

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”)

NOTICE OF OBJECTION

Introduction

1. This is a formal objection to 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 CPO is promoted under sections 239, 240, 246, 250 and 260 of the Highways Act 1980.
3. This objection is made on behalf of the Trustees of the W E Gale Trust being Patrick Gale, Elizabeth Mason and Edward Gale (“the Trustees”).
4. The Trustees are the freehold owners of land to the west of the Didcot to Oxford Railway Line registered under title ON316754 (“the Property”).
5. The order-making authority is Oxfordshire County Council which is the relevant local highway authority and the local planning authority (“the County Council”).
6. The CPO seeks to acquire and otherwise take possession of land within the Property. The Trustees object to the confirmation of the CPO. The Trustees have been served with a notice under section 12 of the Acquisition of Land Act 1981 (“ALA 1981”) as

qualifying persons within the meaning of that Act. This objection is made under the ALA 1981 and is a relevant objection within the meaning of section 13(6) of that Act. It is not an objection which relates exclusively to matters of compensation (s13(4)) ALA 1981.

7. The Grounds of Objection are as set out below.
8. All correspondence relating to the Objection should be sent by email to sbeer@excellolaw.co.uk, and by post to: F.A.O. Sarah Beer, Excello Law, 2 Snowhill, Birmingham, B4 6GA.

The CPO

9. 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”).
10. In each case the description of the land is similar identifying the different areas.
11. In each case the land is owned and occupied by the Trustees.
12. In each case the unconditional and permanent acquisition of the plot is sought.
13. The two largest plots are plot 6/3d and 7/1a. These are described in the Order 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.”

14. The Trustees understand that Plots 6/3a and 7/1a are not permanently required for highway purposes (see further below). This represents 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

15. This objection is necessarily based on the reasons for the acquisition given by the County Council. It is difficult to understand from the statutory material produced – principally the CPO and the Statement of Reasons - why the Land to be Acquired, and specifically the entirety of that land, has been included in the CPO. The Statement of Reasons does not identify under which of the statutory powers listed in paragraph 1.12 of the Statement of Reasons is relied upon to confer the power to acquire specifically the component parts of the Land to be Acquired.

16. Paragraph 9.9.15 of the Statement of Reasons says:

Edward Gale & Elizabeth Mason & Patrick Gale – Plots 6/3a, 6/3b, 6/3c, 6/3d, 6/3e, 6/3f, 7/1a, 7/1b, 7/1c and 7/1d

These plots comprise of 26,143 sqm of woodland and agricultural fields, required for the improvement of the A4130, for the construction of other highways, mitigation of adverse effects of the improved highway upon its surroundings, new private means of access to premises, and construction working space, including for works compound.

17. It appears from the General Arrangement Plan 6 – GEN_PD-ACM-GEN-DGT_ZZ-ZZ-ZZ-DR-T-0006-PO3 that the clear majority of the land to be acquired is sought to be justified only by its use as a temporary works compound. It is noted that the entire construction programme is no more than 2 years (Statement of Reasons 11.15). The wording of 9.9.15 suggests that the entirety of the Land to be Acquired is sought to be

acquired pursuant to section 239 and 240 of the Highways Act 1980. This should be clarified. If so, the relevant test is that the entirety of the Land to be Acquired is required for those purposes. No justification is provided as to why the land may be required to mitigate any adverse effects of the scheme – if and to the extent that s246 of the Highways Act 1980 is relied upon. It is unacceptable that the justification for the acquisition of the entirety of the Land to be Acquired is not set out in the Statement of Reasons.

Grounds of Objection

18. The Grounds of Objection are cross-referenced to the Government’s Guidance on the Compulsory Purchase Process and the Crichel Down Rules (“the Guidance”).
19. 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. The Trustees’ objection relates (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.

Ground 1 – Acquisition and Compulsory Acquisition not necessary

20. The power 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.
21. 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.
22. It follows that the County Council must therefore demonstrate that all of the land included within the Order is necessary to implement the project.

23. The Trustees object on the grounds that this requirement has not been met and the County Council has not demonstrated that the permanent acquisition of all of the Trustees' land is needed.
24. Further in this regard the Scheme does not yet have full planning permission. As such, the precise land take cannot be demonstrated.
25. The information provided in the Statement of Reasons is inadequate to enable an understanding of why the particular land area included in the CPO is required to deliver the proposed road network improvements, and so whether the statutory tests of sections 239 and 240 of the Highways Act are met.

Ground 2 – 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

26. 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.
27. 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 purpose¹ 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 acquisition then the CPO must not be confirmed.
28. The Property sits within the area identified as the Science Vale in the relevant development plans. This is described in para 2.2 of the Statement of Reasons referring to the area as a “hot spot” for enterprise and innovation. 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

¹ Prest v Secretary of State for Wales [1982] 266 EG 257

Property is in the public interest. This development 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), paragraph 2.10). 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 jobs² - see section 5 of the Local Plan from 5.62 and Core Policy 15.

29. 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. The Statement of Reasons says at para 8.7:

“The Scheme is predominantly located on land safeguarded for the delivery of highways infrastructure as set out in...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”.

30. This statement is imprecise. However, the majority of the Property does not fall within the 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”.

31. The Trustees do not accept this. The final design of the Scheme as shown on the General Arrangement appears not to require all of the land identified for acquisition. Further, logically, this requires a demonstration that alternative schemes have been considered and are shown to be less in the public interest than the Scheme including consideration of what other contribution to the public interest the land being acquired may otherwise

² See for example P49 of the Local Plan.

deliver as part of the Science Vale. However, the entirety of the Land to be Acquired is not required to deliver the scheme itself, and so its inclusion cannot be demonstrably in the public interest. Further, the County Council must 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.

32. As far as the Trustees are aware these alternatives have not been considered by the County Council, and they are not addressed in the Statement of Reasons. This also amounts to a failure to take reasonable steps to acquire all of the land included in the CPO by agreement (Guidance paragraph 2) and to take all appropriate steps to reduce the uncertainty and anxiety created by the CPO for those affected by it (Guidance paragraph 19). For example, meaningful engagement with the Trustees began late in the process of making the CPO; no offer has been made relating to minimum compensation; no undertaking has been given to cover the Trustees' reasonable costs. It would be reasonable for the County Council to be funding and promoting the alternatives referred to below. Further, the County Council has not offered to acquire the property outright, but only by way of an option agreement.

33. 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 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) This is disproportionate:
 - (a) 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

(b) 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.

34. It must be recognised that the test of proportionality under the Human Rights Act applies to the acquisition of the totality of the land to be acquired, and so there is a strict onus on the County Council to show that there is a compelling case in the public interest for each and every part of the land to be acquired. That balance is to be struck against 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 balanced against the public interest of 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 consideration of proportionality in Manchester Ship Canal Company v SSEFRA [2022] EWHC 3282 (Admin) (from paragraph 102).

Ground 3: Alternative ways to achieve the purpose of the CPO

35. 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.

36. The Trustees advance a number of alternatives that require consideration – and should have been considered – by the County Council.

37. Firstly, the omission of the land 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.

38. Secondly, insofar as any of the land is only required for a time limited period the Trustees have made clear to the County Council that they are willing to enter into an agreement to grant a leasehold interest in the land so required for the duration of the

construction period of the Scheme on reasonable terms. This avoids the need for compulsory acquisition.

39. Thirdly, and in any event, the Trustees have proposed to the County Council an alternative configuration of the Scheme that would provide an appropriate access from the proposed highway works into the retained land of the Trustees. The Scheme presently does not involve the provision of such access despite acquiring the entirety of the frontage of the Property to the A4130³. The Trustees maintain that the alternative access as provided to the County Council should be incorporated within the Scheme, and any required amendment to the planning permission sought. Given that the planning permission for the scheme has not been issued then the Trustees formally request that the alternative access proposals provided to the County Council through the Hub Transport Planning Scoping Report dated 2 September 2020 should be brought within the scheme by an amendment to the proposed development.

40. If this is not done then the retained land becomes in effect land-locked. As held in Manchester Ship's Canal (supra) 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:

- (i) Whether its objective is sufficiently important to justify the limitation of a fundamental right;
- (ii) Whether it is rationally connected to the objective;
- (iii) Whether a less intrusive measure could have been used; and
- (iv) 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

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.

that the use of the alternative measure above 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. Further, 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 any of the above alternatives will significantly reduce the costs of the Scheme by reducing the land acquisition costs, and the alternative measures represent the reasonable mitigation of loss by the Trustees.

43. Although relevant to the question of proportionality 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 right⁴ – and to recognise that this ground of objection could be overcome by modifications to the CPO.

Conclusion

44. 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 County Council to acquire some or all of the land by agreement;

⁴ This is a conventional approach within compulsory purpose – see for example para 106 of the Guidance bullet 3 in the context of acquisition under s226 TCPA 1990.

- (4) There are alternatives to the CPO that represent less interfering means of achieving the statutory purpose.

45. For these reasons the Order should not be confirmed as presently drafted. The Trustees – in the alternative to non-confirmation of the CPO seek the following modifications:

- (a) Re-formulating of the Order to exclude that land required only for temporary purposes in exchange for the grant by the Trustees of a leasehold interest in that land on reasonable terms and for the period required;
- (b) Amendment of the planning permission for the Scheme (if obtained) to include the alternative access proposal (or a variant of it which achieves the same end) proposed by the Trustees, and for the County Council to construct that alternative access up to the boundary between the Land to be Acquired under the scheme and the Trustees' retained land;
- (c) 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.

Excello Law

21 March 2023