

# **PROOF OF EVIDENCE**

## **HENRY CHURCH MRICS**

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On behalf of

Mays Properties Limited

**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 Oxfordshire County Council (Didcot to Culham Thames Bridge) Scheme 2022**

**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) (Side Roads) Order 2022**

January 2024

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## 1.0 Introduction and Role

- 1.1 My name is Henry John Church. I am a Senior Director in the compulsory purchase and compensation team at CBRE Ltd. I am a Member of the Royal Institution of Chartered Surveyors, a Fellow of the Central Association of Agricultural Valuers and a member of the Compulsory Purchase Association (CPA).
- 1.2 I qualified as a chartered surveyor in 1996 and have over 25 years' experience in the valuation and assessment of compensation in respect of property that is subject to compulsory purchase.
- 1.3 I am an elected board member of the CPA and having been Honorary Treasurer for 5 years, I was Chair for the 19-month period through to 12 October 2023 and remain on the Board as Past Chair.
- 1.4 I have worked at CBRE since April 2006, based in London.
- 1.5 I was previously an associate partner within the compulsory purchase and compensation team at Bruton Knowles, based in Gloucester, having joined the firm in 1997. Prior to that, I held positions within agricultural surveying practices after graduating from the Royal Agricultural College (now University) in 1992 with a Diploma in Real Estate Management.
- 1.6 I act for both claimants and acquiring authorities and have provided advice on the acquisition of land for schemes that include:
  - 1.6.1 2012 Olympics;
  - 1.6.2 The Avon Nunn Mills and St Peter's Waterside regeneration schemes, Northampton;
  - 1.6.3 A417/A417 Cirencester Bypass;
  - 1.6.4 A41 Aston Clinton Bypass;
  - 1.6.5 A6 to Manchester Airport Relief Road;
  - 1.6.6 Norwich Northern Distributor Road;
  - 1.6.7 Norwich Western Link;
  - 1.6.8 Expansion at Glasgow Airport and Bristol Airport;
  - 1.6.9 Regeneration of Purfleet;
  - 1.6.10 High Speed 2; and
  - 1.6.11 Poynton Relief Road

## 2.0 Scope of Evidence

- 2.1 I was instructed by Mays Properties Limited ("MPL") on 3 February 2023.
- 2.2 I am instructed to provide compulsory purchase and compensation advice in relation to the scheme being proposed by Oxfordshire County Council ("OCC" or "AA").
- 2.3 My proof of evidence is structured as follows
- scope of evidence;
  - the Orders;
  - Description of the Order Land
  - Prematurity;
  - Funding
  - negotiations
  - requirement for land;
  - loss of rights; and
  - conclusions
- 2.4 My evidence will cover:
- My experience of advising bodies seeking to promote Compulsory Purchase Orders ("CPO") and how the conduct of the AA compares with that experience.
  - My understanding of the requirement for the land
  - A review of elements of the AA's justification for the Order, in the context of my experience as to what ought to happen when a CPO is being promoted.
  - My engagement with the AA.
  - Conclusions
- 2.5 I have read the following RICS Professional Statements
- *"Surveyors advising in respect of compulsory purchase and statutory compensation, 1<sup>st</sup> Edition"* published in April 2017, and
  - *"Surveyors acting as expert witnesses"*
- and consider that in both instances I am compliant with them.
- 2.6 In carrying out my instructions I have been assisted by MPL and its advisory team.

## 3.0 The Orders

3.1 On 21 December 2022 made

1. 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 (“CPO”), and
2. 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) (Side Roads) Order 2022 (“SRO”)

## 4.0 Description of the Order Land

- 4.1 MPL is the freehold owner of 4.2 acres (1.74ha) of land fronting the A4130 registered under title BK90497 (“the Property”) in which the AA seeks to acquire interests. The land is level and roughly triangular in shape.
- 4.2 The land to be acquired is identified in the Order as plots 1/6a and 1/6b (“Order Land”).
- 4.3 The Property benefits from planning permission P14/V0087/FUL for a T Junction access directly onto the A4130 with loop road serving the Property (“the T Junction Access”). This T Junction Access planning consent (“T Junction Access Consent”) has been implemented (implemented in 2017). The Property also benefits from planning permissions P15/V2880/O, P18/V2139/FUL P19/V0008/RM and P20/V0657/RM for a roadside scheme (including hotel) (“the Roadside Services Consent”) accessed via the T Junction Access. The Roadside Services Consent has been implemented (implemented in 2022).
- 4.4 MPL submitted a planning application (P22/V1121/O) in July 2022 seeking to develop its site for a supermarket scheme. This was an application for a supermarket and roadside services to be accessed from the A4130 via the consented T Junction Access and referred to as the “Supermarket Scheme”. The Local Planning Authority is minded to grant the Supermarket Scheme subject to completion of a s106 agreement, the detail of which is agreed and is currently being documented.
- 4.5 MPL has prepared an application to make its supermarket scheme compatible with the CPO scheme (including revised access) (“the HIF1 Supermarket Scheme”) but it is awaiting a decision formally granting the Supermarket Scheme before it submits this application.

## 5.0 Prematurity

5.1 The Government considers that:

*Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life*

DLUHC publication 'Guidance on Compulsory purchase process and The Crichel Down Rules' July 2019 Para 1, Page 6

5.2 DLUHC publication 'Guidance on Compulsory purchase process and The Crichel Down Rules' ("the Guidance") was published in July 2019. The Guidance provides a guide to those bodies proposing to compulsorily acquire land where, as here, the Acquisition of Land Act 1981 applies.

5.3 At para 2 the Guidance states that

*Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.*

5.4 In my experience the requirement for a 'compelling case' is a test which promoters of CPOs take seriously. Whilst it is accepted that, at the time an Order is first made and, on occasions, when the related Inquiry is heard, there may be elements of the case which are not absolutely clear, I would expect an acquiring authority to be able to demonstrate

- (1) A clear purpose for the Order
- (2) The public benefit that will accrue from the purpose
- (3) Sufficient funding is either identified or in place to demonstrate that the scheme behind the purpose is likely to be implemented
- (4) There are no other impediments to delivery. In this regard impediments may include
  - a. Planning
  - b. Certainty of delivery

5.5 The planning framework providing the justification for an Order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme.

5.6 At para 105 the Guidance advises that

*... it may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order*

And

*..... it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end use proposed. In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.*

5.7 It is noted, and I consider that this is particularly important in this instance, that:

*In all such cases the responsibility will lie with the acquiring authority to put forward a compelling case for acquisition in advance of resolving all the uncertainties.*

5.8 In this instance there is no planning consent for the scheme envisaged by OCC – the Planning Committee of OCC having voted to refuse consent and the application having then been subject to a call in by the Secretary of State.

5.9 Whilst the Guidance makes provision for the Order to be made prior to certainty over planning the situation here is such that the AA cannot make a compelling case. The timing of the Order is, therefore, premature.



## 6.0 Funding

- 6.1 As I stated at 5.4(3) above, I consider it necessary that the AA demonstrates that it has sufficient funding to implement the scheme.
- 6.2 There is no doubt that the costs have increased markedly since the CPO was made. Even if the scheme was fully funded when the CPO was made it is for the AA to demonstrate that it has sufficient funds to deliver the scheme at this time otherwise the confirmation of the CPO would be premature and would not meet the balance between the public interest (insofar as public interest arises) and private interest.

## 7.0 Attempts to acquire by private treaty

- 7.1 At para 16 of the Guidance, the Government encourages the acquiring authority to engage with affected parties as these negotiations can

*... help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.*

- 7.2 This guidance is interpreted differently by different acquiring authorities. However, in my experience, almost all authorities seek to open negotiations with affected parties before the Order is made, refer to their efforts to acquire within the Statement of Reasons and Statement of Case and continue throughout the period leading up to the Inquiry (and in some instances beyond).
- 7.3 In my experience unsuccessful attempts to proceed by private treaty can often strengthen a case for compulsory acquisition.
- 7.4 Many authorities will highlight points of contact for those affected by the scheme in the Statement of Reasons and/or in the covering letter sent with the made Order, as well as in subsequent correspondence.
- 7.5 In the present case, OCC failed to make contact with MPL to discuss possible terms prior to publication of the Order. Attempts to agree terms subsequently have been led by MPL, with me issuing Heads of Terms and, all too frequently, having to chase for a response.
- 7.6 MPL has been consistent in its support for the concept of the scheme, but subject to its concerns being satisfactorily addressed.
- 7.7 At the time of my instruction I was provided with a suite of documents. Of particular relevance were:
- (1) A copy of redacted representations (“Redacted Representations”) made on behalf of MPL in respect of the planning application that is the subject of the current appeal. A section conveying MPL’s qualified support for the scheme read as follows:

*I refer to the above application submitted by AECOM on behalf of Oxfordshire County Council (OCC). I act on behalf of Mays Properties Ltd (MPL). My clients have instructed me to submit the following representations to the application. These are submitted to assist OCC in determining this application and sets out the basis for my clients qualified support for the application as submitted.*

1. *MPL Development Site at Milton Interchange My clients, MPL, are the freehold owners of a site comprising 1.7 hectares (4.2 acres) located to the south of the A4130 and to the east of the Milton Interchange Junction with the A34 (T). Part of MPL’s site is included within the ‘Redline Boundary’ to the current application (AECOM drawing No. 0001/Rev.PO2 (Sheet 1 of 19) refers). My client’s site benefits from detailed planning permission for a new ‘T’ junction to the A4130 (refP14/V0087/FUL) on which a material start has been made in implementing this new road junction on MPL’s land (Road Junction Consent). The site also benefits from detailed planning permission for a development of roadside services comprising a hotel, restaurants and drive-thru’s (ref. P15/V2880/O as varied by P18/V2139/FUL, and reserved matters approval ref. P19/V0008/RM as amended by P20/V0657/RM) (Roadside Services Consent). As you may be aware, my clients have been in detailed negotiations with adjoining landowners and OCC’s Transport Officers over the delivery of a new roundabout on the A4130 (referred to as*

Backhill Roundabout) and the widening of the A4130. Both proposals now form part of the submitted HIF 1 application, as shown on AECOM drawing No. 0001/Rev.PO2 (sheet 1 of 19).

## 2. **Representations to HIF 1 Application**

My clients strongly support the submitted application, specifically the widening of the A4130 to the north and east of their development site and the provision of the new Backhill Roundabout. However, that support is subject to the following conditions:

- (a) That OCC must respect the part implemented Road Junction Consent on MPL's development site in the event that, for whatever reason, OCC fails to deliver the proposed Backhill Roundabout, the south western arm from that Roundabout and the proposed access links from that new arm into the MPL development site.
- (b) That OCC must respect and protect the Roadside Services Consent obtained by MPL through ensuring that the proposed highway works, in this location, do not encroach any further south than the 'sacrosanct line' agreed with OCC Officers at the pre-application stage. We have assumed that this agreed 'sacrosanct line' is reflected by the southernmost extent of the proposed highway works shown on AECOM drawing No.0001/Rev.PO2.
- (c) That OCC must provide confirmation, before the HIF 1 application is determined, that the 'Redline Boundary' shown on AECOM drawing No.0001/Rev.PO2, which extends south of the agreed 'sacrosanct line' on the MPL development site, does not represent the extent of any proposed highway works, but shows, as OCC Officers have confirmed, the extent of land that may be required to facilitate the construction of the proposed highway works. Also, that, if required for that purpose, OCC confirm that they would make good the condition of the land on completion of the highway works and return the land to MPL to enable them to implement their development proposals, in accord with a licence between the two parties to only utilise this part of MPL's site on a temporary basis for construction purposes.
- (d) That OCC provide confirmation, prior to the HIF 1 application being determined, that the two new accesses to the MPL development site, from the new south western arm to the Backhill Roundabout, shown on AECOM drawing No. 0001/Rev.PO2, will extend five metres beyond MPL's eastern site ownership boundary and thus into MPL's site ownership, to reflect the agreement reached with OCC Officers at the pre-application stage.
- (e) That OCC provide confirmation that MPL, its tenants and its successors in title will have unfettered rights of access from its consented development to the A4130 via these new access links, the new access arm and Backhill Roundabout.
- (f) That in the event of MPL bringing forward revised proposals for their development site, including a revised mix of land uses, which require amendments to the proposed access links from the south western arm of the new Backhill Roundabout (as shown on AECOM drawing No. 0001/Rev.PO2), that OCC will work closely with and positively with MPL to secure those changes to the HIF 1 scheme. The negotiations that have taken place between my clients and OCC have also led to an agreement, in principle, over the delivery of the proposed HIF 1 highway works in this location. To secure the latter, a triangle of MPL owned land, on the north eastern boundary of their development site, will be acquired by OCC. This arrangement will form the basis of a Conditional Land Sale Agreement (CLSA), between MPL and OCC, that MPL's Solicitors are currently drafting. If agreed, this CLSA would avoid the need for this triangle of land to be acquired through the use of Compulsory Purchase Powers (CPO). The EZ2 Enterprise Zone landowners have also agreed the principle with OCC that, at the point in time when the new Backhill Roundabout access arm and links to the EZ2 Enterprise Zone are fully delivered, along with unfettered rights of access, these will replace the northernmost element (the 'T' junction) of the part implemented Road Junction Consent. We have highlighted these matters as they are central to the deliverability and viability of MPL's development site, which forms part of the Didcot Growth Accelerator Enterprise Zone and thus are material considerations in determining the HIF 1 application. It will be imperative and essential that the land value assessment, of the land that OCC need to acquire to deliver the Backhill Roundabout and unfettered access from this to the MPL development site, whether by agreement or by the use of CPO powers, fully recognises, reflects and takes into account the development value of both MPL's triangle of land and the significant value of its part implemented, and proceedable Road Junction Consent.

## 3. **Summary & Conclusion**

*My clients strongly support the submitted application, specifically the widening of the A4130 to the north and east of their development site and the delivery of the new Backhill Roundabout with associated unfettered links to the MPL development site. That support is subject to the conditions listed in section 2 a) to f) (inclusive). We look forward to reaching agreement with OCC on these points (conditions) and would invite a meeting with the relevant Officers to expediate the required agreements and licence in relation to MPL owned land. In the meantime, I would, of course, be happy to discuss with you any aspect of my client's representations further or to clarify any part of the submissions that I have made on their behalf.*

(2) A copy of the licence by which MPL granted OCC access for survey purposes

- 7.8 MPL further advised that the prospect of a Conditional Land Sale Agreement ("CLSA") had first been proposed by its Senior Counsel but not progressed.
- 7.9 I wrote to Mr Miles, Technical Director at Gateley Hamer, the firm instructed by the AA to progress negotiations for the acquisition of interests in land, advising of my instruction on 18 February 2022 and requesting
- Plans of OCC's proposed HIF1 scheme – both at a macro level and detailed in respect of MPL;
  - A programme for delivery of the HIF1 scheme
  - Copies of correspondence, notes of calls and meetings with my client; and
  - An undertaking in respect of MPL's professional fees in responding to OCC's approach
- 7.10 Mr Miles responded almost immediately undertaking to provide plans and a programme for delivery when they had been confirmed, suggesting (unhelpfully) that I liaise with my client over previous correspondence and offering to take instructions on the fee undertaking (subsequently provided). He also proposed an introductory Teams meeting which was subsequently fixed for 25 February 2022.
- 7.11 At the 25 February meeting Ian Miles suggested that:
- *MPL were delighted by/welcomed the roundabout proposal.* As I clarified subsequently, my understanding of the situation did not accord with that view. I advised Mr Miles that MPL have a viable scheme within their own footprint and that the development of the roundabout would not be of any material benefit to MPL.
  - *The T Junction Access was 'left in/left out'.* I subsequently clarified that the consented junction is an 'all ways' junction – that is, vehicles can turn in from both directions and exit in both directions.
  - *MPL had agreed to contribute c£1m to the roundabout and link road.* Again this did not accord with my or my client's understanding and was merely the contribution that the planners had indicated they would seek under a s106 agreement. It has subsequently been agreed that there is no basis on which OCC could seek a s106 contribution.
  - *MPL should transfer the land for free.* I confirmed that there was not only no imperative for MPL to do so but, insofar as in a 'no scheme world', the neighbouring property needed some of MPL's land to open up

development then (regardless of whether or not the neighbour intends to develop) the uplift in value needs to be shared. I also advised that with two consented junctions on this stretch of road – the petrol filling station and the T Junction Access – that I suspected the highway authority might raise an issue about an additional access to serve the neighbouring land in such a short stretch of road.

7.12 On 1 March I forwarded Mr Miles a copy of the Redacted Representations, noting further, as follows:

*My reading of the representation is that MPL support the HIF1 scheme, but that support is, however, conditional on the following basis:*

- *The ability to deliver the consented scheme is not fettered.*
- *OCC acknowledge that MPL were able to implement their own scheme via a signalised T Junction and are not reliant on the new roundabout.*
- *OCC compensating MPL adequately for the value of their access land reflecting its value to the neighbouring land parcels.*

7.13 On 5 April 2022 Mr Miles and I exchanged a number of emails, the salient points being

1. Mr Miles advised of a conversation he had had with Richard May, a Director of MPL during which Mr Miles undertook to provide the previously requested information (information relating to contributions to the Backhill junction that OCC was seeking from MPL) and suggested a meeting.
2. I was seeking clarification on the incorrect understandings that Mr Miles had, and which were discussed on 25 February.

7.14 In order to develop a common understanding of the position I set out my understanding in a position statement, the first draft of which I shared with Mr Miles on 6 April 2022. This document was subject to a number of changes and, whilst never agreed in final form, it did (in my view) help each party understand the position of the other.

7.15 The parties agreed to meet at MPL's office on 12 May 2022. On 9 May 2022 Mr Miles wrote to me (copying in my client's team and some of the OCC team) advising that OCC had yet to provide the information requested in my 18 February email (see para 6.9 above) and therefore proposed cancelling the meeting scheduled for 12 May. Whilst MPL would have preferred the meeting to go ahead in any event Mr Miles proposed that the parties meet in the final week of May. Subsequently, and in light of OCC still being unable to provide the requested information, the meeting was re-scheduled for 20 June.

7.16 The parties met, as agreed, on 20 June 2022 at MPL's offices and had a relatively productive meeting. The principal points discussed were, as follows:

1. OCC was working on refining CPO/SRO plans and hoped to be able to circulate these by early July.

2. Whilst OCC had suggested that MPL might give the land required to construct the roundabout to OCC it was agreed that there had been no formal proposal by OCC to acquire MPL's interests.
  3. Variations to the GDA would be going to OCC's Cabinet on 21 June 2022. Assuming that this would be approved, OCC's plan was then to seek a second resolution to make the CPO at its Cabinet meeting on 19 July 2022.
  4. Under the terms of the revised GDA
    - a. Homes England's contribution to the scheme would increase by c£21m with further money from the OxLEP (the Local Enterprise Partnership, a partnership between local authorities and business which ensures business representation, strategic economic planning and the delivery of Government programmes and the balance being funded by OCC using prudential borrowing. OCC was to be responsible for all cost over-runs.
    - b. The scheme had to be completed by March 2026.
  5. The CPO would not be made until after planning permission is granted, the plan for that being that the planning application would go to OCC's planning committee for determination in September 2022.
  6. There was discussion about the financial contribution that OCC considered that MPL should make to enable scheme delivery. OCC advised that this was worked out using trip rates. Notwithstanding MPL being unclear as to the basis upon which OCC could request this OCC stated that it would like to agree a number.
  7. Richard May explained that the Road Services Consent is interchangeable in terms of junction i.e., that, subject to rights, access could be obtained from either the T junction or the proposed roundabout.
  8. There was a discussion on land valuation.
  9. Mr Miles confirmed that OCC would like to secure an option over the MPL land. I agreed that, conceptually, this was a way forward.
  10. Mr Miles confirmed that some land would be required temporarily. At this stage, it appeared to be in both parties' interests to reach agreement on this.
- 7.17 On 31 August 2022 I chased Mr Miles for a response to points that he was going to comment upon following the 20 June meeting.
- 7.18 I sent Mr Miles a further chaser on 7 November 2022. Mr Miles responded advising me that the information had almost been collated and he proposed a Teams Meeting. This was agreed for 2 December 2022.
- 7.19 On 23 November Mr Miles provided a draft land take plan.
- 7.20 On 25 November I responded to Mr Miles' request for an update on MPL's planning position.

- 7.21 On 30 November Mr Miles confirmed OCC's commitment to the HIF1 scheme notwithstanding OCC's decision not to pursue the HIF2 scheme.
- 7.22 On 2 December 2022, Mr Miles and I had a Teams meeting, as previously arranged. Matters discussed included:
1. Agreement on quantum of fees
  2. Mr Miles suggested that he understood from the meeting on 20 June 2022 that the MPL land would be transferred at nil cost as part of a s106 agreement attaching to, I presume, the grant of the Road Services Consent. I disputed this, pointing out that we already had a scheme which had a part-implemented consent and which identified s106 contributions (which did not include any land transfer) and so the need for MPL to transfer the land at nil cost did not arise. I further reiterated that I could not see on what basis the planning authority (which had granted the Road Services Consent (Vale of White Horse District Council)) could require MPL to transfer land for HIF1 (under a s106 agreement or otherwise).
  3. I said that whilst OCC might choose to counter MPL's objection to the CPO, I suspected that its preferred option was an agreement – perhaps along the lines of a Lands Tribunal contract with a minimum payment. (A Lands Tribunal contract would be an agreement by which MPL would conditionally agree to transfer the land interests identified by OCC as being required for scheme delivery to OCC in return for consideration which includes a commitment to pay consideration, the quantum of which would be assessed in accordance with the compensation code). Mr Miles needed to take instructions on this.
  4. We discussed the extent to which Mr Miles considered that the proposed Backhill Roundabout benefitted MPL – a point I disputed.
  5. We discussed matters relating to consideration for the land transfer. Mr Miles advised that OCC had an Opinion from Michael Humphries KC explaining why my position on consideration was incorrect. A copy of the Opinion was requested.
  6. We concluded that an agreement based on a so-called Lands Tribunal contract might be appropriate.
- 7.23 I agreed to meet with Mr Miles to discuss matters further on 12 January 2023.
- 7.24 On 6 January 2023 Mr Miles provided a precis of the Opinion prepared by Michael Humphries KC (referenced at 6.22 (above)).
- 7.25 On 10 January I wrote to Mr Miles asking whether
- the precis of the Opinion was Mr Humphries' summary of his Opinion, or a summary prepared by somebody else and, if the latter, whether Mr Humphries was aware of the summary, an
  - advice was taken on the consideration issue prior to the submission of the HIF bid.

7.26 Mr Miles responded by return advising that it was a summary of the Opinion prepared by TLT (OCC's lawyer) and that he did not know whether Mr Humphries was aware of this summarising exercise. I responded requesting a copy of the Opinion but was rebuffed and told that the precis was sufficient. I responded on 11 January noting

*TLT's summary of MHKC's note makes little sense without*

- *Context, and*
- *knowing which elements of the summary are extracted from MHKC's opinion and which are TLT's summation of the Opinion.*

*Please provide both the instructions to Counsel and the Opinion, redacted if necessary*

7.27 Conscious of OCC's preference to acquire by agreement and in the lack of any proposal from them I forwarded draft Heads of Terms ("HoTs") for the CLSA to Mr Miles by email dated 11 January 2023. I talked Mr Miles through the principal points of the HoTs during our pre-arranged Teams meeting on 12 January 2023.

7.28 On 17 January 2023 Mr Miles provided me with a marked-up copy of the HoTs highlighting points to be discussed in a Teams meeting we agreed to schedule for 20 January 2023.

7.29 On 20 January Mr Miles provided a redacted copy of Mr Humphries's Opinion.

7.30 On 14 February Mr Miles responded to the HoTs in 'without prejudice' correspondence and therefore I cannot refer to any subsequent correspondence or meetings, if any.

7.31 Mr Miles advised me that he was leaving Gateley Hamer at the end of August 2023 with his role in negotiations taken by Steve Moon.

7.32 On 24 January 2024 the parties confirmed to the other their provisional agreement for a private treaty acquisition. This is in the process of being documented.

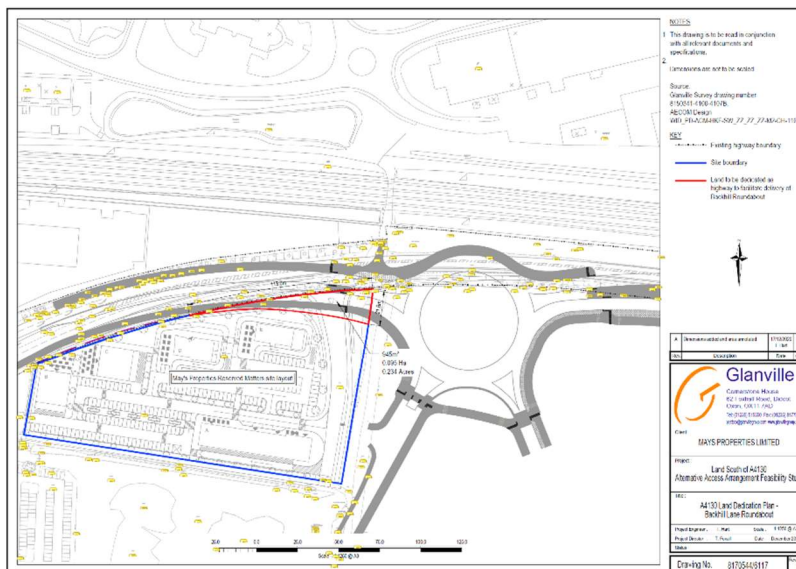


## 8.0 Land not required for the highway

8.1 The AA has clearly stated that it only requires access to plot 1/6a to facilitate construction rather than to construct the highway or anything ancillary to the highway on it. MPL accepts that OCC needs plot 1/6b permanently.

8.2 There is no case – compelling or otherwise – to compulsorily acquire plot 1/6a.

- Communications between OCC and MPL's highways consultants, Glanville Projects, dating back to January 2020, demonstrate OCC's acknowledgement of the need to agree the concept of a sacrosanct line (the "Sacrosanct Line") south of which OCC agreed not to build any highways infrastructure and north of which MPL agreed not to construct any of its development - so as not to fetter MPL's consented (and partially implemented) development. This sacrosanct line is the boundary between plots 1/6a and 1/6b
- Below is a Proposed Land Dedication Plan – a plan showing the land which MPL was willing to dedicate to OCC (edged red below on the plan below) - which Glanville Consultants prepared and issued to OCC on MPL's behalf in December 2020. The plot edged red is identified in the CPO as plot 1/6b and extends to 0.234 acres.



- The dedication required a commitment from OCC in respect of the land now identified as plot 1/6a that OCC would not acquire it.
- Acquisition of plot 1/6b (which, as above, MPL accepts is required) is sufficient to deliver the road infrastructure shown. OCC has failed to demonstrate that OCC need 1/6a for the highway – this is because, by their own admission, it is not.

## 9.0 No requirement to acquire permanently

- 9.1 MPL recognises that there may be a requirement for the AA to take entry to plots to facilitate construction.
- 9.2 In this instance, however, there has been no attempt by the AA to justify the requirement to acquire plot 1/6a – be that for permanent or temporary acquisition.
- 9.3 The importance (to MPL) of plot 1/6a not being compulsorily acquired cannot be overstated. This is indicated by the history, referenced at para 8.1 (above)
- 9.4 Insofar as OCC's CPO and Side Roads Order do not reflect this previously agreed principle of the sacrosanct line then this is clearly in breach of both the agreement reached in the design process with OCC and of CPO principles.
- 9.5 The inability to acquire land temporarily under the Highways Act 1980 has long been recognised as an issue. Acquiring authorities have come up with various ways to overcome this including

- (1) giving undertakings that, where powers are relied on, that the acquiring authority will either
  - a. take entry under a Notice to Treat and Notice of Entry then not seek to take title, or
  - b. vest title subject to a commitment to return land

This solution, whilst a little cumbersome, can achieve the desired end.

- (2) offering to return the land under the principles of *Crichel Down*

The *Crichel Down* Rules are the non-statutory arrangements under which surplus government land which was acquired by, or under a threat of, compulsion should be offered back to former owners, their successors, or to sitting tenants. The Rules apply to government departments, including executive agencies, together with other non-departmental public bodies, local authorities or other statutory bodies.

The difficulties with this approach are that

- The *Crichel Down* Rules are non-statutory and cannot be relied upon;
- The *Crichel Down* rules are only engaged where the Government department expressly wishes to dispose of land – there is no requirement on the relevant department to declare land to be surplus even if it is;
- 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*'. In the absence of any clarity or binding commitment as to what might happen on the land MPL cannot be sure that it might not be '*materially changed*' and therefore fall outside the scope of *Crichel Down*;
- There are also a number of exceptions to the general obligation to offer land back to the former owners

Therefore reliance cannot be placed on the *Crichel Down* rules.

- (3) entering into an agreement with the landowner

This is both the preferred solution and that offered by MPL. The provisional agreement referenced at 7.32 (above) makes provision for this and will become binding if the agreement is documented.

## 10.0 Loss of Rights

- 10.1 Compulsory purchase confers powers to acquire interests (including rights) in land – in this instance land that is the subject of an implemented planning consent for access. Once the Order land has been acquired MPL will not have rights of access to its land – it will be landlocked.
- 10.2 The implications of this are both obvious and significant. It will be impossible for MPL to complete its consented and part-implemented T Junction Access and will therefore render their consented and part-implemented development (or future development proposals) undeliverable unless an acceptable alternative access is provided.
- 10.3 OCC has presented plans showing a potential alternative access to MPL's T Junction Access but not only is this revised access yet to secure planning consent, it will be insufficient for the Supermarket Scheme (see above).
- 10.4 Furthermore OCC has yet to identify on what basis MPL's right of access would be granted, if at all. The HIF1 access link which OCC is proposing to provide for MPL to access the proposed Backhill Roundabout is over land which is owned by Mr Mockler and contained within the CPO. If the CPO is confirmed and implemented the land on which that revised access is shown would be owned by OCC – but, unless expressly stated, this would not give MPL a right of access over that land.
- 10.5 An offer of rights has the potential to address this shortcoming of the CPO.
- 10.6 A further loss of rights issue is the loss of a construction access to the MPL development (whether that is the development permitted by the Road Services Consent or the Supermarket Scheme). This means that MPL would not be able to proceed with the development of its land during the construction of OCC's HIF1 scheme. The impact of this on MPL is that, unless OCC provides an equally commodious access to its current direct access onto the A4130 to enable the construction of its development to proceed, MPL would not be able to commence development of its site until the HIF1 works are complete (or at least the works shown on the General Arrangement drawing sheet 1 of 19).

## 11.0 Conclusion

11.1 It is clear from this Proof of Evidence that

1. MPL has interests in land which are very significantly impacted by the scheme
2. The attempt to secure powers prior to clarifying that there are no impediments to delivery – be that funding or planning – is premature
3. Notwithstanding that terms for a private treaty acquisition have been provisionally agreed until such time as this is documented there is no agreement.
4. The Orders make provision to acquire land that is not only not required permanently but which MPL has agreed to grant rights over to facilitate construction
5. The Order, if confirmed, will leave MPL's interest without rights of access

11.2 Accordingly my opinion is that the Orders be not confirmed.

## 12.0 Expert's Declaration

### Statement of truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

### Declaration

- a. I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- b. I confirm that I understand and have complied with my duty to the Upper Tribunal as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- c. I confirm that I am not instructed under any conditional or other success based fee arrangement.
- d. I confirm that I have no conflicts of interest.
- e. I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Upper Tribunal
- f. I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS Practice Statement Surveyors acting as expert witnesses.



Henry John Church MRICS FAAV

29 January 2024