

**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**

STATEMENT OF EVIDENCE

ROBERT SMITH MRICS

CHARTERED SURVEYOR, BRUTON KNOWLES LTD

on behalf of

THAMES WATER UTILITIES LIMITED

NEGOTIATIONS AND ENGAGEMENT

CASE REF : NATTRAN/SE/HAO/286 (DPI/U3100/23/12)

23rd February 2024

1. **QUALIFICATIONS AND EXPERIENCE**

- 1.1 I am Robert Frederick Smith, an Associate in the firm Bruton Knowles Ltd with the head office of Olympus House, Olympus Business Park, Quedgeley, Gloucester. The firm operates from 14 offices in England, Wales and Scotland.
- 1.2 I am a member of the Royal Institution of Chartered Surveyors (RICS) having qualified in 1992 and have worked for Bruton Knowles since 2013.
- 1.3 I am a General Practice Chartered Surveyor with over 30 years' experience in the property sector, both in the compulsory acquisition of land and the sales and marketing of commercial property and development land.
- 1.4 My career has concentrated on property across all sectors covering farmland, commercial land, individual properties, large development opportunities or mixed use schemes, for clients ranging from owner occupiers, investors, large plcs or Government Departments.
- 1.5 I was instructed in March 2023 by Thames Water Utilities Limited (TWUL). My role in this matter has been to provide advice to TWUL on all aspects of the impact of the Order (CD:H.1) general and objecting to the same associated with the principles of compensation as covered by the CPO Compensation Code.
- 1.6 My evidence is to be read alongside the evidence provided by John Paton of TWUL on the operational impact of the Order.

2. **INTRODUCTION AND SCOPE OF EVIDENCE**

- 2.1 The structure of my Statement of Evidence ("Statement") is set out in the paragraphs below. In broad terms my Statement will explain the following:
- 2.1.1 Section 3 sets out relevant policies and guidance;
- 2.1.2 Section 4 sets out the background;
- 2.1.3 Section 5 sets out a description of the land that is proposed to be acquired;
- 2.1.4 Section 6 sets out the negotiations and engagement with the Acquiring Authority to date, in respect of the acquisition of the land and the provision of replacement land by the Acquiring Authority;
- 2.1.5 Section 7 sets out the response to the Acquiring Authority's statement of case;

- 2.1.6 Section 8 sets out the background and engagement with the Department for the Environment, Food and Rural Affairs ('Defra') in relation to TWUL's objection to the Order under Section 16 of the Acquisition of Land Act 1981;
 - 2.1.7 Section 9 sets out my summary and conclusions;
 - 2.1.8 Section 10 sets out my rebuttal to commentary provided in witness and rebuttal statements submitted by the Acquiring Authority and their consultants; and
 - 2.1.9 Section 11 is the declaration for my statement.
- 2.2 Within this Statement I have used the defined terms set out in TWUL's Statement of Case dated 15 December 2023 and adopted the Core Document numbers where relevant.

3. **RELEVANT POLICIES AND GUIDANCE**

- 3.1 The relevant guidance in respect of compulsory land acquisition is set out in the revised Guidance on Compulsory Purchase Process and The Crichel Down Rules February 2018 and updated in July 2019 ('the Guidance') (CD:H.10). Although revised numerous times, the latest version sets out new 'standards' of the expectation of efforts to try to acquire land by agreement before resorting to compulsory purchase.
- 3.2 The Guidance states at section 2 that "*The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased.*"
- 3.3 The Guidance also states at section 17 that "*Undertaking negotiations in parallel with preparing and making a compulsory purchase order 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*" (my emphasis).
- 3.4 It further explains that, "*Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are*

expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question” (my emphasis).

- 3.5 Paragraph 19 of the Guidance sets out the considerations that should be taken into account by an Acquiring Authority to help those affected by a compulsory purchase order, including providing full information from the outset in terms of what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events, keeping delay to a minimum and alleviating concerns about compensation by entering into agreements.
- 3.6 The requirements of Paragraph 19 were considered in great detail in a recent decision concerning the London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021 (“the Vicarage Fields Decision”) which is appended at page 4 of Appendix 1 to this Statement. The order was not confirmed by the Inspector in that instance because the Acquiring Authority had failed to satisfy her that the scheme was viable and because of the failure to negotiate with those affected by the Order.
- 3.7 In the decision the Inspector noted as follows:
- “The CPO Guidance states that acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted...Paragraph 19 details what acquiring authorities should consider when negotiating. The AA must demonstrate that it has taken reasonable steps to acquire all the land and rights in the Order by agreement...”*
- 3.8 With regards to the steps identified in paragraph 19 of the Guidance, the Inspector concluded as follows:
- “I am not persuaded that the AA has genuinely attempted to negotiate with the affected parties in line with the CPO Guidance in relation to providing full information at the outset, appointing a specified case manager, keeping any delay to a minimum, offering advice and assistance to affected occupiers about relocations and providing a ‘not before’ date.”*
- 3.9 This decision is relevant for understanding what the Guidance expects of an acquiring authority.
- 3.10 The Guidance makes clear at various places, including sections 12 and 13, that a CPO should only be made where it is justified by a compelling case in the public interest.
- 3.11 It is my considered opinion that the Guidance has not been fully taken into account in respect of the Acquiring Authority’s engagement with TWUL. In particular, I consider that there have been no meaningful attempts to enter into negotiations

in parallel with preparing and making a compulsory purchase order, and I set out below the details evidencing this. For the reasons explained later in my evidence, drawing on the evidence of Mr Paton, I do not consider that there is a compelling case in the public interest for the compulsory acquisition of TWUL's interest.

4. BACKGROUND

- 4.1 TWUL owns and operates the Culham Sewage Treatment Works, Abingdon Road, Culham, Abingdon, OX14 3DD ("the Culham Works").
- 4.2 As explained in section 3 of the statement of Mr Paton (Appendix OBJ11/JP/2), Thames Water Utilities Limited is the statutory water and sewerage undertaker for this area as defined under the Water Industry Act (WIA) 1991, Section 94. It has a duty as a sewerage undertaker to provide and improve our sewerage system, including our system of public sewers, to convey the flow, and our treatment works, to treat sewage and release treated effluent back to the environment.
- 4.3 I have been instructed by Thames Water Utilities Ltd (TWUL) since March 2023 to act on their behalf following notification by Oxfordshire County Council ("OXCC" or the "Acquiring Authority") of its intention to permanently and temporarily acquire land owned by TWUL at the Culham Works for 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 "Order").
- 4.4 I have been the point of contact, on behalf of TWUL, with OXCC's agents (Gateley Hamer) who represent the Acquiring Authority for all discussions and negotiations.
- 4.5 If confirmed, the Order would authorise the compulsory purchase of land held as operational land, comprising part of the Culham Works, which has been identified by TWUL as required in order to accommodate future growth as explained in the evidence of Mr Paton.
- 4.6 TWUL are a statutory objector to the Order.

5. THE LAND

- 5.1 TWUL is the freehold owner of plots as set out in the schedule to the Order and this comprises plots 9/24, 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/11i, 17/14a and 17/14b (the "Land") and as shown on the Order Plans.
- 5.2 The total land area for the above plots extends to 3,707 sqm as stated in the Order.

- 5.3 The Land within TWUL's ownership which is subject to the Order (save for plot 9/24) is located at Culham Works which comprises an operational sewage treatment works covering the catchment area of the villages of Berinsfield, Culham, and Clifton Hampden, as well as the Culham Science Centre.
- 5.4 The land at Culham Works is held by TWUL as operational land, part of which contains TWUL's operational equipment. We note that the Acquiring Authority raises the question as to the operational status of the Land proposed to be permanently acquired. TWUL are of the view that they hold the land as operational land for the purposes of TWUL providing its statutory undertaking, notwithstanding that the Land (save for plot 17/11i which contains monitoring equipment) does not presently contain operational equipment but has been identified for the expansion of the Culham Works, which is necessary to respond to increased growth in the immediate vicinity. It is clearly a matter for legal submissions as to whether it meets the statutory test of operational land.
- 5.5 The Order authorises the compulsory purchase and temporary of use of land held by TWUL as operational land.
- 5.6 A plan of Culham Works and an aerial image of Culham Works is appended at pages 70 and 71 of Appendix 2 of this statement.
- 5.7 The Order and the Acquiring Authority's Statement of Case sets out the purpose for the acquisition for each of the TWUL plots, namely:

Table 1

Owner	Plot(s)	Description	Purpose
Thames Water Utilities Limited	17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/11i	Shrubland, north western curtilage of the Culham Sewage Treatment Works, length of Private Access Track extending south eastwards off Thame Lane within the curtilage, lying to the south east of the private access road known as Thame Lane and the Culham Science Centre and to the	Land required for the construction of a new length of the A415, mitigation of adverse effects of the highway, private means of access and construction working space/use land (including 9/24).

		north of the A415 Abingdon Road, Clifton Hampden.	
Thames Water Utilities Limited	9/24	Grassland and shrubland, lying to the east of Bridleway 106/3/10 (Appleford)/co-existent Private Access Road and Level Crossing Cottage and to the west of the Cherwell Valley Railway Line, Appleford.	Land required for the construction of a new length of the A415, mitigation of adverse effects of the highway, private means of access and construction working space/use land (including 9/24).
Unknown, and Thames Water Utilities Limited and Caudwell & Sons Limited (reputed owner)	17/14a and 17/14b.	Shrubland and hardstanding, lying to the south east of the Private Access Road known as Thame Lane and the Culham Science Centre to the north east of the access road to Culham Sewage Treatment Works off Thame Lane and to the north of the A415 Abingdon Road, Clifton Hampden.	Land required for the construction of a length of the new A415 and mitigation of adverse effects of the highway upon its surroundings.

5.8 In summary the Acquiring Authority require the land for the construction of a new highway and associated works.

6. **NEGOTIATIONS AND ENGAGEMENT**

- 6.1 The Order was made on 21st December 2022 and the application for planning permission submitted prior to this on 4th October 2021 (CD:AO2). It is important to note, that by this date, the application for planning permission had been submitted, such that the design of the Scheme (and therefore the land required for it) had been fixed by the Acquiring Authority.
- 6.2 As set out above, TWUL appointed me to act on their behalf in March 2023 and my role in this matter has been to provide advice to TWUL on all aspects of the impact of the Order generally and objecting to the same associated with the principles of compensation as covered by the CPO Compensation Code.
- 6.3 Upon receipt of instructions, on 8th March 2023, I immediately made contact with OXCC's agents and outlined the concerns of TWUL at that time, those being:
- 6.3.1 The design of the Scheme in relation to TWUL's land. TWUL wanted to ensure that its assets were protected during and after construction.
- 6.3.2 TWUL wanted to understand whether there was scope to influence the design of the Scheme at that stage, in particular whether it could seek the exclusion of particular plots from the Scheme. (These two concerns were acknowledged and confirmed in an email by the agent following the call on 8 March, which can be seen at page 93 of Appendix 3 to this Statement).
- 6.4 My reasoning behind this line of enquiry was to understand whether the red line boundary for the Scheme could be relocated to the extent that it did not affect TWUL's assets and land.
- 6.5 At this time, there was no discussion offered by OXCC's agents in respect of the acquisition of the Land or the provision of any replacement land.
- 6.6 On the 17 March 2023, I was instructed to submit a letter of objection to the Order on behalf of TWUL which is appended at page 95 of Appendix 3 to this Statement. The grounds for objection stated in the letter were as follows:
- 6.7 There was other more suitable land available:
- 6.7.1 *"This is a strategic asset for my client and its operational performance is likely an increase in the near future. The availability of existing land under its ownership will help to safeguard this requirement TWUL believe that with reconsideration and redesign it would not be necessary for the acquisition of TWUL's land as outlined in the plots above and that either the land is not required or more suitable land can be provided to accommodate the works."*
- 6.8 Lack of Consultation:

- 6.8.1 *"The acquiring authority has not sought to negotiate the acquisition of TWUL's land and as such TWUL is lacking considerable detail in relation to the proposals. Any works must allow for the protection of TWUL's assets so that they remain fully operational during the construction works and in the longer term are not compromised by the works. TWUL is a statutory undertaker and without proper consultation and agreements in place they are concerned that they will be unable to fulfil their statutory obligations."*
- 6.9 In the objection letter, I concluded, that *"unless and until my client has been engaged in meaningful negotiations and discussions my client's preference would be for a public inquiry to hear its objections to the Order."*
- 6.10 On 26 April 2023, myself and OXCC's agents had a telephone conversation in which I again expressed my concerns, on behalf of TWUL, regarding the impact of the Scheme by way of the loss of land, the effect that this would have on TWUL's operation of the Culham Works, and the resultant difficulty for TWUL to carry out its statutory undertaking. This is further explained in section 11 of John Paton's Statement (Appendix OBJ11/JP/2). In my view, by this point in time, OXCC's agents ought to have been clear as to the gravity of the concerns expressed by TWUL in respect of the impact of the Scheme on its undertaking.
- 6.11 On 3 May 2023, a Teams call took place between myself and OXCC's agents. The purpose of the call was to discuss the Scheme, the impact of the acquisition of each plot on TWUL and whether there were any possible solutions. The discussion was follows:
- 6.11.1 I explained that, with regards to Plot 17/11i, TWUL had equipment installed for a water sampling point which regulated by the Environment Agency and that it was not possible to relocate it.
- 6.11.2 With regards to Plots 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/14a and 17/14b, the land was to provide for future expansion of the treatment works in order to meet the increase in demand. The works in this area of the site were likely to be carried out in the next five years.
- 6.11.3 During the meeting, OXCC's agents confirmed it was not possible to make significant changes to the design of the Scheme, as the Order had been made (some five/six months previously by this point) and the red line boundary fixed.
- 6.11.4 I confirmed that TWUL would be willing to consider a voluntary agreement provided that any such agreement provided for replacement land for the land acquired under the Order, which would protect TWUL's

ability to expand the Works in future and thus be placed in an equivalent position to the current, (i.e. in a 'no scheme world').

- 6.12 If there had been any doubt as to the impacts of the Scheme and the CPO on TWUL and its statutory undertaking prior to this call, the discussion that took place on 4 May 2023 made absolutely clear what the impacts would be.
- 6.13 On the 9 June 2023, a site meeting was held with OXCC, their agents, their design consultants and TWUL.
- 6.14 I set out the discussion that took place at the site visit in an email on the 12 June 2023 to TWUL at 08:55 which can be found at page 101 of Appendix 3 to this Statement. The discussions, which considered possible solutions to the impact of the CPO on TWUL, were as follows:
- 6.14.1 Changing the red line boundary: OXCC's agents reiterated that this could not be achieved as the CPO area had now been set and the Order already made.
- 6.14.2 Deferring the date for the Public Inquiry and thus allow more time to reach an agreement between the parties: OXCC's agents confirmed that OXCC have milestones to reach in respect of the delivery of the Scheme, which relates to the availability of funding, and therefore do not want to delay the public inquiry. At that time, the Public Inquiry into the Order was due to take place in October 2023.
- 6.14.3 TWUL CPO Powers: OXCC's agents suggested that TWUL rely on its own CPO powers in order to acquire additional land in the future when required. I indicated that this provided TWUL with no certainty and therefore was not considered acceptable. The discussion in respect of this option was, at this stage, high level.
- 6.14.4 Other TWUL Facilities: OXCC's agents suggested that other TWUL facilities could be used to provide future capacity. TWUL confirmed that this was unviable because (i) none of those facilities were in sufficiently close proximity to Culham Works and (ii) the fact that a crossing of the Thames would be required.
- 6.14.5 Adjacent Land: I suggested that OXCC could approach the adjacent landowner with a view to securing an option agreement over possible replacement land for the benefit of TWUL. I encouraged them to do this as soon as possible.
- 6.14.6 Change of Design: An offer was made by OXCC to change the design so that less land was acquired from TWUL. No details of the proposal were

discussed at the meeting, but the subsequent re-design that followed from this offer is discussed in more detail below.

- 6.15 On 7 July 2023 OXCC's agents provided an updated indicative plan to show how the Scheme could be re-designed so that less of TWUL's land would be required. On balance the reduction was approximately 40%. The email is appended at page 103 of Appendix 3 and the plan is at page 139 of Appendix 4 to this Statement
- 6.16 On the 19 July 2023 OXCC's agents confirmed that the application for planning permission for the Scheme had been refused by the local planning authority and that they had been instructed by OXCC that they were to commit no further time to engagement with TWUL (Page 104 of Appendix 3). This created immediate uncertainty for TWUL and it was not until some six weeks later, on 31 August 2023, (Page 109 of Appendix 3) that OXCC's agents confirmed that they had been instructed to re-engage with TWUL to re-open discussions.
- 6.17 On 28 September 2023, by way of a Teams call, I responded to OXCC's agents in relation to their updated indicative plan (provided in July) to confirm that:
- 6.17.1 TWUL had already projected growth in this area and that the expansion of the Culham Works was a necessity for TWUL to allow for this future growth of the surrounding population; and
- 6.17.2 That the land proposed to be acquired pursuant to the Order was required for expansion with the next 2 to 5 years and would be utilised for this purpose.
- 6.18 I indicated that for these reasons, the proposed re-design was not suitable. In particular, the reduction in the land take from TWUL was not sufficient to allow TWUL's expansion proposals to go ahead.
- 6.19 On 20 October 2023 a detailed presentation (prepared by TWUL) was provided to OXCC's agents with more detailed feedback in relation to their updated indicative plan on the impact of all aspects of the Scheme on the Culham Works. The presentation included drawings to show how the land was proposed to be used to accommodate further apparatus and evidence of the expansion requirements. The presentation is at page 145 of Appendix 5 to this Statement.
- 6.20 The presentation explained the following points:
- 6.20.1 That the proposed acquisition under the CPO would compromise the future use of this critical operational site due to the growth of the surrounding population.
- 6.20.2 That the proposed expansion of the Works is scheduled to commence within the next 2 to 5 years.

- 6.20.3 That the proposed re-design of the Scheme by the Acquiring Authority continues to compromise the proposed expansion of the Works.
- 6.20.4 TWUL's statutory objection to the Order will not be withdrawn until such time as a satisfactory agreement can be reached in relation to the Land that was proposed to be acquired.
- 6.21 On 6 December 2023, OXCC's agents confirmed that in the interests of reaching a voluntary agreement with TWUL, OXCC would be prepared to explore whether it may be possible to acquire additional/replacement land from the neighbouring landowner and provided the following two options for consideration by TWUL.
- 6.21.1 Option 1 – For OXCC to purchase an area of additional land from a third party (outside of the CPO red line) of 3,247 sqm (i.e. roughly equivalent to that which would be taken under the CPO from TWUL). The plan for Option 1 is at page 140 of Appendix 4.
- 6.21.2 Option 2 – For OXCC to incorporate the previously proposed amendment described in para 6.16 above into the Scheme design, coupled with the acquisition of a smaller area of additional land (outside of the CPO) for the benefit of TWUL. This option would provide an area of land of 1,504 sqm outside the CPO, which could be used in conjunction to that retained by TWUL under the amended design. The plan for Option 2 is at page 141 of Appendix 4.
- 6.22 After consideration of both options by TWUL, on 3 January 2024, I updated OXCC's agents (Page 127 of Appendix 3) to confirm as follows:
- 6.22.1 The shape of the land offered in Option 1 (which effectively narrows to a point) is not an adequate solution as it will produce a constrained parcel of land in a triangular shape, which would not be compatible with, nor support the size and shape of the equipment required to expand the Culham Works.
- 6.22.2 Option 2, offered on the basis of the proposed re-design of the Scheme and reduced land take that was previously offered by the Acquiring Authority, also offers an irregular shape. Furthermore, the proposed re-design compromises any proposed expansion of the site as set out by TWUL in their presentation provided on 20 October 2023.
- 6.22.3 Any land retained by, or acquired, for TWUL needs to be more rectangular in shape. This was advanced on the basis of an understanding that the adjacent landowner, Caudwell and Sons Limited, owned a larger area than that proposed to be acquired for TWUL, so regularising the shape should not create additional ownership issues.

- 6.23 On 10 January 2024 I had a telephone call with OXCC's agents in which I raised an informal discussion on the subject of a potential monetary settlement between the parties, and it was agreed that I would consult with my clients.
- 6.24 On 15 January 2024 OXCC's agents provided a revised plan to show an alternative proposal to acquire adjacent land, this plan is at page 142 of Appendix 4 to this Statement. This plan was passed to TWUL for further consideration.
- 6.25 Also on 15 January 2024, we received correspondence from Defra in response to evidence submitted on behalf of TWUL in respect of test in section 16 of the Acquisition of Land Act 1981. This letter can be found at page 160 of Appendix 6 to this Statement. As explained further in section 8 below, Defra provided their considered opinion in relation to TWUL's objection.
- 6.26 On 17 January 2024, myself and OXCC's agents had a further telephone conversation. The emphasis for OXCC's agent was to seek an urgent resolution to the TWUL's objection and therefore they requested a meeting.
- 6.27 An online meeting on 25 January 2024 took place between TWUL, myself, OXCC and OXCC's agents. In summary the discussion was as follows:
- 6.27.1 Introduction by OXCC in relation to the Scheme.
 - 6.27.2 Outline by OXCC's agent of proposals submitted to TWUL to include possible acquisition of adjacent land.
 - 6.27.3 OXCC confirmed that they cannot guarantee acquisition of the adjacent land ahead of public inquiry in order for TWUL to remove their objection.
 - 6.27.4 On behalf of TWUL I confirmed the shape of land in the latest proposal is more suitable and a review needs to be carried out to ascertain if it can accommodate expansion into this land.
 - 6.27.5 I raised the issue that substantial design work was needed to be carried out to understand the feasibility of the use of the adjacent land.
 - 6.27.6 I stated that I thought it was unlikely that TWUL would reach a position that TWUL could withdraw their objection ahead of the Public Inquiry starting.
 - 6.27.7 TWUL agreed to consider the required land take, with the potential to acquire a plot of land that is in excess of that which is anticipated to be needed, in order to reduce the risk that the land taken would not be of sufficient size.

- 6.27.8 Agreement of heads of terms was raised by OXCC's agent and I stated that unless there was contractual agreement with the landowner TWUL would remain concerned about withdrawing their objection.
- 6.27.9 OXCC's agent suggested a financial settlement as an option. TWUL raised concerns about this option because it would rely on TWUL negotiating a land purchase from a third party, or in the absence of this, relying on CPO powers. It was explained that the Culham Works would need to be expanded sooner than the additional land could be acquired through a CPO process.
- 6.27.10 OXCC's agent suggested that TWUL could use their own powers through a CPO to acquire land however it was agreed that this would not be achieved in a timely manner.
- 6.27.11 TWUL raised the matter of the water course on the south of the operational land plot 17/11i this is shown on a plan at page 143 of Appendix 4, this would be difficult to relocate due to environmental factors, flood management would need to be considered.
- 6.27.12 OXCC requested that TWUL's objection was heard towards the end of the Inquiry.
- 6.27.13 The action points were :
- 6.27.13.1 TWUL were to confirm how much land is required.
 - 6.27.13.2 OXCC were to respond with flood modelling information, in respect of the TWUL discharge point.
 - 6.27.13.3 OXCC were to approach the Public Inquiry with a request regarding dealing with this matter later in the Inquiry.
- 6.27.14 Draft minutes have been prepared and circulated by OXCC's agents in order to seek to agree them. The agreed minutes will be provided to the inquiry in due course.
- 6.28 The lateness of this engagement meant that OXCC was never going to be able to accommodate TWUL's requests to change the design and/or the red line to avoid the adverse effects to perform its statutory undertakings.
- 6.29 By the lack of early engagement, the Acquiring Authority have failed to understand the significance of TWUL's assets at Culham Treatment Works and its operational requirements. This is discussed further below, in response to the Acquiring Authority's Statement of Case.

7. **RESPONSE TO ACQUIRING AUTHORITY'S STATEMENT OF CASE**

- 7.1 The Acquiring Authority have stated the following in their Statement of Case:
- 7.1.1 (Section 11.23.20 pages 90 & 91): 11.23.20 Thames Water Utilities Limited – Plots: 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/11i and 9/24 Reputed owners – Plots: 17/14a and 17/14b 81764464.3 91. Gateley Hamer have been in contact with the landowner and their representatives since March 2021 regarding the Scheme and initial access for surveys. Following the finalisation of the Scheme design in December 2022, land plans confirming the land and rights required for the Scheme were issued to the landowner. Gateley Hamer and the Acquiring Authority have been in regular correspondence with the landowner’s agent since February 2022 regarding the Scheme proposals and landowner’s concerns. A site meeting took place with the landowner’s agent in June 2023 to discuss the Scheme proposals and the landowner’s concerns regarding the impact on their operations as a statutory undertaker. Following this meeting the Acquiring Authority and Gateley Hamer put forward alternative proposals for a land acquisition agreement. The Acquiring Authority and Gateley Hamer will continue to progress discussions with the landowner’s agent with a view to reaching a voluntary agreement if it is possible to do so within a reasonable timeframe.
- 7.2 In their statement OXCC’s agents state *‘the Acquiring Authority have been in regular correspondence with the landowner’s agent since February 2022 regarding the scheme proposals and landowner’s concerns.’*
- 7.3 I do not consider that OXCC’s agents summary in their Statement of Case accurately reflects the current position between OXCC and TWUL and this has been demonstrated as follows:
- 7.3.1 Whilst OXCC’s agents assert that discussions had commenced in March 2021 with TWUL and that the Acquiring Authority have been in regular correspondence with the landowner’s agent since February 2022 , there were no substantive discussions between TWUL or its representatives and OXCC’s agents ahead of the Order being made in December 2022, at which point the red line boundary was fixed.
- 7.3.2 By this date, the application for planning permission had been submitted (4th October 2021) (CD:AO2), such that the design of the Scheme (and therefore the land required for it) had already been determined.
- 7.3.3 Discussions with myself and OXCC’s agents commenced in March 2023 immediately after my appointment by TWUL and clearly after the red line boundary was fixed.

- 7.3.4 Any discussions associated with replacement land were not entered into until December 2023, after the pre-inquiry meeting had been held and shortly before proofs of evidence were due.
- 7.4 To the extent that I've seen correspondence which predates my involvement in this matter, I understand the majority of such correspondence relates to the planning aspects of the Scheme, as opposed to being in respect of the compulsory acquisition of TWUL's land.
- 7.5 The Vicarage Fields Decision (Appendix 1) discussed above illustrates the importance of an acquiring authority demonstrating that it has offered advice and assistance to affected parties. In these circumstances, it was incumbent upon OXCC to work with TWUL as an affected landowner and statutory undertaker, at an early stage, to reduce the impacts of the CPO upon it and accommodate it as far as possible within the Scheme.
- 7.6 The importance of early engagement is underlined by the present circumstances; when engagement comes too late, the acquiring authority has next to no ability to accommodate affected parties or amend the Scheme to reduce impacts upon them. In my view, engagement with TWUL came far too late to be meaningful. That this is the case is demonstrated by the difficulty facing the acquiring authority in belatedly seeking a solution to TWUL's objection, without amending the red line boundary of the Order or the design of the Scheme (having been fixed by the application for planning permission and the making of the Order).
- 7.7 Furthermore, it is my view that the initial correspondence provided to TWUL failed to provide sufficient information from the outset. In particular, it failed to include information as to what the process would involve or make clear the timeframes within which the OXCC was working. The time constraints that applied to OXCC only became apparent when it indicated that it could not delay the public inquiry in July 2023.
- 7.8 Standing back, therefore, in my view there was no meaningful engagement with TWUL at any stage at which TWUL could meaningfully shape the development of the Scheme or the extent of land to be acquired under the order. The engagement that has taken place since has been hamstrung by the late stage at which it began.
8. **BACKGROUND AND CURRENT POSITION IN RESPECT OF SECTION 16 OBJECTION UNDER THE LAND ACQUISITION ACT 1981**
- 8.1 Section 16 of the Acquisition of Land Act 1981 enables relevant Ministers to prevent land owned by a statutory undertaker from being acquired via compulsory purchase, an extract of the Acquisition of Land Act 1981 of Section 16 is at page 164 of Appendix 7. The Order includes the acquisition of land from TWUL (a statutory undertaker) by the Acquiring Authority.

- 8.2 Section 16 provides a mechanism for a statutory undertaker to make a representation to the 'relevant minister' on the basis that the land proposed to be acquired was acquired by the relevant statutory undertaker for the purposes of its undertaking and is also used for the purposes of the carrying on of its undertaking. The relevant minister must then certify that they are satisfied that the land can be:
- 8.2.1 acquired and not replaced without serious detriment to the carrying on of the undertaking (s16(2)(a)); or
 - 8.2.2 acquired and replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the said undertaking (s16(2)(b)).
 - 8.2.3 in order for the land to be compulsorily acquired.
 - 8.2.4 if such an objection is made in time and the relevant minister does not provide such a certificate, then the land cannot be acquired
- 8.3 As referred to above the original objection to the Order was submitted by myself to the Department for Transport on behalf of TWUL on 17 March 2023.
- 8.4 On 23 March 2023, clarification was sought by Defra as to whether this was to be regarded a S16 objection under The Acquisition of Land Act 1981.
- 8.5 On 23 March 2023, I confirmed it was to be regarded as such. However on 3/11/2023, Defra confirmed that procedurally the objection fell outside section 16 due to the fact that procedurally, it was not submitted to the correct minister within the relevant time period and nor was it stated to be a section 16 objection.
- 8.6 However, notwithstanding that the objection did not technically qualify as a section 16 objection for these reasons, Defra invited TWUL to explain how it is considered that the Order would impact upon its statutory undertaking.
- 8.7 This explanation was submitted to Defra by myself on the 14th December 2023 and is appended at page 166 of Appendix 8 to this Statement.
- 8.8 On 15 January 2024, Defra responded to TWUL's representation. In its response, Defra found as follows:
- 8.8.1 *"Thames Water submitted a representation to the Department for Transport on 17 March 2023. The representation was not accepted under section 16 as it was made to the Transport Secretary and not the Secretary of State for Environment, Food and Rural Affairs, it also did not clearly state that the representation was being made under Section 16."*

8.8.2 *"Defra officials are of the belief that this was a procedural error."*

8.8.3 *"Whilst the land included in the proposed order does not currently contain any operational equipment, (excluding plot 17/11i which contains monitoring equipment and is already required as part of Thames Water's daily operational activity) the land has been identified for the expansion of the Culham Sewage Treatment Works (Culham Works) and is therefore essential for performance of the undertaker's activity."*

8.8.4 *"Thames Water have stated that confirmation of the Order will result in serious detriment to the carrying on of its undertaking at Culham Works."*

8.8.5 *"For these reasons, Defra would like to request that you [the Secretary of State for Transport] do not proceed to make the Order whilst it includes the land required by Thames Water for expansion of the Culham Works and the land in parcel 17/11i which is already required as part of Thames Water's daily operational activity."*

8.9 It is clear from Defra's response that it is satisfied that the test in section 16 is not met, as the Order will give rise to a serious detriment to the carrying on of its undertaking at Culham Works. Whilst there is no legal bar to the confirmation of the Order (TWUL's objection falling outside section 16 due to procedural reasons), in my view the request from Defra not to confirm the Order ought to be given substantial weight in determining whether or not to confirm the Order.

8.10 It is clear that Defra shares TWUL's grave concerns regarding the detrimental impact the confirmation of the Order would have on the ability of TWUL to fulfil its statutory obligations. In my view, the Order should not be confirmed whilst it includes TWUL's land on the basis that the detrimental impact to TWUL's statutory undertaking undermines the case for the acquisition of the land. It simply cannot be said that the high threshold of a 'compelling case in the public interest' is met in respect of TWUL's land.

9. **SUMMARY AND CONCLUSIONS**

9.1 TWUL owns and operates the Culham Sewage Treatment Works and is the freehold owner of plots contained 9/24, 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/11i, 17/14a and 17/14b within the Order and shown on the Order Land plans.

9.2 As far as I am aware, and so instructed by my client, OXCC's agents had no substantive and/or meaningful engagement or discussions with TWUL prior to my appointment.

- 9.3 As I have mentioned previously in this Statement, the importance of the acquiring authority providing information at the outset is paramount, this has been considered in depth in the recent Vicarage Fields Decision.
- 9.4 My engagement with OXCC's agents commenced in March 2023.
- 9.5 By submitting the planning application in October 2021 the Acquiring Authority had determined the extent of the Scheme and the red line boundary.
- 9.6 By making the Order in December 2022 and thus fixing the red line boundary ahead of any meaningful engagement, the options available to the parties were limited to:
- 9.6.1 a 'light touch' re-design of the Scheme by the Acquiring Authority, which ultimately has proved to be wholly unsatisfactory; or
 - 9.6.2 the provision of replacement land from the adjacent landowner which was only explored some 7 months after first being suggested by myself and thus allowing a wholly insufficient period of time ahead of the Inquiry in which to reach a possible agreement as admitted by OXCC's agents.
- 9.7 The lateness of the engagement meant that OXCC was never going to be able to accommodate TWUL's requests to change the design and/or the red line to avoid the adverse effects to perform its statutory undertakings.
- 9.8 By the lack of early engagement, the Acquiring Authority have failed to understand the significance of TWUL's assets at Culham Works and its operational requirements.
- 9.9 The exploration of the provision of replacement land was of paramount consideration and should have become the focus for the Acquiring Authority much earlier in the process.
- 9.10 The dialogue with and response from Defra in relation to the S16 objection underlines the strong objection to the making of the Order, as proposed, will result in serious detriment to its statutory undertakings at Culham Treatment Works.
- 9.11 Whilst engagement remains ongoing with the Acquiring Authority to seek a resolution, this evidence has shown that the efforts expended in trying to acquire or replace the land by agreement have been inadequate and do not meet the advice set out in the Government guidance on compulsory purchase process.
- 9.12 Taking the above into account I request that the Inspector does not confirm the Order until such time as a contractual agreement is reached between the parties for the provision of equivalent replacement land, or TWUL's objection is otherwise overcome.

10. **REBUTTAL**

10.1 Since preparing my Statement, I have been provided with the witness and rebuttal statements submitted by the Acquiring Authority.

Mr Moon's evidence:

10.2 I have read the evidence of Mr Moon and wish to respond to three points raised therein. My response to specific points does not indicate my agreement to anything else in the statement of evidence.

(i) Safeguarding

10.3 Mr Moon states at paragraph 4.65 of his statement:

"The land has been safeguarded for the Scheme in the South Oxfordshire Local Plan (policy ref TRANS3)"...and..."Thames Water has not objected to the safeguarding provisions and had not previously raised any concerns with regard to conflict between the Scheme and its proposals for the expansion of the Treatment Works."

10.4 I do not consider the lack of objection by TWUL to the safeguarding of the land in the Local Plan undermines the substance of its objection to the Order. In particular, it is not surprising that TWUL did not submit an objection to the Local Plan at a point in time when the need to expand the Works had not yet crystallised. At the time that the safeguarding policy was being examined, the strategic allocations for the Culham Science Centre (policy STRAT9) and Berinsfield Garden village (policy STRAT10) had not yet been confirmed (being included within the same plan as the safeguarding policy), such that TWUL had not yet commenced work to identify the operational impact of those sites and exploring solutions for meeting any need for increased capacity.

10.5 In any event, the safeguarding of the land in the Local Plan would not necessarily, impact the development of the land. Policy TRANS3 of the Local Plan does not prevent the development in the safeguarded area but requires that:

"New development in these areas should be carefully designed having regard to matters such as building layout, noise insulation, landscaping, the historic environment and means of access. Any proposals for development that may reasonably be considered to impact upon the delivery of the identified schemes should demonstrate the proposal would not harm their delivery. Planning permission will not be granted for development that would prejudice the construction or effective operation of the transport schemes listed above".

10.6 Furthermore, to the extent that the land is operational land, permitted development rights ("PD rights") would apply pursuant to the provisions of the

Town and Country Planning (General Permitted Development) (England) Order 2015, for "any other development in, on, over or under their operational land, other than the provision of a building but including the extension or alteration of a building" (paragraph 'f' of class B of Part 13 of Schedule 2), meaning express planning permission may not be required for an expansion to be carried at the Works. For any works which fall outside the scope of PD rights, there would be a compelling case for planning permission to be granted for the expansion of essential infrastructure notwithstanding the existence of the safeguarding policy.

(ii) TWUL's response time during negotiations

10.7 Mr Moon states at paragraph 4.72 of his statement that:

"Thames Water did not formally respond until 20 October 2023 to confirm that this alternative proposal would not be suitable...."

10.8 This relates to the amended proposals presented to TWUL on 7 July 2023.

10.9 In response, it should be noted that:

10.9.1 On the 21st July 2023, the Acquiring Authority asked that we cease work in relation to the Scheme, due to the planning application being refused.

10.9.2 Only on the 30th August 2023 did the Acquiring Authority request that TWUL re-engage with OXCC's agents.

10.9.3 Between 30th August 2023 and 20th October 2023 there was continual dialogue between myself and OXCC's agents.

10.10 I do not consider that it was unreasonable for TWUL to take a period of circa. 2 months to review the alternative proposal. In particular, TWUL needed to consult with colleagues and other departments internally in order to provide a robust and considered response to the proposals submitted by the Acquiring Authority.

(iii) Expansion of the Culham Works

10.11 Mr Moon states at paragraph 4.68 of his Statement:

"For the reasons detailed above, it is considered that without the Scheme an expansion of the Treatment Works to the extent proposed would not appear to be necessary. Furthermore, Thames Water has not provided sufficient information and evidence to justify its case that the expansion proposed at the Culham Treatment Works is the only reasonable solution for it to meet future demands. As such, the Acquiring Authority is of the opinion that the expansion of the Treatment Works cannot come before the Scheme."

- 10.13 TWUL simply do not accept the Acquiring Authority's position that the evidence for the need for expansion is insufficient. It is my view that the evidence put forward in this regard is clear. The expansion of the Culham Works is the only viable solution to accommodate the projected future growth in demand due to an anticipated growth in the local population in the Culham Works catchment area as is explained in paragraphs 9 and 10 in the evidence submitted by Mr John Paton; and in TWUL's letter to DEFRA dated 14 December 2023 (Appendix 8 to this Statement). DEFRA also agree with and support the position that the land is required for future expansion due to the increase in population in the catchment area, based on the evidence submitted (Appendix 6 to this Statement).
- 10.14 The need to expand the Works was made clear to the Acquiring Authority at the meeting on site on 9 June 2023 which resulted in an action on the Acquiring Authority (following that meeting) to review the Scheme to ascertain whether less land would be required. Furthermore, the detailed presentation submitted on the 20 October 2023 (Appendix 5 to this Statement).

Mr Chan's evidence:

- 10.15 I have also read the evidence of Mr Chan and wish to respond to one point raised therein. My response to specific points does not indicate my agreement to anything else in the statement of evidence.

(i) Alignment

- 10.16 Mr Chan states at paragraph 3.57 to 3.59 of his statement of evidence:

"Thames Water is of the view that with reconsideration and redesign the acquisition of its land is not necessary and that either the land is not required or more suitable land can be provided to accommodate the works."

"In relation to Thames Water's suggestion, the design team considered whether a realignment of the Scheme is possible in order to avoid the need to acquire land from the Treatment Works. As mentioned in Section 2, the available space at this location is limited to fit the CHB carriageway and associated drainage feature, hence the cross section at this location is 0.5m less than the 18.3m wide typical cross section on CHB (see Figure 14 of my proof of evidence). A 7m wide section of water bodies and proposed culvert will lie east of the proposed carriageway, along with a 5m wide access road which spur off a new access to the Culham Treatment Works."

"In addition to the above, the possibility of moving the alignment north-westward would require the Scheme to extend beyond the Scheme Boundary hence it is not deemed feasible."

- 10.17 By way of response, the limitation on the 'available space' for the carriageway is a direct product of the redline boundary for the CPO, as opposed to the physical

constraints of the land in the immediate surrounding area. Indeed, the Acquiring Authority's evidence points to no physical feature that would restrict the alignment of the carriageway. The fact that TWUL's suggested realignment would require land outside the CPO is not sufficient to render it an unsuitable alternative that can be discounted. If the Acquiring Authority's approach reflected a correct interpretation of the Guidance on alternatives, then acquiring authorities would only ever have to consider alternatives that could be delivered within their existing redline CPO boundaries.

10.18 The fact that the Acquiring Authority were working to a fixed red line boundary at the point in time when discussions regarding alternative alignments were raised highlights that the Acquiring Authority failed to engage with TWUL at an early point in the design of the Scheme, and only did so once the red line boundary of the Scheme had already been fixed such that there was little scope for the Scheme to be altered.

11. **DECLARATION**

11.1 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.



Robert F Smith BSc MRICS

23 February 2024