

Oxfordshire County Council (Didcot Garden Town Highways Infrastructure – A4130 Improvement (Milton Gate to Collett Roundabout), A4197 Didcot to Culham Link Road, and A415 Clifton Hampden Bypass) Compulsory Purchase Order 2022 (“the CPO”)

**STATEMENT OF CASE FOR
THE TRUSTEES OF THE W E GALE TRUST**

Introduction

1. This is the Statement of Case for the Trustees of the W E Gale Trust, being Patrick Gale, Elizabeth Mason and Edward Gale (“the Trustees”), in respect of the Oxfordshire County Council (Didcot Garden Town Highways Infrastructure – A4130 Improvement (Milton Gate to Collett Roundabout), A4197 Didcot to Culham Link Road, and A415 Clifton Hampden Bypass) Compulsory Purchase Order 2022 (“the CPO”).
2. The order-making authority is Oxfordshire County Council which is the relevant local highway authority and the local planning authority (“the Acquiring Authority”). The CPO is promoted under sections 239, 240, 246, 250 and 260 of the Highways Act 1980.
3. The Trustees are the freehold owners of land to the west of the Didcot to Oxford Railway Line registered under title ON316754 (“the Property”). The CPO seeks to acquire and otherwise take possession of land within the Property. The Trustees have been served with a notice under s. 12 of the Acquisition of Land Act 1981 (“ALA 1981”) as qualifying persons within the meaning of that Act.
4. The Trustees have objected to the CPO under s. 13(6) of the ALA 1981. Their objection is not one that relates exclusively to matters of compensation (s13(4)) ALA 1981.

The Property to be acquired

5. The CPO includes land within the Property in Table 1 referred to as plots 6/3a, 6/3b, 6/3c, 6/3d, 6/3e, 6/3f, 7/1a, 7/1b, 7/1c, 7/1d (“the Land to be Acquired”). In each case: (a) the description of the land is similar when identifying the different areas; (b) the land is owned and occupied by the Trustees; and (c) the unconditional and permanent acquisition of the plot is sought.
6. The two largest plots are plot 6/3d and 7/1a. These are described in the CPO as follows:

6/3d (“Plot 6/3d”):

“18027 square metres of agricultural land, lying to the north west of the A4130 Principal Road and Southmead Industrial Estate, and to the east of Bridleway 373/24/40 (Sutton Courtenay) and National Cycle Work (NCN) 5 known as the Hanson Way, Didcot.”

7/1(a) (“Plot 7/1a”):

“1693 square metres of drain, woodland and agricultural land, lying to the north of the A4130 Principal Road and to the west of the A4130 roundabout junction with Collett and Bridleway 106/3/10 (Appleford), Appleford.”

7. Plots 6/3a and 7/1a represent a combined land area of 4.87 acres. The total area of the Land to be Acquired is 6.46 acres.

The Need for the Land Acquired

8. Unlike the rest of the Land to be Acquired, Plots 6/3a and 7/1a are not permanently required for highway purposes. The Acquiring Authority’s Statement of Case, at §16.129, confirms that these plots are “*only required temporarily during construction ... for the siting of a construction compound for the Scheme.*”
9. It follows that the acquisition of the majority of the Property is sought to be justified only by reference to its use as a temporary works compound. It is noted that the entire construction programme is no more than two years (Statement of Reasons, §11.15; Statement of Case, §12.17). The relevant test for the acquisition of this land pursuant to sections 239 and 240 of the Highways Act 1980 is that the entirety of the Land to be Acquired, including Plots 6/3a and 7/1a, is required for those purposes.

Grounds of Objection

10. The Grounds of Objection are cross-referenced to the Government's Guidance on the Compulsory Purchase Process and the Crichel Down Rules ("the Guidance").
11. The Trustees are happy to make clear that they do not object to the principle of the acquisition of *some* of the Property in order to provide highway improvements and the delivery of the 'Didcot Science Bridge'. However, this acceptance should not be taken as acceptance that there is a compelling case in the public interest for the land acquisition proposed at the Property.
12. The Trustees' objections relate: (a) to the extent of the land taken, and (b) to the failure of the scheme to provide an appropriate access to the Trustees' retained land as part of the scheme, and (c) the failure of the Acquiring Authority to take reasonable steps to acquire the land needed for the Scheme by agreement.

Ground 1: Acquisition and Compulsory Acquisition not necessary

13. The powers of acquisition within the Highways Act 1980 are available under sections 239 and 240 of the Highways Act where the land is "*required*" for the particular highway purpose.
14. Paragraph 2 of the Guidance is clear that compulsory acquisition is intended as a last resort to secure the assembly of all of the land needed for the implementation of projects.
15. It follows that the Acquiring Authority must therefore demonstrate that all of the land included within the Order is necessary to implement the project.
16. The Trustees object on the grounds that this requirement has not been met and the Acquiring Authority has not demonstrated that the permanent acquisition of all of the Trustees' land is needed.
17. Further in this regard the Scheme does not yet have full planning permission. As such, the precise land take cannot be demonstrated.

Ground 2 – Alternative ways to achieve the purpose of the CPO

18. It is a necessary consideration as part of the requirement to show a compelling case in the public interest, and that compulsory acquisition is a last resort, that the purpose of the CPO cannot be achieved in a way that is less interfering with the property rights of the Trustees.
19. The Trustees advance two principal alternatives that require consideration – and should have been considered – by the Acquiring Authority.
20. *Firstly*, the omission of Plots 6/3a and 7/1a which are required only for temporary purposes as a works area. This works area could have been located elsewhere without requiring compulsory acquisition of land that is otherwise not required for highway purposes. The Acquiring Authority have provided no specifications setting out the requirements of the works area, and/or why the whole of Plots 6/3a and 7/1a are required for this works area, and/or why the works area is required to be located on the Trustees' land.
21. *Secondly*, and in any event, on the basis that Plots 6/3a and 7/1a are required for a time limited period only, the Trustees confirm that they are willing to enter an agreement to grant a licence or leasehold interest in the land so required for the reasonable duration of the construction period of the Scheme, on reasonable terms.
22. The Trustees have made clear to the Acquiring Authority that they are willing to enter into such an agreement. In its Statement of Case, at §16.131, the Acquiring Authority confirms that it would be happy to enter into a licence or lease agreement for Plots 6/3a and 7/1a on appropriate terms. This being the case, there can be no proper justification for the permanent acquisition of Plots 6/3a and 7/1a. There is an alternative available to the Acquiring Authority which does not require the permanent acquisition of all of the Trustees' land.
23. The fact that Plots 6/3a and 7/1a have been included in the CPO is reflective of a lack of early and meaningful engagement with the Trustees. It was only late in the CPO process that engagement even commenced. The prospect of any agreement as to the acquisition or use of the Land to be Acquired was not raised in any correspondence with the Trustees until 23 November 2022, so less than one month prior to the making of the CPO, with heads of terms not proposed until 16 March 2023.

24. Accordingly, prior to making the CPO, the Acquiring Authority failed to properly investigate the alternative of not acquiring Plots 6/3a and 7/1a, and instead leasing these plots of land on reasonable terms, and has not thereafter properly pursued efforts to agree such matters. In this regard, the engagement that has taken place since the making of the CPO was further suspended at the point that the Acquiring Authority's Planning and Regulation Committee determined to refuse planning permission for the CPO scheme, until 15 September 2023.
25. The requirements to take reasonable steps to acquire the required land by agreement and to progress compulsory acquisition as a last resort are engaged throughout the compulsory acquisition. The intention is that through negotiation the land required to be included within the Order for compulsory acquisition can be reduced. There is no timing imperative in this case that justified the inclusion of land which landowners were willing to provide by way of a lease. This applies *a fortiori* where the authority does not have powers to acquire land or use it temporarily. It is the Acquiring Authority's failure to negotiate expeditiously and timeously that has led to the inclusion in the Order of an extent of land taken from the Trustees that goes beyond what is require to deliver the Scheme.
26. In this context – and in respect of all grounds of its objection – the Trustees reject any suggestion that the land take can be justified by reliance on the *Crichel Down* rules (see AA Statement of Case at 16.130 and 16.135) for the following reasons:
 - (1) The Crichel Down Rules are non-statutory and cannot be relied upon in relation to statutory powers authorizing the acquisition of land that is required for highway purposes to obviate the need to demonstrate why the permanent acquisition of the land is necessary notwithstanding the offer of a lease on reasonable terms;
 - (2) The Crichel Down rules are only engaged where the Government department wishes to dispose of land – this provides no certainty of the return of the land;
 - (3) The Crichel Down rules do not provide for the return of the land to the owners where the character of the land has “materially changed”¹;

¹ See paragraph 10 of the Crichel Down Rules

- (4) There are also a number of exceptions to the general obligation to offer land back to the former owners²;
 - (5) Reliance on the Crichel Down rules puts the owners through the process of compulsory acquisition and associated anxiety that the progression of compulsory acquisition only as a last resort is intended to avoid;
 - (6) It also opens up a disparity between any compensation that the Trustees receive based on value at the date of entry and – should it be offered the ability to buy back the land – the open market value at that future date, placing the risk of the acquisition on the Trustees rather than the Acquiring Authority.
27. These matters amount to a failure to take all appropriate steps to reduce the uncertainty and anxiety created by the CPO for those affected by it (Guidance paragraph 19). Further, and although also relevant to proportionality (as to which see below), the failure properly to consider and promote alternatives to the scheme and to the land take within the CPO is advanced as a ground of objection in its own right (Guidance paragraph 106, bullet 3, in the context of acquisition under s. 226 of the Town and Country Planning Act 1990).

Ground 3 – Compulsory acquisition not justified by a Compelling Case in the Public Interest and the interference with the Convention Rights under Article 1 Protocol 1 are not proportionate – Guidance paragraph 12

28. In order to undertake the strict balancing exercise required to justify compulsory acquisition it is necessary first to assess the characteristics of the land being acquired and its value to both public and private interests.
29. This can then be balanced against the benefits and disbenefits of the compulsory acquisition. This latter exercise must recognise that the compulsory acquisition may only be exercised for the stated statutory purpose (Prest v Secretary of State for Wales [1982] 266 EG 257) and that the land acquired may only be held and used for such purposes – here that is for highway purposes. The land cannot be acquired for any collateral purpose. If the public and private interest balance is not compellingly in favour of the compulsory

² See paragraph 15 of the Crichel Down Rules.

acquisition then the CPO must not be confirmed.

30. The Property sits within the area identified as the Science Vale in the relevant development plans. This is described in the Acquiring Authority's Statement of Reasons, §2.2, and its Statement of Case, §3.2, which refer to the area as a "hot spot" for enterprise and innovation.
31. Within this area the Property is identified as within a "Major Development Area". The Property therefore sits within an area which the development plan has identified where the redevelopment of the Property is in the public interest. Any such redevelopment should further the objectives of the Science Vale, including redevelopment for business and technology purposes, and also the delivery of housing (see for example the Vale of White Horse Local Plan (Part 1), §2.10).
32. More particularly, the Property is situated within the South East Vale – which is identified as a key growth area for the delivery of homes and jobs in section 5 of the Local Plan from 5.62 and Core Policy 15. Core policy 15 requires 11,850 new homes in the area in accordance with Core Policy 5. The policy recognises the need to secure the aligned delivery of housing and employment growth together with the infrastructure required to achieve sustainable development. That balance is shown in planning policy terms through the lands safeguarded for the purposes of infrastructure delivery.
33. The Statement of Reasons says at §8.7 (see also §9.7 of the Statement of Case):

“The Scheme is predominantly located on land safeguarded for the delivery of highways infrastructure as set out in South Oxfordshire Plan SOLP Policy TRANS3 and Vale of White Horse Local Plan VoWHLP Core Policy 18, and within OCC's LTP4, supporting the principle of the Scheme. While there are elements of the Scheme that are outside of the safeguarded zones, these are a result of further detailed design to provide the most optimal solution, and the majority of the Scheme is within these safeguarded zones”.
34. This statement is imprecise. The following matters are furthermore of particular importance.
35. *Firstly*, the majority of the Property does not fall within a safeguarded zone. Accordingly, the justification for the acquisition of the majority of the Property is that it forms part of land required to deliver the “*most optimal solution*”. The Trustees do not accept this. The

final design of the Scheme as shown on the General Arrangement does not require all of the land identified for acquisition (necessarily, since Plots 6/3a and 7/1a are not required for the Scheme itself, but rather for a construction compound).

36. *Secondly*, and logically, the suggestion that all of the land is required to deliver the most optimal solution requires a demonstration that alternative schemes have been considered and are shown to be less in the public interest than the Scheme. This includes consideration of what other contribution to the public interest the land being acquired may otherwise deliver as part of the Science Vale. As far as the Trustees are aware, such alternatives have not been considered by the Acquiring Authority, and they are not addressed in the Statement of Case. The Acquiring Authority states at §16.133 that an alternative siting for the construction compound proposed by the Trustees was not acceptable, but still fails to show what alternatives have been considered by the Acquiring Authority, and why those alternatives were determined not to be acceptable.
37. *Thirdly*, and in any event, the Scheme presently does not provide for any access to the Trustees' retained land despite acquiring the entirety of the frontage of the Property to the A4130.³ The CPO as proposed will accordingly land-lock the Trustee's retained land. The confirmation that a future right of access will be granted over Plots 6/3d and 7/1a should they be considered surplus on the completion of the Scheme both: (a) leaves the Trustees' retained land land-locked for the duration of the construction period, and (b) provides no certainty that future access will be granted.
38. The Trustees take little comfort from the suggestion in the Acquiring Authority's Statement of Case at 16.134 that access to the retained land may be achieved through voluntary agreements. This further underlines the shortcomings in the negotiation processes referred to above. The Acquiring Authority should be able formally to undertake to prevent the retained land from being landlocked, and ensure through the Scheme that access is provided. Again, for the above reasons, the suggestion in 16.135 that Objector's concerns are "likely" to be capable of being addressed through the return of the land

³ The general arrangement drawing 6/19 is annotated to show "*Private access to Gales Site*" – but the Scheme does not show any such access. The access that is proposed is only to the acquired Plots 6/3a and 7/1a.

following application of the Crichton Down Rules is misplaced.

39. Although the quantification of compensation is not a matter for the consideration of the Secretary of State, the relative costs of different ways of achieving the statutory objective are relevant (see Prest (supra)). Here, given the development potential of the Property in the absence of the Scheme, the promotion of alternatives not requiring the acquisition of Plots 6/3d and 7/1a, and/or not resulting in the Trustees' retained land being rendered land-locked, will significantly reduce the costs of the Scheme by reducing the land acquisition and disturbance costs, and the alternative measures represent the reasonable mitigation of loss by the Trustees.
40. As held in Manchester Ship Canal Company v SSEFRA [2022] EWHC 3282 (Admin), the case of Bank Mellat v HM Treasury (No. 2) [2013] UKSC 38 provides a structured framework for the assessment of proportionality, as follows:
 - “20.... The question [of proportionality] depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine:
 - (1) Whether its objective is sufficiently important to justify the limitation of a fundamental right;
 - (2) Whether it is rationally connected to the objective;
 - (3) Whether a less intrusive measure could have been used; and
 - (4) Whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community”.
41. It is therefore necessary that the less interfering measures identified above are considered and addressed and – as per Lord Sumption in Bank Mellat - that it is shown that the use of the alternative measure (i.e., either a lease/licence or an alternative works site) would have unacceptably compromised the objective of the compulsory acquisition. Otherwise, the Order should not be confirmed. The Trustees maintain that the alternatives proposed above would have no adverse impact at all on the delivery of the scheme objectives – let alone unacceptably compromise those objectives.
42. It follows from the above that:
 - (1) The Scheme takes land that can then only be used for highway purposes;
 - (2) The CPO takes more land than is required to deliver the highways purposes of the scheme;

- (3) The land that is proposed to be taken would in the absence of the Scheme be redeveloped for development that would contribute significantly towards the planning objectives of the Science Vale and is identified in the development plan for such purposes.
 - (4) The overall effect is disproportionate:
 - (i) Overall, in that there is not a compelling case in the public interest for the acquisition of the totality of the land and its exchange thereby to use only for highways purposes rather than its redevelopment for the purposes of the delivery of commercial development; and
 - (ii) Additionally and particularly, the acquisition of land not permanently required for highways purposes is disproportionate and cannot represent a compelling case in the public interest.
43. It must be recognised that the test of proportionality relevant to the assessment under Article 1 of Protocol 1 applies to the acquisition of the totality of the land to be acquired, and so there is a strict onus on the Acquiring Authority to show that there is a compelling case in the public interest for each and every part of the land to be acquired.
44. That balance is to be struck:
 - (1) Having regard on the one hand to the proposed use of that land pursuant to the CPO – for example, as landscaping, or a segregated footway, or a temporary works area but acquired permanently; and
 - (2) Having regard on the other hand, and balanced against, the public interest in the alternative use of that land if not acquired – its existing agricultural use and its potential redevelopment for job-creating uses – together with the interference with the Trustee’s private property rights (see the consideration of proportionality in Manchester Ship Canal (supra) (from paragraph 102), which also include the land-locking of the Trustees’ retained land.
45. Since the entirety of the Land to be Acquired is not required to deliver the scheme itself, its inclusion cannot be demonstrably in the public interest, particularly in circumstances in which the Trustees are willing to provide an undertaking to provide a lease or licence of Plots 6/3a and 7/1a on reasonable terms, and when the Acquiring Authority has failed to

demonstrate why the temporary works compound cannot be located elsewhere on land that is not proposed for redevelopment, and/or why the land cannot be acquired on a temporary basis only by way of private tenancy agreement.

Conclusion

46. For the above reasons, the Trustees object to the CPO as made and submit it should not be confirmed – or that significant modifications are made to the CPO to address the above grounds. Those grounds are, in summary, that:

- (1) It has not been demonstrated that the acquisition of all of the Land to be Acquired is required to deliver the scheme;
- (2) There is not a compelling case in the public interest for the acquisition of the totality of the land within the Property included within the CPO and the CPO is not proportionate;
- (3) That there have been inadequate attempts by the Acquiring Authority to acquire some or all of the land by agreement; and
- (4) There are alternatives to the CPO that represent less interfering means of achieving the statutory purpose.

47. For these reasons, the Order should not be confirmed as presently drafted. In the alternative to non-confirmation of the CPO, the Trustees seek the following modifications:

- (1) Re-formulating of the CPO to exclude that land required only for temporary purposes in exchange for the grant by the Trustees of a licence or leasehold interest in that land on reasonable terms and for the period required;
- (2) An undertaking to ensure that access can be taken from the new roadway to the Trustees' retained land to facilitate the redevelopment of that land without a ransom situation being created.

GUY WILLIAMS KC

ANDREW BYASS

Landmark Chambers

15 December 2023