned by the operator it was put to him that he was breaching the condition/undertaking regarding not using Chapel Lane. He denied this. On closer questioning it became clear that he may have done so but only as a result of the boundary of Chapel Lane being different from where he (and I) thought it was. Consequently, although he may have technically breached the condition/undertaking I did not consider it necessary to take any formal action as a result. Instead I dealt with the matter by way of directions.
27. He was also questioned by the complainant about the conflict between the 44 tonne vehicles and the horses and their riders when both wanted to use the bridleway at the same time. Mr Lightbown told me that he was a horse rider himself and therefore understood the issues. He conceded that the bridleway was narrow, that it was difficult for a horse to pass a truck and that if he or his drivers saw a horse looking "*worried*" (the word put to him in the question was "frightened") that the vehicle engine was switched off until the horse had passed. This clearly demonstrated that there had been previous incidents involving his lorries and horses. She also asked him about the constant nature of operations stating that she had lived at Merston Manor for 31 years and that it was only in the past very few years that there were problems. She suggested to Mr Lightbown that there was no let-up in the vehicle movements and that there were no longer any peak periods and that it was now a 365-day operation. Mr Lightbown conceded that there had been a "slight increase" in movements "*because of the nature of the crop the farmer grows*". He said that if he was not "carting products for this farmer he was carting products for other farmers" as he had diversified his operations.
28. Finally, he was asked by the complainant if he agreed that it was not safe to turn right from the bridleway onto the A3056 as the speed limit on that road was 60mph and when vehicles did turn right they blocked the road for 6 – 7 seconds and that there was only visibility for 60 metres as it was on the brow of a hill. Mr Lightbown disagreed and referred to the report of the traffic examiners which stated that the manoeuvre was apparently safe. It was put to him that when lorries were turning left off the bridleway onto the A3056 that they took up both sides of the highway and Mr Lightbown did agree with this but stated that the lorries only ever pulled out when the road was clear. It was put to him that this was "an accident waiting to happen". He said that there had not been any accidents so far; indeed, this is the case.
29. In answer to my questions Mr Lightbown stated that he was not able to use the other metalled road that apparently belonged to farmer Smith as he was not a tenant of his and that if he became a tenant that he would then lose farmer Brown as a customer.
30. Mr. Brown's written representations recited the background and history and, understandably, prayed in aid the report of TE James. He stated that if I were to remove the operating centre that the operator would lose a major contract and that visiting vehicles

would have to enter and leave the site with farm produce and would be unregulated leading to a negative effect upon the complainant. He stated that the traffic examiners had stated there were in general 2 movements in and 2 movements out of the operating centre on Mondays to Fridays inclusive and that vehicle movement can increase at the height of the growing season *“but this is an occasional occurrence”*. He confirmed the vehicles had to start early in the mornings to catch the ferry to the mainland and that no issues had been raised about this. He stated in his written representations (and this was confirmed by Wayne Lightbown in his oral evidence) that the first complaint was not received until 2016 and that this should be balanced against the fact that the farm had been there for the last 60 years. He asserted that apart from general statements there was no specific evidence of the adverse environmental impact on Ms Burns-Brannan.

31. He also said, *“in addition, within 500 metres of the farm there is a large industrial site which houses a number of goods vehicle operators”*. I shall deal with this in my findings, but I make it clear at this stage that this is not relevant at all as these operators are able to access that site by another road altogether.

The evidence of the complainant

32. The complainant's case was equally simple. Ms Burns-Brannan gave evidence in response to questions from her husband, Mr. Crofts. She told me that she originally bought Merston Manor in 1987 when the surrounding area (including the farm) was all agricultural. Merston Manor is mentioned in the Domesday Book, it is Jacobean being built in 1605 and is reputed to be the oldest brick-built property on the island. It is Grade 2* listed. She asserted that since the addition of what she called the “lorry park” that the vibration, noise and dust had become almost intolerable, that her boundary walls needed constant expensive repair, that her tennis court and swimming pool could not be used very often in the summer due to the dust and that the intensity of the commercial vehicle traffic had increased considerably since the farm was authorised as an operating centre. She asserted that some drivers of the large lorries drove at speed down the bridleway and that they were a danger to cyclists and horses and their riders and that there was a serious road safety risk when they went on to the main A3056 road.
33. She told me that she let out parts of her property (for example, converted stables and a coach house) to paying guests to provide an income to pay for the extensive and expensive upkeep of the property and that the noise, vibration and dust were now leading to a real risk that she would not be able to find tenants. In support of this contention she told me that one tenant had moved out after 12 years as he could no longer cope with the noise and dust. Ms Burns-Brannan told me that she had not objected to the original application to nominate the operating centre in January 2014 as she was not aware of it due to her being in Spain at the time looking after her unwell mother in law. She said that she first became aware of the application when her previous tenant, Warren Wright, told her about it. She said that she has seen commercial vehicles belonging to the operator parked on Chapel Lane in breach of the undertaking. She told me that Imphouse use Chapel Lane (and not the bridleway) to access the operating centre. She said that in 1990/1991 Imphouse started out as a small civil engineering company with two 7.5 tonne vehicles which originally used the bridleway but that when they moved their whole operation and the office they then only used Chapel Lane as the vehicles were small enough to do so. She told me that cars used Chapel Lane to get to the operating centre but that other commercial vehicles which take the grain away from the farm used the bridleway and that this work was highly seasonal and so only happened on a small number of days a year. She stated that in her view 90% of the journeys on the bridleway were attributable to Lightbown vehicles. She told me that car drivers got to the farm via Chapel Lane.

34. When she was questioned by Mr Brown on behalf of the operator it was put to her that there were only 2 movements in and out of the operating centre each day. She asked if the operator had any other statistics to support this. It didn't. Ms Burns-Brannan answers to being cross-examined were simple; she stated that since the farm was specified as an operating centre that the number of vehicle movements had increased. When asked to what extent removing it would solve the problem she said that on the basis of the operator's statistics presented that day the operator's vehicle movements would reduce by 80%.
35. She told me about a number of close encounters with the operator's vehicles coming down the track where she had to reverse back to enable them to pass. She told me that she used the track both ways but that she would never turn right onto the main A3056. She said if she wanted to do this she used the metalled road to do so and that farmer Smith had never stopped her. She described the dust and vibration caused by the operator's vehicles stating that clouds of dust were "*all over my windows, gardens and swimming pool.*"
36. To assist Ms Burns-Brannan provided me with a copy of a site plan and I confirmed with her and the operator that I was aware of the location of properties as I had visited the site.

The operator's evidence heard in closed session

37. After the lunch break I heard some evidence in closed session from the operator about the financial and commercial implications of the effect of removal of the operating centre on the business and of the operator coming to an arrangement to use the access road owned by the other farmer, Mr Smith. **REDACTED**

My directions

38. Having completed the closed session evidence, I indicated that I was not yet in possession of enough factual information regarding matters and that I needed this before I considered and issued my decision. I therefore issued a number of directions regarding this. Unfortunately, there is a number missing from those directions at paragraph 10b, but Mr Brown has correctly assumed that this should read "2018". I also gave both parties an opportunity to provide details of any data of any commercial vehicles using the bridleway that are not operated by Lightbown. I also invited the operator to make any further representations regarding the financial impact of removal of the operating centre, and I made it clear that I expected the production of all relevant data regarding the contracts.

The further information provided

39. Consequently, I have now received the following documents from Mr. Brown.
- a) Letter and accompanying written representations dated 3rd August 2018 on behalf of the operator marked "*commercial in confidence*" comprising 8 pages dealing with my directions.
 - b) A letter dated 28th June 2018 from Ben Brown of A.E. Brown (Farms) Ltd confirming authority for the operator to use the bridleway.
 - c) A plan of the location of the farm and operating centre and access route.
 - d) A plan of the location of the farm and operating centre and associated properties.
 - e) A schedule of commercial vehicle movements to and from Merston Manor Farm for the period 1st June 2017 to 31st May 2018.
 - f) A Land Registry map of the area in question.

40. On 7th August my clerk sent a copy of the schedule of vehicle movements at (e) above to Ms Burns-Brannan and she responded on the same day as follows

- I. *The schedule does not distinguish between those vehicles accessing the farm via Chapel Lane only and those using the bridleway and Chapel Lane. The object of the exercise was to show the proportion of use of the bridleway attributable to Lightbown. Our observations are that most vehicles visiting the farm are small and do not use the bridleway at all.*
- II. *The schedule does not show the size of the vehicles. Imphouse account for almost 50% of all movements and these are small vehicles rarely using the bridleway.*
- III. *Lightbown have 584 movements, all of which use the bridleway, all of which are extremely large vehicles, all of which cause danger to other traffic when entering and leaving the bridleway and all of which are causing danger to other lawful users of the bridleway and damage to a Grade 2* listed building.*
- IV. *The 584 movements account for a very high proportion of commercial non-farm use of the bridleway the only vehicles of this size being the 184 movements of grain trucks which is limited in number and time (August and April).*
- V. *The schedule states that it is compiled from the electronic records of AE Brown Farms Ltd. We cannot see how it keeps records of Imphouse Ltd an entirely separate company using separate premises.*

41. Consequently, I arranged for my clerk to contact Mr Brown to ask for clarification on certain matters. He responded by letter on 11 September stating as follows.

- I. *All commercial vehicle movements listed in the statistical table (e) were of vehicles travelling along the bridleway. This was in clear conflict with the evidence given by Ms Burns-Brannan that Imphouse did not use the bridleway.*
- II. *The statistics provided regarding Imphouse vehicle movements were obtained from one of their directors. More detail was provided regarding their movements. Again, this was in clear conflict with the evidence given by Ms Burns-Brannan that Imphouse vehicles did not use the bridleway.*
- III. I had asked Mr Brown to expand further on paragraph 24 of his written representations and to be specific about who he was referring to and why there would be the apparent loss of the contracts. **REDACTED**
- IV. In paragraph 25 of his written submissions Mr Brown had stated **REDACTED**.
- V. I had indicated to Mr Brown that I intended to provide Ms Burns-Brannan with a copy of paragraphs 1 – 20 of his representations as these only related to geographical issues and vehicle movements and I had asked if he agreed to the disclosure. He stated that he did not as the activities of the other businesses were commercially sensitive. Consequently, I read those paragraphs again and was entirely satisfied that there is nothing whatsoever therein which is commercially sensitive, and Ms Burns-Brannan could obtain the statistics herself by simply recording all vehicle journeys. I therefore disclosed them to her via my clerk.
- VI. In his submissions on 11th September Mr Brown said that his client was suffering from increased stress and that he thought his entire business on the Isle of Wight was at risk and that he had fully co-operated with me.

- VII. Finally, Mr Brown submitted that he had not received any evidence from the complainant which detailed how Lightbown had created any adverse environmental conditions in respect of the complainant's property. He stated that as there would be "minimal reduction in vehicle movement" if the operating centre was removed that I should not make any direction on the grounds of proportionality. He stated that there were "mere assertions" on the part of the complainant and not sufficient evidence.
42. In addition to the above, as a result of my requests to the local authority via my clerk I have received the following documents from Mr Alan White at Island Roads.
- I. Plan marked Chapel Lane Merstone 1
 - II. Plan marked Chapel Lane Merstone 2
 - III. Plan marked Chapel Lane Merstone 3
 - IV. Plan marked Merstone access map
 - V. Photograph of blue sign "public bridleway only – no motor vehicles".
43. In addition, I have received an email from him via my clerk stating the following
- I. There are no weight restrictions on Chapel Lane*
 - II. The route currently used by the operator's vehicles is recorded as a public bridleway falling under the remit of the Isle of Wight Council Public Rights of Way Department.*
 - III. In respect to the "blue sign" at the junction of bridleway A29 with the A3056, this was not erected by Island Roads. However, the Isle of Wight Council's Public Rights of Way Team have confirmed that they erected the sign in question on 3rd January 2017.*
44. As I was concerned at the evidential discrepancies, I arranged to speak to Mr Brown and Ms Burns-Brannan by telephone conference on 21st September as it was not practical to reconvene the public inquiry hearing. I am grateful to my clerk, James Holt, for arranging this. The conversation was recorded, and my questions were sent to Mr Brown and Ms Burns-Brannan in advance. They both had the opportunity to address me on the questions and to make further representations. The evidence and clarification I received has been significant in consideration of my decision. Mr Brown had stated in his written representations that the vehicles operated by Imphouse were all using the bridleway to access their operating centre. In his address to me on that day he was asked about the weight of those vehicles and to confirm where his evidence came from that the Imphouse vehicles used the bridleway as this was in direct conflict to that of Ms Burns-Brannan. Mr Brown confirmed that the vehicles were all under 7.5T, that they did use the bridleway and that the information came direct from the director of Imphouse. He subsequently confirmed this by email. Ms Burns-Brannan was asked if she agreed this evidence and whilst she did not she was not in a position to provide any evidence that disproved this. I had also asked for clarification of the schedule that had been produced as it was the operators' case that all of the vehicles which visited the operating centre used the bridleway. Again, I asked Mr Brown to clarify this and he stated in quite clear terms that these visiting vehicles referred to in the schedule were all over 7.5T and that they all used the bridleway. Again, Ms Burns-Brannan was asked for her comments. Again, she did not accept this was the case but again she was not in a position to provide any evidence in rebuttal. Following on from this telephone conference I considered that I was then in possession of all the evidence that is going to be produced by the operator and the complainant.

The findings of fact

45. As a result, I find the following facts.

- I. Merston Manor is an important landmark property on the Isle of Wight as evidenced by its Grade 2* listed building status and it is located in the vicinity of the operating centre.
- II. The public bridleway which is used by all vehicles to access the operating centre at Merston Manor Farm is located right next to the grounds of Merston Manor and in very close proximity to the manor house itself. Therefore, the traversing of any vehicles along the public bridleway will have a considerable impact upon the quiet enjoyment of Merston Manor.
- III. I accept the reason for Ms Burns-Brannan not objecting to the application to specify the operating centre at the time. She was out of the country and would not have known about the application. In addition, in my opinion the legislation regarding the advertising of applications for operating centres is out of date and in need of review to ensure that local residents can easily ascertain when an application is being made which might affect their quiet enjoyment of their property.
- IV. The entry of motor vehicles to the bridleway is prohibited by the local authority as evidenced by the sign erected at the junction with the A3056 in January 2017 "*public bridleway only – no motor vehicles*". This is also evidenced by the sign at the other end of the bridleway which states "*no access for unauthorised vehicles*".
- V. Section 34(1) of the Road Traffic Act 1988 provides that anyone driving a mechanically propelled vehicle on a road that is a footpath, bridleway or restricted byway is guilty of an offence unless it can be shown that there is a private right in place for people to use the access way to gain vehicular access to their property.
- VI. The operator has provided quite clear evidence (paragraph 38b above) that it has the consent and permission of the owner of the bridleway, A.E. Brown (Farms) Ltd, to use it. Consequently, no criminal offence is being committed by the operator by the traversing of its vehicles up and down the bridleway and the use is lawful.
- VII. There is an apparent conflict between the sign erected by the local authority and the consent of bridleway owner regarding who has permission to use it. Taking account of this and the provisions of Section 34(1) of the Road Traffic Act 1988 I find that its use is therefore not allowed by motor vehicles unless there is specific written permission granted by the owner. Whilst this has been provided for the operator it has not been provided for any other users. I do not consider that I need to see which other permissions have been given. That is a matter for the local authority, Island Roads of the Isle of Wight.
- VIII. The bridleway is used by walkers, horses and their riders as well as all large vehicles which cannot gain access to the operating centre due to the size restrictions on Chapel Lane.
- IX. There have been previous incidents where the operator's vehicles have had to stop to allow the horses and riders to continue on their journey. There is insufficient room for two vehicles of any size to pass each other on the bridleway and if they meet each other one of them has to reverse to a wider section of the bridleway to allow the other to pass safely.

- X. Dust is caused to rise up from any motor vehicle during dry weather as they pass down the bridleway and this dust travels onto the grounds and the building of Merston Manor House itself.
- XI. Whilst Ms Burns-Brannan states in her oral evidence to me that there has been damage caused to the boundary walls by the vibration caused by the use of the commercial vehicles using the bridleway she has not actually produced any documentary or statistical evidence of this to me. However, I do not consider this to be a bar to her claims. Having been a full-time traffic commissioner for 17 years and a part time deputy traffic commissioner for 18 months thereafter I have dealt with enough public inquiries to be able to conclude where there has been evidence of damage simply by seeing the site and hearing the oral evidence of the local residents. This is one of those cases.
- XII. I am satisfied that damage will have been caused but I cannot quantify the extent of that damage. In addition, I cannot possibly quantify how much damage has been caused by the operator's vehicles travelling up and down the bridleway and how much has been caused by other vehicles visiting the operating centre.
- XIII. In her complaint Ms Burns-Brannan states that the vibration and damage is caused to her property when the operator's vehicles "start-up". I cannot see how this is the case as they are parked sufficiently far away from her property so as not to cause the damage. I therefore find as a fact that no damage is caused by the operator's vehicles starting up when they commence their journeys as they are too far away from Merston Manor for this to be the case.
- XIV. I find from the evidence that the number of vehicle movements from the operator's vehicles has increased significantly over the years since the operating centre was specified in 2014. I conclude that this is due to the growth and diversification of the operator's business and of the farm business.
- XV. I find that the number of vehicle movements of the operator's vehicles is a small percentage of the overall vehicle movements of commercial vehicles on the bridleway. On the figures produced in the schedule (paragraph 38e above) by Mr Brown, there is a total of 3,356 commercial vehicle movements along the public bridleway. Of these 918 are attributable to the operator's vehicles of which 584 relate to the general haulage operation and 334 relate to the farm itself. The operator's total vehicle movements therefore account for 27.35% of the overall total vehicle movements
- XVI. 1500 of the 3,356 movements relate to Imphouse vehicles and 938 of the 3,356 relate to visiting commercial vehicles. The Imphouse vehicle movements therefore account for 44.69% of the total vehicle movements and the visiting vehicle movements for 27.94% of the total vehicle movements. It is therefore clear that the percentages of vehicle movements by the operator's and the visiting vehicles are virtually identical with the Imphouse vehicles accounting for the most movements. However, the Imphouse movements are only smaller commercial vehicles up to 7.5T so their impact will be much smaller than the others will.
- XVII. The consequences of this are that if I remove the operating centre from the licence the vehicle movements past Merston Manor for the Imphouse and visiting vehicles will remain at 2,638 out of a total of 3,356, namely 72.63%. The vehicle movements for the operator for the farm would double from 334 to 668, as they would have to

have an extra journey each way to leave the operating centre at the end of the working day and return at the start of the next working day.

- XVIII. Removal of the operating centre would mean that the general haulage operation movements of 584 would stop altogether as the operator would have to base this work elsewhere at another operating centre. The net effect would therefore be that the total operator vehicle movements would be reduced from 918 to 668 and so the operator's vehicle movements would reduce from 27.35% of the total vehicle movements to 19.90% of the total – a reduction of 7.45%.

My considerations and determinations

46. These figures are important as they illustrate very well the impact on Merston Manor of removal of the operating centre. In reaching my decision, I have reminded myself of the Senior Traffic Commissioner's Statutory Document No. 4, the relevant guiding legislation and case law. Determination of this case has required a careful and detailed consideration of the facts.
47. It is quite clear that the public bridleway is not at all suitable for the traversing of any large commercial vehicle as they cause an adverse environmental impact upon Merston Manor. The traversing of all commercial vehicles up and down the bridleway does cause damage to the boundary walls of Merston Manor – although the extent of this damage cannot be quantified by me. It also causes dust to be distributed onto its grounds and the property itself.
48. The traversing of large commercial vehicles also presents two road safety risks. The first is the fact that the bridleway is not wide enough to accommodate two vehicles at the same time and there is a conflict with them and the horses and their riders. The second (and I consider this to be the greater risk) is that when commercial vehicles are turning onto the A3056 from the bridleway they are at the mercy of users of that road not travelling too fast for the road conditions. It is a well known fact that drivers of large commercial vehicles have a much better line of sight than drivers of smaller vehicles and cars but that does not alleviate the problem of users of the A3056 driving too fast and not being able to stop in time if they come across a lorry pulling out as they travel over the brow of the hill and around the bend.
49. However, the governing legislation is clear. I am limited to considering whether the "*parking of vehicles used under the licence at or in the vicinity of the place causes adverse environmental conditions in that vicinity*" – section 31(2) of the 1995 Act. My findings of fact above make it clear that the traversing of the operator's vehicles to access the parking at the operating centre accounts for a small percentage of the total vehicle movements and that removal of the operating centre would result in a very small reduction in the total number of vehicle movements.
50. As stated at paragraph 64 of SGD4 I must conduct a careful balancing act of the rights of the operator to continue to operate from an established site and the rights of local residents to quiet enjoyment of their property. Mr Brown rightly reminds me of the need for proportionality in reaching my decision. When conducting this balancing act I am required to balance the commercial impact of removal of the operating centre against the resultant improvement on any adverse environmental or road safety impact. I conclude that loss of the centre might mean loss of about a third of the income of the business although I cannot

find this as a certain fact – but it is likely. I must therefore ask myself if I should jeopardise a third of the operator’s business as a result of 20% of total vehicle movements causing damage, dust and noise to the occupiers of Merston Manor. I must also consider if I should remove the operating centre on road safety grounds (section 31(1)a of the 1995 Act). I have concluded that the manoeuvre from the public bridleway onto the A3056 is dangerous but even if I remove the operating centre 80% of the movements will continue.

51. I wish to make it perfectly clear that I have the greatest amount of sympathy for Ms Burns-Brannan and her husband. I find as a specific fact that the quiet enjoyment of their property has been disturbed and will continue to be disturbed by the traversing of large numbers of commercial vehicles along the bridleway. I find as a specific fact that road safety is compromised where the bridleway meets the main trunk road, A3056. But the harsh reality is that this quiet enjoyment will continue to be disturbed and road safety will continue to be compromised if I remove the operating centre. I completely understand why a complaint was lodged and I would have done the same in their shoes. Ms Burns-Brannan and Mr Crofts are entitled to rely on regulatory bodies to address their concerns. But the Traffic Commissioner is not the relevant regulatory body here. The relevant regulatory body is the local authority/highway authority – Island Roads. It is clear that the local authority has concerns about the use of the public bridleway by any vehicles as evidenced by the erection of the sign in January 2017 but the fact that the owner of the land has granted permission to the operator and presumably to other visiting vehicles renders the sign meaningless. The road safety and environmental issues must be dealt with by the local planning and highway authority.
52. I therefore conclude that whilst I have every sympathy with the occupiers of Merston Manor that it would not be proportionate or appropriate to remove Merston Manor Farm as an authorised operating centre.
53. That having been said as stated at section 32 of the 1995 Act I have the power to attach conditions to mitigate the adverse environmental and road safety concerns. An undertaking is already in force but this was agreed “on the papers” without a site visit. I remind myself that there is no requirement for a traffic commissioner or their staff to conduct a site visit at application stage. In addition, there has been no material irregularity. I conclude that if a site visit had taken place that a different undertaking might have been agreed and that conditions might have been attached.
54. Dealing with the undertaking I consider this should be removed. Such removal will allow the operator to see if it is possible to gain access to the operating centre via the metalled road that is owned and maintained by Farmer Smith. Removal of the undertaking does not prevent the vehicles from gaining access to the operating centre via the bridleway but it does allow for access by other more suitable routes if this can be arranged at some time in the future.
55. I consider it necessary to attach conditions in accordance with section 32(4) to do what I can to mitigate the adverse environmental and rod safety concerns. I have already stated that the number of vehicle movements attributable to the operating centre parking are a small proportion of the overall movements. I consider it essential that these do not increase.
 - I. I therefore attach a condition in accordance with section 32(4) that the maximum number of authorised vehicles shall not exceed 3 and the maximum number of trailers shall not exceed 8.
 - II. I have considered whether it would be practical and effective to attach a condition limiting the size of the and/or weight of the authorised vehicles but have decided

against this as to do so would simply increase the number of journeys up and down the bridleway – smaller vehicles means more journeys. I have also considered whether it would be practical and effective to attach conditions pursuant to section 21 of the 1995 Act to secure road safety. My powers are limited to the point where the vehicles join the public road and this is where the road safety risk is at the meeting of the bridleway with the A3056.

- III. I have considered attaching a condition that they can only exit the bridleway by turning right or left onto the A3056 but quite frankly neither would be more safe than the other. I therefore make no direction in this regard.
- IV. I have also considered whether I should attach conditions to prevent or minimise adverse effects upon environmental conditions pursuant to section 23 of the 1995 Act. Ms Burns-Brannan referred in her original complaint to “*the unsociable hours of operation and maintenance*” but she did not provide any persuasive evidence that this was solely due to the operator’s vehicles. I remind myself that this is a working farm (indeed it has been for over 60 years) and this will result in some vehicles and agricultural machinery and equipment working at all hours of the day and night. I heard no evidence that the operator’s vehicles were solely to blame for her being disturbed but I did hear evidence that the operator parked his vehicles as far away from Merston Manor as possible to minimise any disturbance. Ms Burns-Brannan also stated in her complaint that this is a residential area. I consider that it is a mixed use rural area with the manor house and the farm being cheek by jowl. I therefore do not think that any condition could alleviate the problems referred to by Ms Burns-Brannan as a number of vehicles cause them and not just those that are the subject of this inquiry.

56. Taking account of all of the above, I consider that the current undertaking must be removed and that the sole condition above must be attached to the licence. The rest of the perfectly valid and reasonable complaints that Ms Burns-Brannan and Mr Crofts have will have to be dealt with by the local planning and highway authority as these are matters outside the traffic commissioner’s jurisdiction.

The decision

- 57. In conclusion, Merston Manor Farm remains authorised as an operating centre with the above undertaking at paragraph 3 removed and the above condition at paragraph 55(i) above attached.
- 58. I record my thanks and gratitude to all parties for the way in which they have dealt with this case. I am very grateful to all of them as well as to my clerk, James Holt, for his considerable assistance in this complex and long standing matter.
- 59. Finally, I direct that a copy of this decision be sent to Mr Alan White at Island Roads and also to the Isle of Wight Council’s Public Rights of Way Team for their consideration. It is my view that it is only a matter of time before there is an incident which results in the personal injury (or worse) of a user of the public bridleway either on the bridleway itself or where it meets the A3056. The regulatory body with the power to prevent this is the local authority hence this decision being sent to it. With regard to the adverse environmental impact upon Merston Manor legal redress for this lies in the civil courts and not with the Traffic Commissioner.

Beverley Bell

Beverley Bell, CBE

Deputy Traffic Commissioner

2nd October 2018