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

THE CALLED-IN PLANNING APPLICATION BY OXFORDSHIRE COUNTY COUNCIL FOR THE DUALLING OF THE A4130 CARRIAGEWAY, CONSTRUCTION OF THE DIDCOT SCIENCE BRIDGE, ROAD BRIDGE OVER THE APPLEFORD RAILWAY SIDINGS AND ROAD BRIDGE OVER THE RIVER THAMES, AND ASSOCIATED WORKS BETWEEN THE A34 MILTON INTERCHANGE AND THE B4015 NORTH OF CLIFTON HAMPDEN, OXFORDSHIRE (APPLICATION NO: R3.0138/21)

APP/U3100/V/23/3326625 and NATTRAN/SE/HAO/286 (DPI/U3100/23/12)

CLOSING SUBMISSIONS IN RESPECT OF THE ORDERS

ON BEHALF OF OXFORDSHIRE COUNTY COUNCIL

AS ACQUIRING AUTHORITY[1]

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1. These closing submissions will first address the case in support of the Orders[2], including compliance with the CPO Guidance, before turning to remaining objections. By way of overview, the Orders are required to deliver the HIF1 Scheme ("**the Scheme**"), for which there is a compelling case in the public interest, in light of the urgent need for and the substantial benefits of the Scheme. The remaining objections do not provide any proper basis not to confirm the Orders, and any valid concerns raised have been appropriately

[1] These closing submissions are produced in respect of the Orders inquiry. Separate closing submissions have been provided by OCC as Applicant in respect of the called-in planning application inquiry. However, OCC asks the Inspector and Secretaries of State to take into account the section of these closing submissions on funding, deliverability and viability both in the determination of the called-in planning application, and in deciding whether to confirm the Orders, given that funding, deliverability and viability has been raised in respect of both the Orders and the called-in planning application.

[2] The compulsory purchase order ("**the CPO**") (CDH.1); the side roads order ("**the SRO**") (CDH.3); and the bridge scheme ("**the Bridge Scheme**") (CDH.5).

addressed by OCC. OCC has complied with the CPO Guidance[3] and the Orders should be confirmed so that this important and significantly beneficial Scheme can come forward.

Need and benefits

2. The need for and benefits of the Scheme are overwhelming. That forms the principal justification for the CPO and is the fundamental basis for there being a compelling case in the public interest for the CPO.

3. Due to the conjoined nature of the inquiries, the evidence on the need for and benefits of the Scheme was heard in weeks 1 – 4. OCC's call-in closing submissions made on 23 April 2024 set out OCC's case on the need and benefits. OCC relies on and does not repeat that case. In summary, it was set out how:

   a. The need for the Scheme most directly derives from the existing and planned housing and employment growth in Science Vale. The Scheme will enable that growth. The development plans which plan for that growth directly depend on the Scheme, and without the Scheme they would fail (paras. 3 – 14 of OCC's call-in closing submissions).

   b. In addition to enabling delivery of planned development, the Scheme will address four further key issues, as follows (paras. 15 – 29):

      i. The poor existing highway network performance, by providing modern, fit for purpose highway infrastructure;

      ii. The under-provision of active travel in the area, by providing extensive and high quality cycling and walking infrastructure;

      iii. The need for improvements in public transport, by enabling more reliable, enhanced and additional bus services; and

      iv. The need for adequate network resilience and safety.

[3] Guidance on Compulsory Purchase Process and the Crichel Down Rules, July 2019 (CDH.10).

c. The need for and benefits of the Scheme also gain weight by their recognition in other tiers of policy beyond the Local Plans, in particular the Local Transport and Connectivity Plan, the Didcot Garden Town Delivery Plan, and the NPPF (paras. 30 – 34).

d. Overall, the need and benefits are entirely compelling, wholly made out, and worthy of very substantial weight (para. 34).

4. In addition to the need and benefits (Issue 1 for the call-in inquiry), OCC's call-in closing submissions considered the Inspector's other 13 main issues (paras. 35 - 166). It was concluded that the Scheme accords with the development plan as a whole and that the planning balance comes down heavily in favour of the Scheme. Any adverse environmental effects are heavily outweighed by the benefits; the adverse effects are few and far between and the overall environmental picture is very positive (paras. 167 – 170). OCC relies on, and does not repeat here, that strong planning case for the Scheme in support of the compelling case in the public interest for the Orders.

5. All the land and rights sought to be acquired are needed for the Scheme, and do not exceed that which is required. Mr Blanchard and Mr Chan have provided detailed written and oral evidence explaining the Scheme design, how it is properly based on appropriate design standards and guidance, and that all the land and rights are needed to deliver the Scheme.[4]

Alternatives

6. The existence of alternatives may be a relevant matter in deciding whether to confirm a CPO. The issue of alternatives has been thoroughly considered in the call-in part of the conjoined inquiries and OCC's call-in closing submissions under Issue 4 ("consideration of alternatives") set out OCC's case on that issue (paras. 67 – 76). OCC relies on and does not repeat that case here. Those closing submissions explain that the Scheme is the product of a detailed, robust and multi-stage optioneering process which took place between 2014 and 2021, and that there are no feasible, realistic alternatives to the Scheme (paras. 67 – 71).

[4] In particular Mr Blanchard and Mr Chan proofs section 2 ("Scheme design") and evidence in chief (day 17, 24 April 2024).

7. Attempts to acquire by negotiation as an alternative to compulsory purchase are dealt with below.

Funding, deliverability and viability

8. OCC is able to show that all the necessary resources will be in place to deliver the Scheme, in accordance with para. 13 of the CPO Guidance. As explained by Mr Mann[5], the cost of the Scheme is c.£332.5m. Homes England are contributing £276.2m to the total, having recently agreed to increase their contribution from £239.8m in light of cost increases in the Scheme, principally due to an increase in the inflation budget. Homes England confirmed the increased funding on 19 April 2024, along with contingency should it be required. The remainder of the funding comes from the Oxfordshire Local Enterprise Partnership (£10m), OCC (£30m), and s.106 developer contributions (£16.4m, which is underwritten by OCC to the extent that it is unsecured).

9. The additional funding was only approved after the request had been considered by five separate government departments and agencies: Homes England, HM Treasury, the Department for Transport, the Department for Levelling Up, Homes and Communities, and the Infrastructure and Projects Authority. As such, the case for funding the Scheme has been scrutinised extensively throughout Government and has been found to be made out.[6]

10. Various objectors to the called-in planning application and to the Orders have raised certain challenges to the viability and feasibility of the Scheme. They are without substance. In particular:

    a. Mr Ng, on behalf of the NPCJC, suggests that an overall inflation allowance of £62m is required, but that is very close to the actual inflation allowance of £59.3m, as at the date of Mr Mann's proof. Mr Mann also explained that the figures are subject to continuous review, and the most recent review (after the date of his proof of evidence) has shown a projected reduction of £5.8m to the inflation costs.[7]

[5] See section 5 of Mr Mann's proof for the cost and funding position, with the funding position updated by Mr Mann in evidence in chief (day 17, 24 April 2024) and in the subsequent HIF1 Funding Update Note (O-INQ-12).
[6] HIF1 Funding Update Note (O-INQ-12).
[7] Mr Mann rebuttal para. 2.2; evidence in chief (day 17, 24 April 2024).

b. Mr Ng's comments doubting the robustness of OCC's approach to risk were misconceived. Mr Mann explained that OCC has support from commercial and risk managers from AtkinsRealis in the management of the contingency budgets, which includes risk and optimism bias. Rather than a top down approach to calculating risk, which is more reliable at the earlier stages of a project, OCC is transitioning to a 'bottom up' quantified risk approach, as is appropriate. This uses costed risk registers identifying individual and site-specific risks; there is a detailed register and it is reviewed regularly to adjust the risks, remove those not needed, and add new ones. This is periodically analysed via a quantitative cost risk analysis process to provide a suitable risk budget for the project. OCC also analyses optimism bias using guidance from the HM Treasury Green Book guidance, again led by OCC's commercial and risk practitioners. As expected, the risk and optimism bias allowance is reducing as the Scheme develops.[8]

c. Mr Harman's evidence on behalf of the NPCJC raising concerns over deliverability and feasibility was also unsubstantiated. Mr Harman discussed procurement challenges and risks in a generalised way. These will of course be inevitable on an infrastructure project of this scale, but OCC is taking all relevant expert advice, and is also itself an experienced deliverer of highway projects, such that there is no proper basis to doubt the deliverability of the Scheme within the programme and budget (plus contingency if required). In particular, Aecom have been appointed as engineers for the delivery of the feasibility design, preliminary design, planning application, ground investigation and other areas of technical support. Graham Construction Ltd has been appointed to provide construction advice during the preliminary design stage, including on construction methodology and site compound requirements. AtkinsRealis is a strategic partner to OCC with a framework contract to provide a range of support. For HIF1 this has focused on areas of project management, including risk management expertise, commercial management, supporting the management of the budget, contract management, and elements of procurement. To date, key contracts have been let to Aecom for feasibility and preliminary design, and to Graham Construction Ltd for the delivery of detailed design of the Culham

[8] See Mr Mann rebuttal paras. 2.3 – 2.5, and proof table 3 (p.15) to see the risk and optimism bias allowance reducing as the Scheme develops.

River Crossing Section and the Clifton Hampden Bypass section. The Scheme is being split into three for the purposes of practical management and delivery of the works: Culham River Crossing, Clifton Hampden Bypass, and Didcot Science Bridge (which includes the A4130 elements). The procurement strategy for the third element, the Didcot Science Bridge / A1430, has now been agreed and OCC intends to let a detailed design contract, while preparing for the separate procurement of a construction contract. In short, contractual and procurement matters are progressing in a well-planned and managed way.[9]

d. Mr Harman made various assumptions about procurement and contractual matters which do not align with what is actually taking place. In particular, Mr Harman was wrong to suggest that large uncontrolled risks would fall on OCC; as Mr Mann explained, OCC generally has control over risk allocation and this is set out in the tender documentation for contractors. Mr Harman's suggestions of unforeseen difficulties due to stakeholder interests such as Network Rail are contrary to evidence which shows that OCC has been engaging in detail with Network Rail, along with other affected statutory undertakers and stakeholders, and is accommodating their requirements through any necessary asset protection agreements compatibly with the Scheme.[10] On programme, Mr Mann has set out the anticipated programme and explained that it has been developed with appropriate expert advice.[11] Homes England have extended the funding availability period to accord with the revised programme resulting from the delay to the determination of the planning application.[12]

11. OCC asks the Inspector and Secretaries of State to take into account this section of the closing submissions on funding, deliverability and viability both in the determination of the called-in planning application, and in deciding whether to confirm the Orders, given that funding, deliverability and viability has been raised in respect of both the Orders and the called-in planning application.

[9] Mr Mann proof 5.24 – 5.36; rebuttal 2.8 -2.16.
[10] Mr Mann rebuttal paras. 2.8 – 2.16.
[11] Mr Mann proof paras. 5.24 – 5.29; 5.43 – 5.50.
[12] HIF1 Funding Update Note paras. 4, 6 (O-INQ-12).

Impediments

12. In accordance with para. 15 of the CPO Guidance, the Scheme is unlikely to be blocked by any physical or legal impediments to implementation. Planning permission is being considered alongside confirmation of the Orders via the called-in planning application. Mr Mann has given unchallenged evidence that there are unlikely to be any impediments by way of other necessary consents: in particular, any necessary traffic regulation orders are anticipated to be made as required; there is no reason to consider that any necessary protected species licences will not be obtained; and there has been engagement with affected statutory undertakers, whose requirements are being accommodated in Scheme design and delivery so far as is necessary.[13]

Attempts to acquire by negotiation

13. In accordance with the CPO Guidance (paras. 2 and 17), OCC has taken reasonable steps to acquire all of the land and rights included in the CPO by agreement, and continues to do so. OCC has treated compulsory purchase as a last resort, albeit noting the guidance that:

> "*However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to: plan a compulsory purchase timetable as a contingency measure; and initiate formal procedures.*"[14]

14. OCC and its land agents, Gateley Hamer, have been engaging with landowners since February 2020. Prior to this OCC had undertaken significant engagement and consultation with key stakeholders in respect of the design and route alignment of the Scheme, as described in Mr Wisdom's proof of evidence (section 9). There has been ongoing contact with all parties impacted to discuss the Scheme, the CPO and land acquisition requirements. This has also included engagement in early 2021 to secure access to land for ground investigation and environmental surveys to assist with the design and construction of the Scheme. It also included statutory notices sent out to landowners in July 2021 requesting information in respect of the land (including providing plans of the plots in

[13] Mr Mann proof paras. 5.51 – 5.65.
[14] Paragraph 2.

question). The formal statutory notices specifically stated that the request for information was to enable OCC to perform its functions in relation to the making of a Compulsory Purchase Order pursuant to Sections 239-260 of the Highways Act 1980, and accompanying correspondence also explained that compulsory purchase might be required.[15]

15. In December 2022, following refinements to and the finalisation of the Scheme design, notices informing impacted landowners of the making of the CPO were served, and land plans confirming the land and rights required for the Scheme were issued to landowners. Negotiations with impacted landowners regarding the acquisition of the specific plots of land and rights which are required to deliver the Scheme have continued since that time. This has included meetings, both virtually and in many cases on site, with landowners to discuss OCC's proposals and potential voluntary agreements. Heads of terms for voluntary agreements have been drafted and agreed with landowners where it is possible to reach agreement. The vast majority of the impacted parties are willing to engage with OCC with a view to agreeing voluntary agreements to enable the acquisition of the necessary land and rights required to facilitate the delivery of the Scheme.[16]

16. In response to certain objectors' criticisms that detailed land plans were not provided before December 2022, it was obviously not possible for OCC to provide these until Scheme finalisation. In the circumstances of the present case it was reasonable to allow the Orders confirmation process and negotiations with landowners to proceed in parallel. The CPO guidance (para. 2) quoted above indicates that this can be appropriate. Objectors rely on the CPO Guidance noting that there can be benefits in undertaking negotiations in parallel with preparing and making a CPO, but the CPO Guidance does not make that a mandatory requirement.[17] In the present case, there is an urgent need for the Scheme and a significant amount of planned development in Science Vale depends on it coming forward, as set out in OCC's call-in closing submissions. There is a public interest in the Scheme proceeding in a timely manner and not being delayed. There are a large number of landowners given the

[15] See, by way of example, the request for information ("RFI") sent to Thames Water Utilities Limited ("TWUL") dated 7 July 2021, which is at O-INQ-11.a (the plans annexed to the RFIs) and O-INQ-11.b (comprising OCC's and Gateley Hamer's (OCC's land agents) letters to TWUL, and TWUL's reply). The formal statutory notice is at pdf p.26 of O-INQ-11.b. At pdf p.28 of O-INQ-11.b, the Gateley Hamer letter explains that compulsory purchase may be required. The RFIs were made under s.16 of the Local Government (Miscellaneous Provisions) Act 1976.
[16] Mr Moon proof section 3; Mr Moon evidence in chief (day 17, 24 April 2024).
[17] Section 17, p.15.

linear nature of the Scheme, which inevitably requires compulsory purchase to be pursued alongside negotiations. The funding for the Scheme from Homes England has a time-limited window, and delay would have been inconsistent with that. A balance has to be struck between engagement and progressing an urgently needed scheme expeditiously. Further, the significant engagement with landowners prior to December 2022 (as discussed in respect of individual landowners later in these closing submissions) means that it is wrong to characterise the process as not commencing until December 2022. Finally, and importantly, we are now 16 or so months on from December 2022. During that period, there have been extensive negotiations with all landowners (with the exception of one who has declined to engage). Mr Moon has explained that in all cases where negotiations are ongoing, there have been significant discussions with a view to reaching a voluntary agreement and negotiations are at an advanced stage.[18]

17. In respect of the offers made to landowners, Mr Moon has confirmed that OCC has made offers which are in accordance with Compensation Code principles and, as such, has reflected compensation within offers as if the landowners' interests had been compulsorily purchased.[19]

Human rights and equalities[20]

18. The CPO has the potential to interfere with the human rights of persons who own property in the Order Land by compulsorily transferring property rights to the Council, in particular Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions). Such interference is authorised by law provided that the statutory procedures for obtaining the CPO are followed, there is a compelling case in the public interest for the CPO, and any interference is proportionate to the legitimate aim served. Given the very limited land take in respect of any property in residential use, it is unlikely that there is any interference with Article 8 (the right to respect for one's home and private and family life), but to the extent that there is, it is legitimate and justified.

[18] Mr Moon proof section 3; Mr Moon evidence in chief (day 17, 24 April 2024).
[19] Mr Moon proof para. 3.22; Mr Moon evidence in chief (day 17, 24 April 2024).
[20] See Mr Mann's proof at section 6 for OCC's evidence on human rights and equalities.

19. The Scheme has been designed to minimise interference with rights and the Acquiring Authority considers that the strong public interest in the Scheme, as set out above, clearly outweighs any interference with rights caused by the use of compulsory purchase powers to acquire third party land for the Scheme.

20. In promoting the CPO, the Acquiring Authority has complied with all relevant legislation. The Scheme has been extensively publicised and consulted upon. There has been extensive engagement with all those whose land interests are affected.

21. Although there is no obligation on the Acquiring Authority to establish that there are no less intrusive means available, the Order Land has been kept to the minimum necessary to construct the Scheme and provide the associated mitigation measures. Those directly affected by the CPO will be entitled to compensation for any loss in accordance with the Compensation Code.

22. In terms of equalities, an Equality Impact Assessment (October 2021) has been undertaken.[21] This concludes that the Scheme will result in a number of beneficial impacts for communities, including those from protected characteristic groups, in particular improved connectivity and accessibility, improved safety, increased opportunities for active travel, and support for new housing and employment. The EqIA also identified some potential adverse effects, related to potential noise and air quality effects, and impacts on public rights of way. The EqIA makes recommendations to mitigate against those potential adverse effects, including environmental mitigation in respect of the construction and operational phases, and inclusive design. The EqIA has enabled OCC to ensure that it has fulfilled its public sector equality duty under s.149 of the Equality Act 2010 to have due regard to the need to address certain equalities considerations. It also enables the Inspector and Secretary of State to comply with the duty as it applies to them in considering whether to confirm the Orders. Overall, OCC considers that the Scheme is clearly beneficial in terms of its equalities impacts.

[21] CD M.10, Appendix 11 (pdf p.84). See in particular section 7 ("Conclusions") for the impacts identified and the recommendations made.

SRO and Bridge Scheme

23. The statutory tests in respect of the SRO and the Bridge Scheme are met.

24. As to the SRO, the tests in s.14(6) (another reasonably convenient route) and s.125(3) (no access reasonably required / another reasonably convenient means of access available or to be provided under a SRO) of the Highways Act 1980 are satisfied. Mr Blanchard and Mr Chan in their written and oral evidence have explained how the SRO provisions are justified by the Scheme design, and how there is compliance with the two tests in s.14(6) and s.125(3).[22]

25. The SRO is unlikely to give rise to any interference with human rights, given that the tests in section 14(6) and 125(3) of the 1980 Act are satisfied, but to the extent that there is any such interference then it is considered that it would be justified and proportionate, for the same reasons as set out in respect of the CPO above.

26. As to the Bridge Scheme, the new Thames bridge will not impede the reasonable requirements of navigation, in accordance with s.107(1). Mr Chan explained that the Thames bridge meets the Environment Agency's design requirements, including clearances above water level, and there has been no objection by the Environment Agency.[23]

27. The case in support of the SRO and the Bridge Scheme is the same as that for the CPO. As set out above and below, that case is clearly made out.

Remaining Objections to the CPO and SRO: summary

28. Objections to the CPO and SRO which are remaining and have not been withdrawn at the time of writing are set out in the table below, with the withdrawn objections struck through for ease of reference.[24] There have been no objections to the Bridge Scheme.

No.	Party	Date received	Statutory / Non-statutory	Objection type
1	Network Rail Infrastructure Limited	3 February 2023	Statutory	Objection to the CPO and SRO

[22] Mr Blanchard and Mr Chan proofs section 2 ("Scheme design") and evidence in chief (day 17, 24 April 2024).
[23] Mr Chan proof section 4 ("Bridge Scheme design considerations") and evidence in chief (day 17, 24 April 2024).
[24] The objections are contained in CDJ.

2	Alan and Penny Aries	17 February 2023	Statutory	Objection to the CPO and SRO
~~3~~	~~Mandy Rigault~~	~~21 February 2023~~	~~Non-statutory~~	~~Objection to the CPO and SRO~~
~~4~~	~~Nuneham Courtenay Parish Council~~	~~21 February 2023~~	~~Non-statutory~~	~~Objection to the CPO and SRO~~
6	Stephen Smith	8 February 2023	Statutory	Objection to the CPO and SRO
7	Mays Properties Limited	24 February 2023	Statutory	Objection to the CPO and SRO
~~8~~	~~John Peters~~	~~26 February 2023~~	~~Non-statutory~~	~~Objection to the CPO and SRO~~
9	CPRE, The Countryside Charity	1 March 2023	Non-statutory	Objection to the SRO
~~10~~	~~Sutton Courtenay Parish Council~~	~~7 March 2023~~	~~Non-statutory~~	~~Objection to the CPO and SRO~~
11	Thames Water Utilities Limited	17 March 2023	Statutory	Objection to the CPO
12	Appleford Parish Council	20 March 2023	Non-statutory	Objection to the CPO and SRO
~~13~~	~~UKAEA (United Kingdom Atomic Energy Authority)~~	~~20 March 2023~~	~~Statutory~~	~~Objection to the CPO and SRO~~
~~14~~	~~Caudwell & Sons Limited~~	~~17 March 2023~~	~~Statutory~~	~~Objection to the CPO~~
15	Anthony Mockler and Gwendoline Marsh as Trustees of the Milton Manor Estate	20 March 2023	Statutory	Objection to the SRO
16	Anthony Mockler	20 March 2023	Statutory	Objection to the SRO
17	Anthony Mockler	20 March 2023	Statutory	Objection to the CPO
18	Anthony Mockler and Gwendoline Marsh as Trustees of the Milton Settled Estate	20 March 2023	Statutory	Objection to the CPO
19	The occupiers of New Farm	17 March 2023	Statutory	Objection to the CPO
~~20~~	~~Morrells Farming Limited~~	~~17 March 2023~~	~~Statutory~~	~~Objection to the CPO~~
~~21~~	~~Emmett of Drayton Limited~~	~~17 March 2023~~	~~Statutory~~	~~Objection to the CPO~~
~~22~~	~~Mrs Veitch~~	~~17 March 2023~~	~~Statutory~~	~~Objection to the CPO~~
~~23~~	~~David Morrell, Lavinia Taylor and Catherine Ballard~~	~~17 March 2023~~	~~Statutory~~	~~Objection to the CPO~~

~~24~~	~~Morrells Holdings Limited~~	~~17 March 2023~~	~~Statutory~~	~~Objection to the CPO~~
~~25~~	~~Commercial Estates Group Limited and CEG Land Promotions II Limited~~	~~21 March 2023~~	~~Statutory~~	~~Objection to the CPO and SRO~~
~~26~~	~~Leda Properties Limited~~	~~21 March 2023~~	~~Statutory~~	~~Objection to the CPO and SRO~~
27	W E Gale Trust	21 March 2023	Statutory	Objection to the CPO and SRO
28	Neighbouring Parish Councils Joint Committee	21 March 2023	Non-statutory	Objection to the CPO and SRO
~~29~~	~~Bernard Wallis~~	~~22 March 2023~~	~~Statutory~~	~~Objection to the CPO~~
30	Oxford Fieldpaths Society	22 March 2023	Non-statutory	Objection to the SRO
31	RWE Generation UK plc	22 March 2023	Statutory	Objection to the CPO and SRO
~~32~~	~~Jacqueline Mason~~	~~22 February 2023~~	~~Statutory~~	~~Objection to the CPO~~
~~33~~	~~National Grid Electricity Transmission plc~~	~~12 October 2023~~	~~Statutory~~	~~Objection to the CPO~~[25]
34	The Ramblers	22 March 2023	Non-statutory	Objection to the SRO

Obj. 1: Network Rail Infrastructure Limited ("NRIL")

29. NRIL has interests in plots where the Scheme crosses the Great Western mainline and also around Culham Station. NRIL and OCC have been in detailed discussions with a view to enabling NRIL to remove its objection concerning the effect on operational railway land. As Mr Moon has explained,[26] the discussions have progressed well and the parties' solicitors have been working for some time on a legal framework agreement that will secure the Acquiring Authority the rights it needs to deliver the Scheme. The proposed agreement is in the form of an overarching framework agreement and subsidiary transactional documentation and licences, including an Asset Protection Agreement (APA), which will allow the Acquiring Authority to enter onto NRIL's operational land in order to construct the Scheme and Works. Once the legal agreement is finalised, it will secure the land and new rights that the Acquiring Authority requires in order to construct the Scheme and will,

[25] National Grid Electricity Transmission plc has recently withdrawn its objection by email dated 30 April 2024 (CDK.18).

[26] Mr Moon proof paras. 4.6 – 4.9; evidence in chief (day 17, 24 April 2024).

therefore, remove the need to compulsorily purchase certain land. As a result, modifications to the Orders are being sought to remove or limit the NR interests which are included within the CPO. On the conclusion of the framework agreement, NR has indicated that it will withdraw its objection to the Orders. This position has been confirmed by NRIL's letter to PINS dated 25 April 2024.[27] The parties will update the Inspector or Secretary of State once the legal agreement is finalised.

30. A representation under s.16 of the Acquisition of Land Act 1981 has been made to the appropriate minister by NRIL as a statutory undertaker. It is anticipated that this will be withdrawn along with NRIL's objection.

Obj. 2: Alan and Penny Aries

31. Mr and Mrs Aries have an interest in plots 17/7, 17/8 and 17/9 in respect of subsoil only. These plots are part of the existing A415 Abingdon Road (comprising carriageway, verge and hedgerow). They lie to the south of Mr and Mrs Aries' residential property (North Cottage). Given the nature of this interest (subsoil under a highway), which is generally of no practical utility to an owner, the impact of acquisition is negligible.

32. The objectors' objection is primarily concerned with highway design and amenity issues, which are principally planning matters, but are addressed here in any event, and have been responded to in written and oral evidence by Mr Chan.[28] As to the objection concerning the existing road branching off at the North Cottage to form the proposed A415 connection, the road design is based on DMRB including the road width and forward visibility requirements. The road is also designed to tie in with the existing A415. As the existing A415 would be stopped up, a new connection is needed to provide a connection between the existing A415 and the Clifton Hampden Bypass. The proposed link road utilises the alignment of an existing private access and will connect with the Clifton Hampden Bypass via a priority junction. Mr and Mrs Aries have suggested that an alternative is to provide a fifth arm onto the proposed Culham Science Centre roundabout. This option was reviewed by OCC but it would have negative impact on the Grade II listed Fullamoor Farmhouse as the fifth arm would require land from the property. Traffic modelling was also carried out

[27] O-INQ-10.
[28] Mr Chan proof paras. 3.36 – 3.40; evidence in chief (day 17, 24 April 2024).

and concluded that a fifth arm would cause significant queuing, thus likely causing noise and air quality impacts. For these reasons, connecting the existing A415 directly with the proposed roundabout would not be feasible.

33. Mr and Mrs Aries raise a concern that they would be subject to more traffic noise and pollution, but the traffic modelling shows that on link 38[29] which is close to North Cottage, there would be a dramatic reduction in traffic flows in the with HIF1 scenario compared to the without HIF1 scenario: dropping from 11,423 vehicles per day to 2,730 in 2024 (-8,693) and from 14,402 to 2,384 (-12,018) in 2034.[30] Mr Pagett has further explained that the location of this property means that it will experience a significant reduction in traffic noise levels when the Scheme is in operation. The property is well shielded from noise from the Scheme itself by surrounding buildings, and noise levels from the existing A415 will reduce considerably, resulting in a significant beneficial noise effect at the property. Additionally, this property would be exposed to noise levels above the significant observed adverse effect level ("SOAEL") in the opening year without the Scheme but would no longer experience noise levels above SOAEL with the Scheme.[31]

34. In terms of air quality, Ms Savage explains that predicted annual mean NO2 concentrations at properties close to Mr and Mrs Aries' house on the A415 in Clifton Hampden are around 12 µg/m3 with and without the Scheme, which is well below the relevant air quality objective of 40 µg/m3.[32]

35. In respect of privacy concerns, Ms Ash has explained that for the representative viewpoint (RV29) that best represents North Cottage, the baseline is that residential properties north and south of the road in this location are enclosed by vegetation such that they do not have views of the Site. Although RV29 will experience a slight adverse visual effect during construction, this reduces to a neutral effect at operational year 1 and year 15.[33]

36. OCC has engaged with Mr and Mrs Aries by meeting them on site and providing documentation. To alleviate concerns raised regarding privacy, OCC has offered to

[29] For the location of the links, see fig. 16.4 (p.17) in ES Ch 16 – Transport (CDA.15.16).
[30] Ms Currie appendix CC2.9, Table 3.1 (2034; pdf p.86) and Table 3.3 (2024; pdf p.94).
[31] Mr Pagett proof para. 3.64 – 3.65, and fig. 4.
[32] Ms Savage proof para. 3.6.
[33] Ms Ash proof paras. 6.35 - 6.37.

undertake accommodation works to install fencing (6ft wooden panel fencing with gravel boards and concrete posts) along the western and southern property boundaries of their property subject to any planning consent that might be required. Furthermore, OCC has committed to exploring the possibility of undertaking additional landscape screening works by way of planting along the southern section of the proposed fencing that OCC is providing for the adjacent landowner, during the detailed design stage of the Scheme.[34]

Conclusion in respect of Mr and Mrs Aries' objection

37. For all the above reasons, the impacts of the land take on Mr and Mrs Aries are negligible given that the plots in question are subsoil plots under the highway. Any negative environmental impact on Mr and Mrs Aries as a result of the Scheme is very limited. The impacts looked at overall are significantly positive due to the large reduction in traffic flows and noise. The objection provides no reason not to confirm the Orders.

Obj. 6: Stephen Smith

38. Mr Smith has an interest in plot 19/4a in respect of a right of way.

39. Mr Smith raises concerns regarding continuity of his utility supplies, in particular water supply. As explained by Mr Moon, OCC has been engaging with Mr Smith since February 2023. OCC has exchanged email correspondence and has had meetings and a number of telephone calls with Mr Smith regarding his concerns since receiving his objection. OCC has also liaised with Thames Water with a view to establishing how his water supply will be diverted and meter relocated. It has been explained to Mr Smith that his utilities and water supply will be protected and diverted as part of the Scheme, and that the intention is to minimise any disruption which may impact on Mr Smith and his property. Further details as to how this will be achieved will be provided to Mr Smith during the detailed design stage.[35]

40. In respect of Mr Smith's concerns regarding access, Mr Chan explained that the safety and convenience of the access to his property will be improved under the Scheme. The existing B4015 makes a dog-leg turn directly at the access to Mr Smith's property. Under the

[34] Mr Moon proof paras. 4.17 – 4.20.
[35] Mr Moon proof paras 4.27 – 4.27; evidence in chief (day 17, 24 April 2024).

proposal, the B4015 Oxford Road connection with the proposed bypass will be some 110m further west. The proposed layout will provide better visibility of traffic approaching the property's access.[36]

41. In respect of noise concerns, at some facades moderate noise increases are predicted in the short term and long term due to the Scheme, therefore a significant adverse effect (in EIA terms) is reported in the ES. However, the sensitivity test indicated that the low noise road surfacing proposed for the Scheme past Clifton Hampden would reduce the magnitude of impact to minor, removing the significant adverse EIA effect.[37] The absolute levels are well below the SOAEL at all facades with and without the Scheme. As illustrated on Figure 10.4[38] in the future year 15 years after opening (2039) L_{A1018h} traffic noise levels with the Scheme in operation are in the mid to high 50 dB range, so closer to the LOAEL (55 dB) than the SOAEL (68 dB). Therefore, in terms of compliance with policy the effect is adverse (above LOAEL), but not significant adverse (above SOAEL), and the policy requirement is to minimise the impact.[39] Mitigation in this area includes the inclusion of low noise road surfacing on the Scheme, plus the speed limit for the Scheme past Clifton Hampden being reduced from 60mph at the preliminary design stage to 50mph.[40]

Conclusion on Mr Smith's objection

42. The Scheme will improve the safety and convenience of the access to Mr Smith's property. The environmental effects of the Scheme on Mr Smith's property are limited and have been mitigated and minimised in accordance with policy. Mr Smith's objection provides no basis not to confirm the Orders.

Obj. 7: Mays Properties Ltd. ("MPL")

43. MPL has written to the Inspector to confirm that, given the advanced state of negotiations with OCC for a private agreement, it has decided not to present evidence at the inquiry.[41]

[36] Mr Chan proof para. 3.44; evidence in chief (day 17, 24 April 2024).
[37] ES Chapter 10 Noise and Vibration, Table 10.14 ("Summary of operational traffic environmental effects") (pdf p.50 – entry for "2 properties north of Clifton Hampden at north-east end of scheme") (CDC.1 Annex 4).
[38] CDA.16.
[39] ES Chapter 10, Fig 10.4 (CDA.16). See ES Chapter 10 Table 10.8 for the traffic noise LOAELs and SOAELs (CDC.1 Annex 4).
[40] ES Chapter 10, para. 10.10.74 (CDC.1 Annex 4).
[41] Email from Henry Church to the Programme Officer dated 7 May 2024 at 4:42pm.

MPL explains that once the agreement is reached, its objection can be withdrawn. The nature of the proposed agreement is outlined in the correspondence.

44. As explained by Mr Humphries KC on day 20 (8 May 2024) the outline of the proposed agreement is broadly as follows:

    a. OCC will use its compulsory purchase powers to acquire plot 1/6b permanently for the HIF1 development;

    b. MPL will grant OCC an option to take a licence of plot 1/6a for construction purposes, such that OCC will not need to exercise its compulsory purchase powers over that plot;

    c. The option agreement will also require OCC to apply for planning permission for access into the MPL proposed development site in a different location to that in the HIF1 planning application; and

    d. The option agreement also provides timescales within which OCC must commence and complete the A4130 Works to give MPL comfort in relation to the timing of its own development proposals.

45. The proposed agreement does not require any modification to the Order and nor is there any need for a bespoke planning condition relating to the MPL objection. Once completed MPL will withdraw its objection to the CPO. It is anticipated that the agreement will be completed and the objection withdrawn within the 20 May deadline set by the inspector.

46. Although it is positive that negotiations have reached this advanced state, MPL has not yet withdrawn its objection and hence OCC needs to address it.

47. MPL has interest in two plots, 1/6a and 1/6b, which are the subject of MPL's objection. The objection raises various points, none of which have any substantive merit.

Prematurity

48. MPL is wrong to suggest that, due to the current absence of planning permission for the Scheme, confirming the Order would be premature.[42] The call-in inquiry is conjoined with the Orders inquiry, which enables the determination of the planning application and the decision on whether to confirm the Orders to be considered in tandem by the Inspector and the Secretaries of State. This will ensure no prematurity issue arises.

Funding

49. MPL is wrong to suggest that the necessary funds to deliver the Scheme may not be available.[43] The section in these closing submissions on funding and viability above shows that all necessary resources to implement the Scheme are likely to be available in the necessary timescale, in accordance with the CPO Guidance.

Attempts to acquire by private treaty

50. MPL is incorrect to suggest that there has been a failure to comply with the CPO Guidance on seeking to acquire by agreement. OCC has negotiated extensively and in good faith with MPL to acquire by agreement, and continues to do so at the time of writing. MPL's suggestion to the contrary[44] is wholly contradicted by the evidence.

51. In particular, the engagement record produced by Mr Moon shows engagement between OCC and MPL in 2020 and 2021 regarding survey access and the discussion about the Scheme.[45] On 1 October 2021, the engagement record explains that MPL "*put forward a proposal for the HIF1 1 scheme on the land required for the delivery of the scheme*", which shows that the potential need for land acquisition was understood and being discussed by the parties at this stage.

52. Mr Church records that when he was instructed in February 2022, he was provided with representations that MPL had made in respect of the planning application for the Scheme,

[42] Mr Church proof section 5.
[43] Mr Church proof section 6.
[44] Mr Church proof section 7.
[45] Mr Moon appendix SM2.7 (p.28 – 37).

which acknowledged that negotiation as to land acquisition was taking place. The representations stated:

> "*The negotiations that have taken place between my clients and OCC has also led to an agreement, in principle, over the delivery of the HIF1 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).*"[46]

53. The engagement record then shows MPL and OCC in extensive discussion during 2022. Mr Church's proof shows the same, with meetings and communications in 2022 discussing matters, including the drafting by the parties of a "*position statement*", which Mr Church acknowledges served to "*help each party understand the position of the other*", and what Mr Church acknowledges was "*a relatively productive meeting*" in June 2022.[47]

54. On 2 December 2022, there was a meeting at which land transfer and agreements were discussed, including consideration for the transfer.[48] Draft land plans had been issued on 23 November 2022, and final land plans issued on 20 December 2022.[49]

55. In 2023, negotiations were extensive. There was discussion of the compensation position in early 2023, with OCC sharing a opinion from counsel on the request of MPL.[50] On acquisition, Mr Church sent out heads of terms on 11 January 2023.[51] Lest there be any suggestion that OCC rather than MPL should have put these heads of terms in circulation, there is no suggestion at all in any of MPL's evidence that they had been chasing heads of terms or similar at this point, and in light of the extensive negotiation in 2022 and 2023 it cannot be said that OCC had not been negotiating.

56. The engagement record then shows that there were negotiations on the heads of terms throughout 2023, with the exception of the two or three months after the Planning and

[46] Mr Church proof, p.11.
[47] Mr Church proof paras. 7.14 and 7.16. See paras. 7.9 to 7.21 for the discussions in 2022 up to the end of November 2022.
[48] Mr Church proof para. 7.22.
[49] SM appendix 2.7 engagement record, p.33-34.
[50] Mr Church proof para. 7.24 – 7.26, 7.29.
[51] SM appendix 2.7 engagement record p.34 and Mr Church proof para. 7.27.

Regulatory Committee's decision on 18 July 2023. By 24 January 2024, heads of terms are recorded in both OCC's engagement and Mr Church's proof as having been agreed and lawyers having been instructed.[52]

57. As Mr Moon explains, "*discussions, although protracted, have been productive*".[53] MPL's suggestion of failure to attempt to acquire by agreement is obviously without merit in light of the undisputed factual account.

Land not required for the highway

58. It is worth stressing that plot 1/6b and that part of plot 1/6a running parallel with the A4130 are safeguarded for the HIF1 scheme in Core Policy 17 of the Vale of White Horse Local Plan (2016)[54].

59. Plot 1/6b is required as it will be part of the new highway, as explained by Mr Blanchard[55] and the need for this land is not disputed by MPL.[56]

60. Plot 1/6a is required for temporary working space during the construction phase, as explained by Mr Blanchard.[57] The plot is a 10m wide strip of land along the frontage of the proposed widened A4130. The level of the widened road and the adjacent shared use facility is higher than the land within plot 1/6a, and in order to construct the path it was identified that it would be safer and more efficient to use plot 1/6a. If this plot is not available then the lack of working space in this area will present significant challenges during construction, for example temporary retaining structures may be required to prevent works from impinging on plot 1/6a. This will have the effect of increasing the construction costs and the period of construction for this section of the Scheme. Additionally, it is intended that the plot 1/6a strip would be used as a temporary haul road to minimise the impact on users of the A4130 or to provide a temporary route for those walking, wheeling and cycling, as it would allow a NMU facility to be maintained to the south of the A4130 throughout the construction period.

[52] SM appendix 2.7 engagement record p.34 – 37; Mr Church proof para. 7.32.
[53] Mr Moon proof para. 4.37.
[54] CD G.2.01 and plan at CD G.2.02 pdf p.65
[55] Proof paras 3.31 – 3.35, including figures 20 and 21.
[56] Mr Church proof para 8.1.
[57] Proof paras. 3.32 – 3.34, including figures 20 and 21 and his oral evidence on day 20.

61. MPL has adduced no contrary evidence to contradict Mr Blanchard on these points, let alone expert construction evidence. MPL's sole point appears to be a suggestion that as the plot is not needed permanently, there is no basis to compulsory purchase it[58]. That is obviously flawed. Construction working space is essential to deliver the Scheme, as explained by Mr Blanchard. There is, therefore, a compelling case in the public interest for acquisition.

62. It should be noted that, notwithstanding Mr Church's evidence, his own clients acknowledged the need for this plot for construction working space and raised no objection to it in their supporting representation on the planning application, stating:

> "*… 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."*[59]

63. Indeed, even later in his own proof Mr Church accepts that "*MPL recognises that there may be a requirement for the AA to take entry to plots to facilitate construction*".[60]

64. Accordingly, this point raised by Mr Church has no real merit and is not a point on which MPL actually hold any real objection.

<u>No requirement to acquire permanently</u>

65. There is no power for highways authorities to acquire land only temporarily under the Highways Act 1980, as conceded by MPL.[61] The compelling case in the public interest justifies the CPO in respect of plots that are needed both permanently and temporarily. Even without any agreement between the parties, if (as is anticipated) plot 1/6a becomes surplus and no longer required following completion of the Scheme, then OCC can confirm that in accordance with the Crichel Down Rules it would offer this land back to the landowner for re-purchase. Although MPL criticises the Crichel Down Rules for not

[58] Mr Church proof paras 8.1/2.
[59] Mr Church proof p.11 (para. 2(c)).
[60] Mr Church proof para. 9.1.
[61] Mr Church proof para. 9.5.

providing a landowner with certainty,[62] they are Government policy. MPL suggests that a private agreement would be a more equitable route for a landowner (whereby a lease or licence is granted over the land for the temporary period that it is required), and indeed the proposed agreement (above) seeks to give effect to such an arrangement. However, although the parties are close, no agreement has yet been reached and hence the CPO is needed and should be confirmed in the public interest.

66. Contrary to Mr Church's evidence[63], there is no breach of the 'so called' 'sacrosanct line' below which the HIF1 permanent works will not extend and above which MPL's proposed development will not extend. As is clear from the planning application, and Mr Blanchard's evidence, no part of the HIF1 permanent works extends below the 'so called' 'sacrosanct line' and plot 1/6a is only required for temporary construction works.

Loss of rights

67. MPL is incorrect to suggest that confirmation of the Orders will lead to MPL's land being landlocked.[64] This suggestion takes no account of the SRO. As explained by Mr Blanchard[65], the Backhill Lane private access road will be stopped up, removing the existing rights of access to MPL's land, but the SRO provides for a new private means of access to the MPL land from the new south-west arm of the proposed Backhill roundabout, as part of the Scheme. It is necessary to stop up the Backhill Lane in order for the Scheme to be built and to operate safely. The Scheme provides for a reasonably convenient alternative to the existing Backhill Lane access, through the provision of a high-quality paved alternative (i.e. south-west arm of the new Backhill Lane roundabout). The proposed new private accesses to MPL's land are labelled as such on General Arrangement Sheet 1.[66]

68. MPL has planning permissions on its land for a roadside scheme (including hotel) and for a new T-junction access from the A4130, as shown on the development layout plan at Mr Roberts's Appendix A. MPL has stated that the roadside services planning permission and T-junction planning permission have been implemented[67]. The permitted T-junction is on

[62] Mr Church proof para. 9.5.
[63] Mr Church proof para. 9.4.
[64] Mr Church proof para. 10.1.
[65] Mr Blanchard proof para. 3.35, including figure 22 and 23.
[66] CDD.01.
[67] Mr Church proof para 4.3

the MPL land and would have to be implemented and funded by MPL. By contrast, the proposed Backhill roundabout southwest arm is further to the east, taking far less of MPL's land and would be funded by OCC as part of the HIF1 scheme.

69. MPL has also very recently been granted planning permission for an alternative form of development, being a supermarket scheme as shown on Mr Roberts's Appendix C.[68] This application again is served by MPL's proposed T-junction from the A4130.

70. MPL has now, however, submitted a further (as yet undetermined) planning application for its supermarket scheme, taking access this time from the HIF1 scheme Backhill roundabout southwest arm proposals, as shown on Mr Roberts's Appendix D. Mr Roberts describes this as his client's *"preferred strategy"*,[69] thus making it clear that MPL is not opposed to the HIF1 planning application or CPO in principle. The HIF1 planning application, however, proposes private site accesses into the retained MPL land that are consistent with the permitted roadside services planning permission,[70] as was agreed between OCC and MPL when the HIF1 scheme was being designed.[71] The undetermined Appendix D supermarket application, however, has a different private access point into the MPL development site than that in the roadside services development and, therefore, the proposed private accesses in the HIF1 planning application. The intended agreement between OCC and MPL seeks to resolve this issue in a manner acceptable to both parties by requiring a further planning application to be submitted for an alternative private access into the MPL development site consistent with MPL's current supermarket proposals. If granted planning permission, OCC would then construct the private accesses in accordance with that further planning permission.

Conclusion on MPL's objection

71. Whilst it is anticipated that this objection will be withdrawn, in the event that it is not it is OCC's case that MPL's objection provides no basis not to confirm the Orders. Both plots 1/6a and 1/6b are required for the Scheme, and the fact that plot 1/6a is required

[68] See Mr Roberts's update note to the Inspector dated 8 April 2024, which explains that planning permission was granted on 11 March 2024,
[69] Mr Roberts proof para 3.13
[70] Mr Roberts's Appendix A
[71] Mr Blanchard's oral evidence day 20

temporarily for construction working space rather than permanently is no proper basis to object. Once the plot is no longer required by OCC, it can be re-provided back to MPL. Access rights are preserved for MPL land, and indeed the Scheme will significantly enhance the quality of access as compared to what exists at present and what is proposed in MPL's T-junction arrangement. OCC has negotiated extensively and diligently with MPL, in accordance with the CPO Guidance. The concerns regarding funding and prematurity are also obviously unfounded.

Obj. 9: CPRE; Obj. 30: Oxford Fieldpaths Society; Obj. 34: Ramblers

72. OCC deals with these three objections together because they concern the same issues. That is clear from the objections themselves, the objectors' proofs of evidence, and the oral evidence given by Mr Nicholas Moon and Mr David Godfrey.[72]

73. The objectors' first concern is the extinguishment of the length of Bridleway 3 (i.e. 106/3/10 Appleford) between the Collett roundabout and the Appleford level crossing.[73] The majority of this Bridleway consists of a 3.2m wide single track road, except the northern and southern end where it is approximately 6.6m wide. As explained by Mr Chan, the objectors' suggestion that the extinguishment would deprive riders, cyclists and walkers of a segregated route is incorrect. There is currently no segregation between non-motorised users ("NMUs") and vehicles, as they use the same carriageway, and the majority of the vehicles are HGVs for the landfill site and operational aggregate site. Mr Nicholas Moon observed that the haul road for HGVs only shares the same surface as the bridleway for the southern and northern sections of the bridleway, with the haul road branching off for the stretch around Hartwright House, before returning. But that middle stretch still lacks any segregation for NMUs, and also it is only accessible by the shared haul road, such that there no realistic way to get to it without contending with the HGVs.

74. The existing bridleway will be subsumed by the new length of the A4197 classified road and its 3.0m cycle tracks, 2.0m footways and 1m verge will provide a complete replacement route for NMUs from the Collett Roundabout. The proposed facilities represent much

[72] Day 19 (26 April 2024).

[73] The location and numbering of the rights of way with which CPRE, Oxford Fieldpaths Society, and the Ramblers are concerned are set out in various places, including ES Figure 8.7 Public Rights of Way (CDA.16.12), but for clarity OCC has produced a note dated 1 May 2024 which highlights those at issue (O-INQ-13).

improved conditions for walking and cycling, as those users will be segregated from vehicular traffic. A walking, cycling and horse-riding survey was carried out for a 7-day period in November 2019, which evidenced that, on average, there are 20 pedestrians / cyclists using the bridleway per day. No equestrian was recorded during the entire survey period. This limited current use reflects the current shortcomings of the route, which the Scheme will comprehensively address.[74]

75. The objectors' suggested alternative route for the existing bridleway, which would see it moved east to run alongside the train tracks, is unnecessary given the high quality provision being proposed alongside the new road, which is in the location of the existing bridleway. The objectors' alternative route is also undesirable, because it would sterilise land which is subject to a Local Development Order (for a development known as DTech), as explained by Mr Wisdom.[75] This site has a well-developed masterplan that is currently under consideration with the local planning authority. The area in question is currently proposed as an ecological buffer zone and with land also safeguarded for a potential active travel bridge from the North East Didcot development site to DTech and towards Milton Park.

76. As to the objectors' second area of concern, the proposed stopping up of sections of Footpaths 3 and 6 at Clifton Hampden (i.e. 171/3/10 Clifton Hampden and 171/6/10 Clifton Hampden respectively), what is being stopped up is a short section only (about 150m of both footpaths in total). A new route is being re-provided as shown on Sheet 19 of the General Arrangement plans, i.e. alongside the carriageway, with a crossing point to continue south on Footpath 3. As Mr Chan explained, the re-provided route will be surfaced and shared-use, and while it may therefore not have the character of an unsurfaced rural footpath which Mr Nicholas Moon advocated for, it will be more accessible and inclusive, e.g. for those pushing buggies or wheelchairs, or using walking aids. Also, as Mr Chan explained, woodland planting is proposed to the north of the new road and it is likely that

[74] See Mr Chan proof at paras. 2.22 – 2.29 (including figures 4 and 5 showing the cross-sections with the new improved segregated NMU provision), and para. 3.47 (including fig. 27); and Mr Chan's evidence in chief (day 19, 26 April 2024).
[75] Mr Wisdom proof para. 13.16.

a walker will be able to walk through that area rather than using the surfaced shared-use path, if they prefer.[76]

Conclusion on Obj. 9: CPRE, Obj. 30: Oxford Fieldpaths Society, and Obj. 34: Ramblers

77. Accordingly, the SRO test in s.14(6) of the Highways Act 1980 is satisfied in respect of the stopping up of Bridleway 3: another reasonably convenient route will be provided before the highway is stopped up. Indeed, the quality of the new provision will be far superior to the existing route.

78. The SRO test in s.14(6) is also satisfied in respect of the stopping up of the relevant parts of Footpaths 3 and 6: another reasonably convenient route will be provided before the footpath is stopped up.

79. For the avoidance of doubt, this also applies in respect of the stopping up of Footpath 5 (171/5/10 Clifton Hampden), albeit the objectors appear to raise no issue in respect this. Footpath 5 is being re-provided on an almost identical alignment.[77]

Obj. 11: Thames Water Utilities Ltd ("TWUL")

80. TWUL's objection does not provide any proper basis not to confirm the Orders. Neither TWUL's interests nor the public interest in sufficient sewerage capacity will be harmed by confirming the Orders. TWUL's allegations as to inadequate negotiation are wholly unsubstantiated, and what the evidence actually reveals is a failure by TWUL to properly engage with the planning or CPO process until very late in the day.

No adverse impact on TWUL: TWUL plots outside the northern parcel

81. Plot 17/11i at the extreme south-west of the Culham Treatment Works ("CTW") is where certain monitoring equipment is located for monitoring and sampling of final effluent. As explained by Mr Chan,[78] the plot is required by OCC for construction of a headwall, as part

[76] See Mr Chan proof para. 3.48, Mr Wisdom proof para. 13.17, and Mr Chan evidence in chief (day 19, 26 April 2024). The Landscape Masterplan version of the relevant general arrangement drawing (sheet 19) shows the proposed planting most clearly (CDD.152).
[77] See SRO site plan 19 (CDH.4-b), in particular re-aligned route 19/B.
[78] Mr Chan evidence in chief on TWUL (day 18, 25 April 2024). See also Mr Chan's proof figure 30, p.35, which shows a proposed swale (in light blue) terminating at its southern end at a headwall (black line), which then flows into an underground pipe. There is a further headwall (another black line) at the head of the ditch.

of the drainage system for the new road. That is the only reason why acquisition is required. OCC needs to discharge into the same watercourse (a ditch) in this location, into which TWUL also discharge. Mr Paton for TWUL expressly agreed that a licence granted by TWUL to OCC for OCC to undertake the necessary works could resolve the need for acquisition.[79]

82. If for whatever reason that licence is not granted by TWUL in a timely manner, the CPO would enable OCC to carry out their works, while not interfering with TWUL's operation which OCC obviously understands the need for. As noted by Mr Moon, OCC has already confirmed during a site visit in June 2023 that it would grant right to TWUL to enable it to maintain its equipment in this location in the event of compulsory acquisition.[80] Alternatively, the land could be returned to TWUL if required. TWUL's closing submissions say nothing in response to this point, simply stating that the plot is used for monitoring equipment, but not disputing that OCC could undertake its works whilst not interfering with TWUL's use.[81] Accordingly, TWUL's objection provides no proper basis not to confirm the CPO in respect of this plot.

83. TWUL also has an interest in plot 9/24, but there is nothing in TWUL's objection or their closing submissions about that plot, and Mr Paton conceded that there was no objection maintained in respect of it.[82] Nor have any points of objection been raised by TWUL in respect of their interest in plots 17/14a and 17/14b.

<u>No adverse impact on TWUL: the northern parcel of CTW</u>

84. The plots with which TWUL's objection is principally concerned are plots 17/11a to 17/11h, which are all plots in the area at the north of the CTW, fronting Thame Lane.

85. This land contains no TWUL operational equipment or assets, as confirmed by Mr Paton.[83] It is vacant scrub land. TWUL has been at pains to demonstrate that it is operational land within the meaning of s.263 of the Town and Country Planning Act 1990.[84] OCC does not dispute that technically the northern parcel does have that status, but the point is of no

[79] Mr Paton cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[80] Mr Moon rebuttal para. 4.8.
[81] E.g. TWUL closing submissions paras. 30 – 33, 35
[82] Mr Paton cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[83] Evidence in chief (day 18, 25 April 2024).
[84] See TWUL Technical Note on Operational Land dated April 2024 (O-INQ-06).

significance in this case. Status as operational land does not preclude compulsory purchase. TWUL has made no valid representation under s.16 of the Acquisition of Land Act 1981, such that the 'serious detriment' test does not apply, and even if it did acquisition of this vacant parcel of scrub land would not give rise to serious detriment to TWUL's undertaking, for reasons that will be set out more fully below (i.e. the existence of alternative options). Status as operational land brings with it certain permitted development rights, which may facilitate development. However:

a. There has been no detailed analysis advanced by TWUL to show that what they propose by way of development would fall within any permitted development rights, noting that the relevant permitted development right does not extend to the provision of a building.[85] TWUL's closing submissions are incorrect to assert that Mr Paton stated in cross-examination that "*none of the upgrade works would require construction of a building"*.[86] Mr Paton did not say that; he professed ignorance on the point. The exchange was:[87]

Mr Humphries KC:	*See Mr Smith's appendices at pdf p.156. The Sidestream Nereda and TT plant – is it open or enclosed?*
Mr Paton:	*I can't speak to what it looks like.*
Mr Humphries KC:	*Is it a structure?*
Mr Paton:	*Yes a structure, what it's made of I couldn't talk to.*[88]

b. Further, and in any event, Mr Smith has stated that "*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*".[89] Accordingly, planning permission would be forthcoming

[85] Robert Smith proof para. 10.6. The permitted development right relied upon is paragraph 'f' of Class B of Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"). Paragraph 'f' excludes "*the provision of a building"*.
[86] TWUL closing submissions para. 26.
[87] Day 18 (25 April 2024).
[88] It is important to note that Art. 2 of the GDPO states that: *"building" — (a) includes any structure or erection and, except in* [list of exceptions not including Part 13 (sewerage undertakings)], *includes any part of a building; and (b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure".* Thus a 'building' includes a 'structure' and Mr Paton said that this (fairly substantial) plant would be a structure. That would exclude it from the scope of the PD right.
[89] Mr Smith proof para. 10.6.

for the proposed development – whether on the northern land or the proposed replacements land (see below) – anyway, even without the existence of PD rights.

86. The northern parcel is also subject to numerous adverse rights in favour of third parties, including various rights of way and other rights over the relevant plots.[90] When this was raised with Mr Paton, he was unable to confirm that it had been determined that TWUL's development proposals are compatible with those third party rights.[91] The suggestion in TWUL's closing submissions that they are now belatedly seeking to produce a 'constraints report' simply illustrates the absence of consideration given to this point at an earlier stage. It is also obviously unfair on OCC for TWUL to seek to submit this kind of substantive new evidence at such a late stage.[92] The point is, however, that whether or not those constraints can be overcome they are a potential limitation on the use of that land that will have to be considered by TWUL and, where necessary, resolved before any development by TWUL could take place.

87. Accordingly, there is nothing in the present use of this northern parcel that indicates its acquisition by OCC would adversely affect TWUL's interests. TWUL's argument as to unacceptable detrimental impact has to rely entirely on TWUL's future expansion plans.

88. To understand whether those future plans would give rise to such an impact, it is necessary to understand both the nature of the plans and the options for addressing the need without this land.

89. As to the nature of the plans, they are plainly at an early stage. TWUL's 'Enhancement Case' and 'Business Plan' outline the need for extra sewage treatment capacity due to a forecast shortfall in capacity as a result of future proposed development. But those documents were only submitted to Ofwat in October 2023.[93] Similarly, it was only on 20 October 2023 that a presentation was provided to OCC by TWUL showing a very high level design solution comprising additional sewage treatment assets in the northern parcel of the CTW.[94]

[90] See Table 2 of the CPO Schedule at p.1179 (CDH.1).
[91] Mr Paton cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[92] TWUL closing submissions para. 47.
[93] Mr Paton proof section 9, with the October 2023 date confirmed by Mr Paton in cross-examination by Mr Humphries KC (day 18, 25 April 2024), and also in TWUL's closing submissions at para. 20.
[94] Mr Smith proof para. 6.19, and appendix 5 (starting at pdf p.144).

90. The date by which additional facilities are needed is also some way off: Mr Paton explains that "*from 2031, the Culham Works would not be capable of handling the forecast demand without upgrade works*". Mr Paton in cross-examination similarly confirmed that 2031 was the date by which they need to have a solution in place.[95]

91. In the context of that need and timeframe, Mr Paton agreed in cross-examination that TWUL had three options to meet the need.

92. **The first option** is that outlined in the Statement of Common Ground ("SoCG") between TWUL and OCC.[96] This would take the form of an agreement whereby OCC acquires land adjoining CTW to the east from the neighbouring landowner, then undertakes a land swap, providing the acquired land to TWUL in return for the northern parcel. There is no reason to think that this option will not be feasible. The replacement land has been precisely identified by TWUL and OCC: see the blue line area at Appendix 2 of the SoCG. The neighbouring landowner is willing to sell, and the land in question is agricultural land which has no buildings on it, does not adjoin any sensitive locations, and presents no obvious impediments to use as an extension to CTW. To the extent that TWUL needs planning permission, there is no reason to think that it will not be obtainable, given the need for expansion and the absence of any obvious environmental or other constraints. Mr Smith's evidence as to the *"compelling case for planning permission to be granted for the expansion of essential infrastructure notwithstanding the existence of the safeguarding policy*"[97] applies equally to this neighbouring site.

93. **The second option** is for TWUL to use its own powers of compulsory purchase to acquire the same parcel of land. There is no dispute that TWUL has such powers available to it; the only issue raised by TWUL is as to whether they could be exercised in sufficient time to enable expansion.[98] But given the 2031 deadline set out above, i.e. some 6 or 7 years away, it is plainly possible for CPO powers to be exercised and for the necessary expansion works to be undertaken in time. The CPO, so far as it became necessary, would be very small, only involving a part of one agricultural field.

[95] Cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[96] O-INQ-08.
[97] Mr Smith proof para. 10.6.
[98] See Mr Smith proof paras. 6.27.9 and 6.14.3.

94. **The third option** is a non-Culham solution, i.e. the expansion of another sewage treatment works ("STW") in the area. Mr Paton explained that five STWs in the vicinity (Abingdon, Nuneham Courtenay, Long Wittenham, Dorchester, and Didcot) had been reviewed and none had sufficient capacity currently to accommodate the increase anticipated. An upgrade at Abingdon STW had been considered, which was estimated to cost £65m, whereas the CTW expansion was anticipated to cost £25m.[99] However, Mr Paton also explained that the other four STWs could also be expanded, and that costings had not been produced for those.[100] Mr Paton further explained that "*Abingdon treats a PE [population equivalent] of around 50,000, so upgrades tend to be more complex in nature"*, which presumably accounts for the much higher cost.[101]

95. TWUL's closing submissions assert that "*none of the other STWs are readily available to be able to serve the flow within this catchment area"*. That is only true for the existing STWs as they currently stand.[102] It ignores the potential for expansion, which Mr Paton expressly acknowledged. The potential for expansion at those other STWs should obviously not be ignored, when expansion is exactly what TWUL are contemplating at CTW.

96. Accordingly, there plainly are alternative non-Culham options, if the first and second options on the land adjacent to CTW do not proceed for any reason.

97. Indeed, TWUL's closing submissions only say that expansion onto the northern parcel at CTW is "*the preferred solution"*[103] and notably do not dispute that there are alternative options. They expressly concede that such alternatives exist: e.g. "*The fact that TWUL may have to pursue an alternative solution …"*.[104]

98. TWUL's closing submissions make assertions to the effect that 'there is no alternative land'. For example, TWUL states that "*At present, there is no alternative land that is available for acquisition by TWUL that could replace the land proposed to be acquired pursuant to the Order*".[105] That is simply incorrect. TWUL have accepted that there is directly adjacent land,

[99] Mr Paton evidence in chief (day 18, 25 April 2024).
[100] Cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[101] In answer to a question from the Inspector (day 18, 25 April 2024).
[102] TWUL closing submissions para. 11.
[103] TWUL closing submissions para. 22.
[104] TWUL closing submissions para. 79b.
[105] TWUL closing submissions para. 82. See also paras. 79b and 79d.

which is suitable in principle, has a willing seller, and is available for acquisition to serve TWUL's expansion plans. It has not yet been acquired, but it could be acquired, either by agreement or by compulsion. Looking further afield, Mr Paton confirmed in answer to the Inspector that at Abingdon STW "*there is land availability*".[106] Mr Paton also gave no evidence that land ownership at the other STWs was an issue (it appears that TWUL have simply not investigated it yet).

99. Given the existence of multiple potentially viable alternatives, there is no reason to think that the eventualities envisaged by TWUL in the light of the CPO being confirmed will materialise, i.e. suggestions of flooding, storm overflows, and non-compliance with TWUL's statutory permits.[107] TWUL as a statutory undertaker is under duties to provide adequate provision, and given the options available and the timescale involved, the Inspector and Secretary of State can be confident that confirmation of the CPO will not preclude compliance by TWUL with its statutory duties.

100. TWUL's closing submissions are incorrect to suggest that "*It is agreed by the Acquiring Authority that TWUL is best placed to understand its operational needs and how those should be met*".[108] Here and elsewhere in its closing submissions[109] TWUL misrepresents OCC's position, wrongly suggesting that OCC or its witnesses have agreed that only TWUL has the expertise to determine whether the CPO should be confirmed. Likewise, TWUL is wholly incorrect to suggest that OCC "*no longer advances evidence of whether or not the acquisition of land would result in a serious detriment to the undertaking*".[110] OCC has made absolutely clear in its case and evidence to the inquiry that there is no basis to suggest that the CPO would result in a serious detriment to TWUL's undertaking. OCC of course recognises TWUL's role and duties as a statutory undertaker, but TWUL's claims in respect of the northern parcel must be examined on the evidence, and not by deferring unquestioningly to TWUL's position. OCC says that the evidence clearly indicates that, notwithstanding TWUL's preference to use the northern land, multiple satisfactory alternative options exist, and the public interest in the HIF1 Scheme going ahead mean that

[106] Day 18 (25 April 2024).
[107] E.g. TWUL closing submissions para. 29.
[108] TWUL closing submissions para. 34.
[109] E.g. TWUL closing submissions paras. 43, p.22 footnote 88, and p.24 footnote 97.
[110] TWUL closing submissions para. 77.

those alternative options should be pursued. OCC relies on TWUL's own evidence on alternative options, in particular the evidence of John Paton who clearly explained that there are alternative potential options, which will be pursued if required. Indeed, Mr Paton accepted that, if the CPO is confirmed over the northern parcel, TWUL's legal obligations would require it to bring forward an alternative option in order to meet its statutory duties.[111]

101. TWUL's reliance on the letter from Defra dated 15 January 2024[112] takes matters no further. In particular:

a. Defra agrees with TWUL about the importance of sufficient sewage treatment capacity being provided, but does not address the potential for sufficient capacity to be provided notwithstanding confirmation of the CPO, i.e. by expansion somewhere other than on the northern parcel. The letter therefore cannot be taken as supporting non-confirmation of the CPO.

b. As to the solution of OCC acquiring adjacent land and providing it to TWUL, including the fact that the neighbouring landowner is willing to sell, and that TWUL and OCC have agreed in principle on an area of that neighbouring land which is suitable for expansion, none of that was known in December 2023 when Defra wrote their letter. At that date, negotiations between OCC and TWUL were at an earlier stage, and none of the relevant information about this option is found in the letter from TWUL's land agent, Bruton Knowles, to Defra,[113] which resulted in the Defra letter. Matters have moved on significantly since Defra's letter date. TWUL's suggestion in its closing submissions that circumstances as set out in Defra's letter "*remain materially unchanged*" is plainly inaccurate:[114] all the detail as to the availability and suitability of the neighbouring land, and the agreement in principle as to how an option agreement would achieve both TWUL's and OCC's aims, is new since December 2023. Defra's letter is based on an out of date understanding of the position.

[111] Cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[112] Mr Smith's appendix 6.
[113] Dated 14 December 2023, at Mr Smith's appendix 8.
[114] TWUL closing submissions para. 79d. Further, TWUL's closing submissions at para. 79c accept that matters were at an earlier stage in December 2023.

c. In other respects also, the Bruton Knowles letter provided Defra with only a limited and very partial picture. The Bruton Knowles letter asserts that TWUL having to compulsorily acquire the neighbouring land could result in a delay of 2 – 2.5 years. The need for such a long delay for such a small and straightforward CPO is not explained and appears implausible. In any event, even that timeline is clearly not inconsistent with TWUL's deadline of 2031 for bringing extra capacity online.

d. There is no mention at all in the Bruton Knowles letter of the option of expanding one of the other STWs in the locality. Indeed, the Bruton Knowles letter is factually incorrect in stating that "*There is no other land within TWUL's ownership which would be suitable for expansion"*, given that Mr Paton confirmed in answer to the Inspector that at Abingdon STW "*there is land availability"*,[115] and further Mr Paton said nothing about land ownership at the other STWs. The Inspector has now heard direct from Mr Paton that use of the northern parcel is far from the only solution.

e. Accordingly, no weight can be placed on the Defra letter in respect of the merits or otherwise of confirmation of the CPO, when virtually none of the evidence before the inquiry as to how TWUL could continue to provide sufficient sewage treatment capacity notwithstanding confirmation of the CPO was placed before Defra.

f. The Inspector and the Secretary of State for Transport are now plainly in a significantly better position than the officials at Defra to reach a conclusion on this matter. The Inspector has extensive written and oral evidence from the parties, and the Secretary of State for Transport will have the Inspector's reasoned recommendations and access to the evidence. Defra officials had none of that, but only the high level, partial and now out of date picture presented by the Bruton Knowles letter. OCC asks that the Inspector and Secretary of State for Transport reach a conclusion on the much fuller and more up to date evidence now before them.[116]

[115] Day 18 (25 April 2024).

[116] TWUL has submitted a note to the inquiry entitled "TWUL's PR24 Business Plan – Growth EC", received by OCC late on 8 May 2024, the penultimate day of the inquiry. The note takes matters no further. It states that "*Culham STW will need expanding in order to meet this demand"*, but as Mr Paton clearly explained in oral evidence, and as set out in these closing submissions, TWUL has multiple options to meet the demand and if the northern parcel is not available there is no suggestion that an alternative option will not be found. The note also explains that only 'Early Start' funding has been allocated in respect of a CTW expansion option at present, "*which is being used to develop more detailed solutions before the start of AMP8"*. Those detailed solutions accordingly do not yet exist, and

Negotiation

102. TWUL's allegation that OCC has not complied with the CPO Guidance on seeking to acquire by negotiation is wholly without merit.

103. The context is important. The northern parcel of the CTW, which is the subject of the CPO, was safeguarded for the HIF1 Scheme in the South Oxfordshire Local Plan 2020 ("SOLP"). The SOLP was adopted in December 2020, i.e. well in advance of the making of the CPO in December 2022, and prior to 2020 the SOLP had been through the examination in public process. The safeguarding map is clear and precise in including the northern parcel.[117] TWUL did not object to that safeguarding. Mr Paton in cross-examination said TWUL would be unlikely to object to development which did not involve an increase in population,[118] and TWUL in closing submissions likewise says that such safeguarding "*is not something that would have triggered involvement by TWUL"*.[119] That is wholly misguided. Safeguarding of land in a statutory development plan would obviously be expected 'trigger the involvement' of the landowner. Certainly any responsible statutory undertaker whose land is proposed for safeguarding can be expected to engage with the plan process, rather than to ignore it and then propose development which directly conflicts with it. A central purpose of examination of development plans is for stakeholders to input into and influence those plans. It is extremely unsatisfactory for TWUL to stay silent during that process and then later object to the CPO, which precisely reflects the extent of the safeguarding to which they did not object.

104. Indeed, it is not only the safeguarding which TWUL did not object to, but also the planning application for the Scheme, which was made in October 2021 and gave TWUL another chance to raise an objection to the alignment of the new road. They did not and OCC understandably then maintained that alignment when drawing up the detailed land plans for the CPO and making the CPO in December 2022.

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in any event the option of using the land adjacent to CTW, identified in the statement of common ground, would provide for expansion of CTW.

[117] SOLP Appendix 5 Safeguarding Maps (p.263) (CDG.1).

[118] Cross-examination by Mr Humphries KC (day 18, 25 April 2024).

[119] TWUL closing submissions para. 70.

105. The reality appears to be that TWUL themselves did not know that they needed to expand the CTW at this point, and that the northern parcel would be usable for this purpose. TWUL concedes that "*as at December 2020, TWUL had not yet started to plan for the increased growth that would result from allocations within that Local Plan"*.[120] That was only nine months before the full planning application was submitted in early October 2021, which obviously had been in preparation long before then. As stated above, TWUL's Enhancement Case and Business Case were not issued to Ofwat until October 2023, and the presentation showing a high level design for expansion at CTW was also not provided to OCC until October 2023.

106. TWUL appears to criticise OCC for not having an understanding of TWUL's proposals for the northern parcel at the time of road design.[121] That is wholly unjustified. TWUL itself did not have any understanding, as there simply were no proposals for the northern parcel at this time. Accordingly, the idea underpinning much of TWUL's closing submissions to the effect that the current dispute could have been avoided through more discussion with TWUL[122] is fundamentally flawed. The fact is that when OCC was designing the road, TWUL did not have any expansion plans for the northern parcel.

107. Indeed, if TWUL was privately aware at an earlier stage of the potential need to expand onto the northern parcel, it is clearly the author of its own misfortune in repeatedly failing to raise this with OCC despite the safeguarding and the planning application showing the new road going across the northern parcel, and OCC engaging with them in 2021.

108. OCC made significant efforts to engage with TWUL in 2021 and subsequently. Mr Moon's engagement record shows Mr Moon repeatedly contacting TWUL to outline the Scheme and discuss survey and access requirements in this period (see entries for 20 January 2021 to 20 December 2022). The engagement record also records discussion about land acquisition with TWUL and their representatives: see entries for 22 February 2021 and 17 March 2021.[123] In addition to those two entries, Mr Moon orally explained that the meeting dated 24 March 2021 in the engagement record involved discussion of land acquisition –

[120] TWUL closing submissions para. 70.
[121] TWUL closing submissions para. 59a.
[122] E.g. TWUL closing submissions para. 68.
[123] Mr Moon appendix SM2.14 (p.63).

not detailed discussion, but it did not need to be detailed given the obvious need for land-take shown by the alignment of the road. Mr Moon confirmed that at no point did TWUL say that the land in question was needed for CTW expansion, or otherwise object to what was proposed.[124]

109. It is quite wrong for TWUL to assert in its closing submissions that "*It is readily apparent from the schedule of correspondence in Mr Moon's Appendix SM2.14 that the contact between the Acquiring Authority and TWUL prior to December 2022 when the Order was made was concerned with access to TWUL's site to carry out surveys*", and that "*the Acquiring Authority has produced no documentary evidence"* of land acquisition conversations prior to 2022.[125] The entries for 22 February 2021 and 17 March 2021 refer expressly to land acquisition. TWUL have advanced no evidence to suggest that this documentary evidence was in any way incorrect. On top of the documentary evidence, Mr Moon (who provided evidence in accordance with his professional obligations and gave a declaration that his evidence was true) was not challenged in cross-examination on his factual evidence that the meeting dated 24 March 2021 in the engagement record involved discussion of land acquisition.

110. It is also clear from Mr Moon's engagement record that he was speaking to a number of different people at TWUL about the Scheme and land acquisition, both internally at TWUL and TWUL's external agents (at Savills in 2021, and at Bruton Knowles in 2023).[126] Mr Paton made the point in oral evidence that TWUL is a very large organisation, but it is of course incumbent on such organisations to have adequate internal communication channels and procedures in place to ensure that important information is not missed; that is not something which OCC can control.

111. There were also formal notices to TWUL. A request for information ("RFI") was sent by OCC to TWUL on 7 July 2021 under s.16 of the Local Government (Miscellaneous Provisions) Act 1976 seeking information in respect of TWUL's land, and containing plans which precisely identified the land in question – including the northern parcel of the CTW site. The formal statutory notice specifically stated that the RFI was to enable OCC to perform its functions

[124] Mr Moon evidence in chief on TWUL (day 18, 25 April 2024).
[125] TWUL closing submissions paras. 65 and 66 respectively.
[126] Mr Moon appendix SM2.14 (pdf p.63 – 68).

in relation to the making of a Compulsory Purchase Order pursuant to Sections 239-260 of the Highways Act 1980, and covering correspondence also explained that compulsory purchase might be required.[127] TWUL is incorrect in its closing submissions to suggest that "*There is some dispute as to whether initial plans were provided earlier as part of a request for information*".[128] There can be no dispute: the plans and the covering notices and correspondence have been submitted to the inquiry and clearly identify the northern parcel of the CTW.[129]

112. TWUL were formally notified as a landowner when the planning application was submitted in October 2021.[130] TWUL's closing submissions notably do not deal with this point about being notified about the planning application over TWUL land, presumably because TWUL has no answer to it.

113. TWUL's closing submissions seek to place weight on the fact that a letter sent by OCC to TWUL in December 2022 is described in one isolated place in the engagement record as an 'initial contact' letter.[131] But the actual entry includes reference to the letter "*Providing an update on the Scheme …"*, which is consistent with the substantial engagement prior to this date.[132] It was not suggested in cross-examination to Mr Moon that this 'initial contact' terminology had any significance, and it should have been if it is now to be relied upon. If it had been raised with him, Mr Moon would have been able to explain that this *pro forma* terminology obviously cannot undermine the uncontested factual evidence showing that land acquisition was discussed prior to 2022, on top of the safeguarding and the planning application showing development on TWUL's land.

114. TWUL's position in respect of the Scheme changed in March 2023, when TWUL submitted its objection to the CPO.[133] Even then, the terms of the objection are revealing. Rather than

[127] O-INQ-11.b ("RFI response from Savills on behalf of TWUL including completed RFI"). The relevant plan is at pdf p.17 of O-INQ-11.b. It is also at pdf p.5 of O-INQ-11.a ("Plans annexed with RFI to TWUL 07.07.21"). The formal statutory notice is at pdf p.26 of O-INQ-11.b. The Gateley Hamer letter dated 7 July 2021 (pdf p.28 of O-INQ-11.b) also explains that compulsory purchase may be required.
[128] TWUL closing submissions at footnote 67 on page 17.
[129] O-INQ-11.a and O-INQ.11.b.
[130] See CDA.03, which is the schedule of landowners to whom 'C4' notices were sent on 30 September 2021 immediately prior to submission of the planning application on 4 October 2021 (see CDA.01 and A.02). TWUL appear at p.13.
[131] TWUL closing submissions paras. 59c and 67b.
[132] Mr Moon Appendix SM2.14, p.64 – entry for 20 December 2022.
[133] 17 March 2023 (CDJ.10).

indicating that any actual proposals had been formulated for the northern parcel of the CTW site, TWUL's agents simply said that "*Our clients are currently considering how the operational performance of this asset [i.e. CTW] would respond to a significant increase in population. … This is a strategic asset for my client and its operational performance is likely to increase in the near future. The availability of existing land under its ownership will help safeguard this requirement"*. Mr Moon confirmed that at this time no plans or proposals were shown to OCC by TWUL.[134] The engagement record then shows that Mr Moon had to chase TWUL throughout March and April 2023 and only in May and June 2023 were substantive discussions able to progress, with meetings on 3 May and 9 June 2023 in particular.

115. TWUL's engagement was late by the admission of TWUL's own land agent. Mr Smith candidly stated in cross-examination that had he been appointed before March 2023, he would have advised his client of the implications earlier and that they should make any concerns known.[135]

116. On 7 July 2023 OCC provided an indicative plan to TWUL to show how the Scheme could be re-designed to reduce the extent of acquisition from TWUL by 40%. This is clear evidence of OCC negotiating in good faith and being flexible to acquire by agreement. This was on top of the design which already reduces the width to minimise the impact on TWUL.[136]

117. Engagement was paused on 19 July 2023 following the decision by the Planning and Regulatory Committee and uncertainty over the planning position. OCC's agents then notified TWUL on 31 August 2023 that they had been instructed to recommence discussions in light of the decision to call in the planning application. It was not until 20 October 2023, however, that TWUL provided its presentation with the high level proposal for the northern parcel. The only explanation for why it took over 7 months from issue of TWUL's objection on 17 March 2023 for TWUL to provide this high level design is that TWUL did not themselves know if and to what extent the northern parcel was required. OCC clearly cannot be held responsible for that significant delay.

[134] Mr Moon evidence in chief on TWUL (day 18, 25 April 2024).
[135] Cross-examination by Mr Humphries KC (day 18, 25 April 2024).
[136] See Mr Chan proof paras. 2.56, and 3.58 – 3.60, including figures 30 and 31, for explanation of the design and proposed re-design. The revised land plan is at Mr Smith Appendix 4, plan a).

118. Mr Moon explained that it is incorrect and unfair for TWUL now to suggest that OCC could have progressed the replacement land option more expeditiously from June 2023. While replacement land was mentioned in June 2023, the CTW is plainly a specialist asset and OCC needed clear specification and engagement from TWUL to establish what was required, which OCC did not get in June 2023. Again, this must be because TWUL themselves did not know, prior to producing their October 2023 presentation. TWUL's closing submissions do not engage with this point, implying that it was simply enough for Mr Smith to suggest to OCC that they consider replacement land.[137]

119. Even after the presentation in October 2023, OCC had to come up with its own proposals for replacement land without guidance from TWUL, which resulted in the two 'triangle' solutions on the neighbouring land put forward by OCC in late 2023, and a third more rectangular option in early 2024 based on limited feedback received. As Mr Moon stated, TWUL's "*approach really was that it was our problem – we didn't have much direction as to what would be suitable. … Opportunities were missed – if Thames Water had replied more promptly, we could have resolved matters more quickly"*.[138] Only in early February 2024 did TWUL actually confirm their detailed requirements, and based on this a fourth option for a replacement parcel was produced. This has now been agreed on by both parties in Appendix 2 of the SoCG, and negotiations have progressed on the basis of it.[139]

120. TWUL's case gets no support whatsoever from the Vicarage Fields decision, contrary to Mr Smith's suggestion. That was both an extreme case and involved a very different factual matrix, with a clear failure by the acquiring authority to progress the CPO as quickly as possible (a delay of nearly 7 years from pre-application discussions to consideration of the CPO at inquiry, and a three year delay from Cabinet approving the CPO to making the CPO), the absence of specified case manager to whom those with concerns could easily contact, a failure to genuinely attempt to negotiate, and a failure to provide advice and assistance to affected occupiers.[140]

[137] TWUL closing submissions para. 59e.
[138] Mr Moon evidence in chief on TWUL (day 18, 25 April 2024).
[139] See Mr Moon's engagement record (SM2.14). The three plans are plans b), c) and d) in Mr Smith's appendix 4 (pdf pages 140, 141 and 142), and the fourth is at Appendix 2 of the SoCG (O-INQ-08).
[140] Decision ref. APP/PCU/CPOP/Z5060/3278231 dated 4 October 2022, at Mr Smith appendix 1. See paras. 229 – 266 and 375 in particular.

121. In the Vicarage Fields case, the Inspector criticised the acquiring authority for providing information on the CPO to those affected by it 10 days prior to the making of the CPO.[141] That is hardly comparable to the facts in respect of TWUL, whose land had been safeguarded for the HIF1 road 2 years before making of the CPO, who in 2021 had been served with requests for information (including plans) and planning application C4 notices as a landowner, and with whom land acquisition had been raised by Mr Moon orally and in writing in 2021.

122. TWUL's attempted reliance on the CPO Guidance is flawed. TWUL suggest that the CPO Guidance "*presupposes some form of negotiations take place prior to the making of the CPO*". But the CPO Guidance is not drafted in those mandatory terms and TWUL do not cite any passage of the Guidance to that effect. As stated above in the "Approach to Negotiations" section of these closing submissions, the CPO Guidance states that there can be benefits in undertaking negotiations in parallel with preparing and making a CPO, but the CPO Guidance does not make that a mandatory requirement.[142] In the present case, there is an urgent need for the Scheme and a significant amount of planned development in Science Vale depends on it coming forward, as set out in OCC's call-in closing submissions. There is a public interest in the Scheme proceeding in a timely manner and not being delayed. There are a large number of landowners given the linear nature of the Scheme, which inevitably requires compulsory purchase to be pursued alongside negotiations. The funding for the Scheme from Homes England was being made available in a funding window which delay would have been inconsistent with. A balance has to be struck between engagement and progressing an urgently needed scheme expeditiously. There was extensive engagement with TWUL prior to the making of the CPO, including in respect of land acquisition, and detailed discussions about land acquisition have taken place following the making of the CPO over the past 16 months. That is more than sufficient to comply with the CPO Guidance.

Alternatives

123. TWUL's case to the inquiry has relied heavily on the suggestion that rather than having a route alignment which crosses the northern parcel of the CTW site, OCC could have aligned

[141] A point relied on in TWUL's closing submissions at footnote 83, page 21.
[142] Section 17, p.15.

the road further north at this point, involving land-take from UKAEA's site (which lies directly north of Thame Lane). That is misconceived. UKAEA's site is an allocated site in the SOLP and the red line for the allocation runs right up to the northern boundary of Thame Lane.[143] It was entirely appropriate for OCC to pursue an alignment which avoided impinging on this allocated site, and instead to keep to the safeguarded route alignment which ran through the northern parcel of the CTW site. Further, UKAEA had published plans to develop right up to this boundary: see UKAEA's masterplan for the Culham Campus published in January 2022, which has proposed buildings and structure planting in this area.[144] TWUL is plainly incorrect in its closing submissions to suggest that "*there is no evidence before the inquiry to demonstrate that the realignment of the scheme to the north-west would result in any adverse impact to the UKAEA or its operations*".[145] The existence of UKAEA's masterplan, and the proposed development which it shows in this area, is direct and clear evidence of that.

124. TWUL's written evidence suggested that the road could be realigned, whilst making no reference whatsoever to UKAEA's site. Unfortunately, therefore, it has been necessary for OCC to point out to TWUL that what they were suggesting would conflict with the UKAEA site, its allocation and masterplan, TWUL apparently not having given the matter proper consideration previously. In closing submissions TWUL for the first time prays in aid the fact that UKAEA is not a statutory undertaker. The apparent suggestion that UKAEA's activities can somehow be considered less important than those of TWUL is entirely misconceived. The inquiries have heard evidence from Professor Sir Ian Chapman as to how the Culham Campus "*is at the centre of fusion development globally*";[146] it is a world-leading research centre, the Government has committed funding of £184m to support its transformation, and as the Secretary of State for Energy Security and Net Zero has personally explained in a letter in respect of the called-in planning application:

> "*We are already planning on investing around £700m in UK fusion in this Spending Review period and are in discussions with the Treasury to invest a further £600m up to 2027, depending on the outcome of negotiations with the EU around participation*

[143] SOLP Appendix 2 Strategic Allocation Maps (p.254) (CDG.1).
[144] Appendix 1 of Professor Sir Ian Chapman's proof, at p.31 (pdf. p.44) – "Composite Masterplan".
[145] TWUL closing submissions para. 55.
[146] UKAEA closing submissions to the called-in planning application inquiry, para. 18 (INQ-74).

in EU programmes. Without developing the Culham Science Centre, the benefits of these investments are at serious risk."[147]

125. TWUL has not disputed any of that evidence. Indeed, TWUL did not engage at all in the parts of the conjoined inquiries where the evidence was heard and tested on the need for the Scheme, including UKAEA's case. It is not in the public interest to compromise UKAEA's expansion plans, on an allocated site, simply so that TWUL can (on land which has been safeguarded for the Scheme) expand the CTW rather than pursue other available alternatives to increase sewage treatment capacity.

126. Further, and fundamentally, the land to realign the road is not included in the Orders. What TWUL is suggesting is therefore not an alternative. Without the TWUL plots, the Scheme cannot go ahead, it will not meet the pressing need for improved transport infrastructure in the Science Vale, and all its wide-ranging benefits will be lost. TWUL's case entirely fails to grapple with this hugely undesirable consequence.

Conclusion on TWUL's objection

127. TWUL's objection provides no proper basis not to confirm the CPO.

128. In terms of impact on TWUL and sewerage capacity in the area, there are multiple potential options for meeting the need for expanded capacity which do not rely on TWUL retaining the northern parcel of CTW: most obviously by expanding onto the neighbouring land either by private agreement or by use of TWUL's CPO powers, or alternatively by expansion of one of the other five STWs within a three mile radius. TWUL have only recently (October 2023) clearly identified the need to expand, and additional capacity does not need to come online until 2031.

129. In terms of negotiation, OCC has extensively engaged and negotiated with TWUL. TWUL acquiesced in the safeguarding of their land for the HIF1 Scheme and did not object to the planning application. TWUL now makes the remarkable and wholly misconceived suggestion that prior to December 2022 OCC was asking TWUL to "*read between the lines*", in respect of the need to acquire the northern parcel of the CTW site for the HIF1

[147] Letter from Secretary of State for Energy Security and Net Zero dated October 2023 (CDN.18).

Scheme.[148] TWUL at no point had to read between the lines. They simply had to read the words of the statutory development plan, which safeguarded the northern parcel for the road, and showed it on the safeguarding plan. The planning application, of which TWUL were notified as a landowner, showed the same thing. Mr Moon also explained the Scheme to TWUL in 2021 and raised the need for land acquisition from TWUL.

130. After December 2022, there is no dispute that there has been substantial engagement for the last 16 months or so. TWUL, having stayed silent despite the safeguarding, planning application and engagement in 2020 – 2022, then raised an objection very late, after the CPO was made. Even then it was not until late 2023 and early 2024 that TWUL began to provide sufficient information to OCC to enable OCC to devise a worked up solution on the neighbouring land.

131. In light of all of the above, it cannot be said that TWUL's objection justifies not confirming the CPO, with the consequence that the thousands of homes and jobs planned in the development plans for the area which the Scheme would facilitate cannot go ahead.

Obj. 12: Appleford Parish Council ("APC"); Obj. 28: Neighbouring Parish Councils Joint Committee ("NPCJC")

132. Neither APC nor the NPCJC (including the five Parish Councils which make up the NPCJC) are landowners. Their objections are in very large part the same as those advanced by the NPCJC at the call-in inquiry, raising concerns about: climate change; the robustness of the traffic modelling, including induced demand; noise impacts; air quality impacts; landscape and visual impacts; health impacts, including health impact assessment; biodiversity; compliance with the Local Transport Connectivity Plan; the road alignment around Appleford; adequacy of consultation; Green Belt impacts; bridge design; and compliance with planning policy. All those matters have been responded to in detail in OCC's evidence under Issues 1 – 14 for the call-in inquiry and in OCC's call-in closing submissions. OCC relies on and does not repeat those closing submissions. They show the objections relating to all those issues to be without merit.

[148] TWUL closing submissions para. 73.

133. APC's and the NPCJC's objections allege that there is inadequate funding for the Scheme and also raise concerns about deliverability. Those issues have been responded to above. They too are unsubstantiated.

134. APC and NPCJC contend that there is no compelling case in the public interest, based on the criticisms set out above. That contention is without foundation, given it is entirely based on the criticisms which have been shown to be entirely without merit in OCC's call-in closing submissions and, in respect of funding and deliverability, in these closing submissions.

Conclusion on APC's and NPCJC's objections

135. APC's and NPCJC's objections overlap completely with the points raised by those parties during the call-in inquiry. They are without merit for the reasons which OCC has set out in the call-in inquiry. They provide no basis not to confirm the Orders.

Obj. 15: Anthony Mockler and Gwendoline Marsh as Trustees of the Milton Manor Estate; Obj. 16 and 17: Anthony Mockler; Obj. 18: Anthony Mockler and Gwendoline Marsh as Trustees of the Milton Settled Estate

136. Mr Mockler and Ms Marsh, in their own capacities and as trustees, make various objections[149] to the Scheme, all of which OCC considers to be without merit.

137. The objectors' principal objection is their suggestion that the Scheme is not needed in highways terms, and hence there is no need for the land-take for the Scheme. That is not the case. As has been set out above by reference to OCC's evidence and case in respect of the called-in planning application, there is an acute and urgent need for the Scheme in highways and transport terms, in order to allow for the very significant development coming forward in the locality, and to address the significant shortcomings of the existing highway infrastructure. Mr Mockler and Ms Marsh have adduced no contrary expert evidence, and their objections do not engage in detail with OCC's case and evidence on this issue.

[149] Set out in OBJ-15-19.01 "Statement of Case for ABP Mockler & the Trustees of the Milton Manor Settled Estate".

138. More specifically in respect of the A4130 widening element of the Scheme which the objectors have raised particular issue with, there is no substance in Mr Mockler's suggestion that the A4130 does not need to be dualled. Mr Mockler did not challenge OCC's highways and traffic modelling witnesses on this matter when they gave evidence, but in any event the evidential basis for the dualling is compelling, and was further explained by Mr Blanchard in giving evidence in response to Mr Mockler's objection.[150] There is a significant amount of new residential development (both already coming forward and planned to come forward) around the A4130, including Great Western Park, Valley Park and Northwest Valley Park. The A4130 is also required for the significant employment and industrial development around the Didcot northern perimeter road, and the FCC waste and Heidelberg aggregates sites. As the Transport Assessment explains, "*HIF enables the A4130 eastbound from Milton Interchange to operate more efficiently, allowing vehicles to travel away from the junction. This reduces blocking back through the junction, enabling it to operate more efficiently, which in turn reduces queuing on the A34 off slip roads*".[151] Protecting the Milton Interchange and the A34 is important from a safety point of view, which National Highways are particularly concerned about, as explained by Mr Blanchard.[152] The modelling shows that without the Scheme in 2034, average eastbound vehicle speeds in the PM peak are extremely slow: 3.4mph. With the Scheme, they rise to 14.9mph.[153]

139. As to the objectors' further concern regarding the A4130 widening resulting in a dual carriageway but the remainder of the Scheme being only single carriageway, Mr Mockler is wrong to suggest that the dualled A4130 part of the Scheme ends in a single carriageway. Rather it ends by splitting into two single carriageways, with one going north around Didcot and to the new Thames bridge, and the other going east towards the centre of Didcot and Great Western Park. Mr Blanchard explained that the split is fairly even: 58% going north, 42% going east.[154]

[150] Mr Blanchard evidence in chief in response to Mr Mockler's objection, day 20 (8 May 2024).
[151] Transport Assessment para. 6.9.9 (CDA.07).
[152] Mr Blanchard evidence in chief in response to Mr Mockler's objection, day 20 (8 May 2024).
[153] Transport Assessment Figure 6.26 (CDA.07, pdf p.113).
[154] Mr Blanchard evidence in chief in response to Mr Mockler's objection, day 20 (8 May 2024).

140. The objectors' generalised allegation of inadequate consideration of alternatives is rebutted by the submissions on alternatives above in these closing submissions and in OCC's submissions in the call-in inquiry.

141. The concern as to increased costs has been dealt with above in the funding section of these closing submissions.

142. As to alleged conflict with the Local Transport and Connectivity Plan and the potential for induced demand, they have been dealt with in the evidence of Mr Disley and Ms Currie on behalf of OCC.

143. As to the objectors' support for the case of POETS and the NPCJC to the call-in planning inquiry, those points have been fully addressed in OCC's closing submissions for the call-in planning inquiry.

144. The objectors make certain further points concerning alleged impacts on their development proposal for the site which they refer to as 'Milton Fields'. The objectors' suggestion that the Scheme, in particular the A4130 widening, would have "*a disastrous effect*" on their proposal is clearly wrong. Their proposal is on a site allocated for "*at least 800 homes, subject to masterplanning*" in the Vale of White Horse Local Plan Part 1, namely 'North West of Valley Park'. The allocation includes the requirement to "*Provide land for widening of the A4130"*.[155] The area required for A4130 widening is also safeguarded in the same plan.[156] The Scheme is therefore entirely consistent with what is planned for the site in the adopted development plan. Even the objectors' own masterplan for the site reveals no inconsistency: their 'emerging concept masterplan' has open space rather than built development in the northern part of the site adjoining the A4130.[157]

145. The Scheme will provide significantly enhanced access to the site which will facilitate, not adversely effect, the site: the south-east arm of the new Backhill roundabout in the Scheme is designed to link into the site, as noted on sheet 1 of the General Arrangement

[155] VWHLPP1 Appendices, starting at p.26 with the requirement to provide land for widening at p.27 (CDG.2.2).
[156] Appendix E: Land for safeguarding for future transport scheme – maps (p.62) (CDG.2.2).
[157] OBJ-15.19.03 - Milton Fields Masterplan September 2023 at p.18.

drawings.[158] That access is essentially in the same location as is indicated in the objectors' masterplan.

146. As to noise concerns, there is no basis to think that the widened A4130 would cause unacceptable noise impacts. In the objectors' masterplan, built development does not extend north of the current buildings at New Farm. The ES noise assessment shows that there would be no significant noise effects during operation of the Scheme at the New Farm buildings, and accordingly there would none in respect of the objectors' proposals.[159]

147. Mr Mockler has stated that he wishes to pursue a car free development. The Scheme does not determine the form of development on Mr Mockler's site, but in any event Mr Wisdom has explained how a car free development in this location, remote from the town centre, is not realistic.[160]

148. OCC has sought to engage with Mr Mockler over a long period of time, with a view to acquisition by negotiation rather than compulsion, but Mr Mockler has been unwilling to engage, based on his strong in-principle opposition to the Scheme. Mr Mockler's refusal to engage extended to refusing even to allow access surveys, such that OCC needed to apply for warrant of entry in the Magistrates Court, which they successfully obtained in November 2021.[161] Mr Mockler accepted in cross-examination that OCC has sought to engage with him, including by sending draft heads of terms, but his in-principle objection to the Scheme meant that he would not reach agreement.[162]

Conclusion on objections by Mr Mockler and Ms Marsh

149. To the extent that the objectors' raise planning objections to the Scheme, or challenge the need for the Scheme, those matters have all been dealt with fully in OCC's evidence and closing submissions for the call-in inquiry and are without merit. To the extent that the objectors allege an unacceptable impact on their development proposal for the North West Valley Park allocated site, those objections are also without merit, and the Scheme is in fact

[158] CDD.1.
[159] See Mr Pagett proof paras. 3.66 – 3.68.
[160] Mr Wisdom proof paras. 13.27 – 13.29.
[161] For the engagement and attempts to negotiate and acquire by agreement from Mr Mockler, see Mr Moon proof paras. 3.18.3 and 4.155 – 4.164, and the engagement record at appendix SM2.15.
[162] Cross-examination by Mr Flanagan, day 20 (8 May 2024).

entirely consistent with the allocation in the development plan and will facilitate, not harm, development of the site. For those reasons, the objections provide no basis not to confirm the Orders.

Obj. 19: The occupiers of New Farm

150. It is understood from this objection that the family referred to in the objection letter dated 18 March 2023 rent a property on the grounds of New Farm which is owned by Mr Mockler. However, OCC did not have any other information about the individuals or the nature of this tenancy and these parties are not named in the Schedule to the CPO as the requisition for information returned by Mr Mockler does not provide their details. In addition, Mr Mockler expressly informed OCC that his tenants should not be contacted. Notwithstanding this, in order to seek to address the concerns of the occupiers of New Farm, OCC sought to ascertain the nature of their land ownership and to explain the Scheme to them. A letter to this effect was sent to them on 7 June 2023. The subsequent response dated 16 June 2023 declined to provide that information and indicated that they did not wish to speak to OCC.[163] Subsequently, Mr David Page was called as a witness as Mr Mockler on day 20 of the inquiries (8 May 2024), who confirmed he was a tenant of Mr Mockler and lived at New Farm with his family including his five children.

151. Mr Page and his family have raised concerns based on noise, disturbance, and safety. It is acknowledged that there will be some unavoidable disruption during construction but appropriate construction and construction traffic management measures will be put in place by the contractor, as secured by the proposed planning conditions requiring a Construction Environmental Management Plan (which is to include a Noise and Vibration Management Plan), and a Construction Traffic Management Plan.[164]

152. New Farm was a selected receptor for the construction noise assessment and it was concluded that there would be daytime, evening and night-time significant adverse effects, albeit the duration was very limited: four months for daytime levels at or above the SOAEL, and two months for evening and night time levels at or above the SOAEL. Further, the anticipated duration of evening and night-time works in this area is very low, and well

[163] Mr Moon proof paras. 4.167 – 4.168.
[164] Draft conditions nos. 3 and 4 in CDQ.1.

below the DMRB criterion of 10 or more working days (or evenings/weekends or nights) in any 15 consecutive days, which would remove the evening and night-time significant adverse effects. However, for the purposes of the assessment a conservative approach was adopted and a risk of exceeding the duration criteria (so as to lead to a significant effect arising) was identified. The mitigation measures will include best practical means, including selection of quieter machinery, acoustic enclosures around machinery and limits on intrusive alarms. This has the potential to reduce significant adverse impacts, although some may remain.[165] During operation, no significant noise effects are anticipated.[166]

153. Overall, in light of the temporary nature of the construction effects, the mitigation that will be put in place, and the absence of significant operational effects, the effects are considered to be acceptable and policy compliant in noise terms.[167] Other disruption will also be properly managed and mitigated by the CEMP and CTMP. This includes safe provision for those walking and cycling along the A4130, noting the objectors concern on this point. Mr Page explained that currently the pedestrian and cycling facilities along the A4130 in this location are unsatisfactory, leaving users (including his children whom he accompanies to school along this route) uncomfortably close to fast and heavy traffic.[168] The wide and fully segregated cycling and walking provision in this location will be a major improvement and address these issues. It should also be noted that there is potential to open the new enhanced walking and cycling facilities along A4130 (and elsewhere in the Scheme) early (i.e. prior to the first use of the Scheme by vehicles), and a planning condition is proposed to require opportunities to be sought to do so.[169] In response to Mr Page's evidence, Mr Blanchard also explained that the road safety audit process had raised no issues in respect of access from the Scheme to New Farm.[170]

[165] ES Chapter 10 Noise and Vibration, Table 10.11 and paras. 10.10.5 (second bullet point), 10.10.6 – 10.10.8, 10.10.48 – 10.10.53 (CDC.1, Annex 4). See also Mr Pagett proof paras. 3.66 – 3.68.
[166] ES Chapter 10 Noise and Vibration, Table 10.14 (entry 4 – New Farm) (CDC.1, Annex 4).
[167] See ES Chapter 10 Noise and Vibration, paras. 10.10.48 – 10.10.53 (CDC.1, Annex 4).
[168] Mr Page evidence in chief (day 20, 8 May 2024).
[169] As at the time of writing, a proposed amended condition no.9 (i.e. amended from that in CDQ.1) states: *Opportunities should be sought to open footways, footpaths and cycleways shown on the approved drawings, prior to first use of the Scheme by vehicles, where this does not create safety hazards to active travel users or impose unnecessarily adverse constraints on construction sequencing"*.
[170] Mr Page evidence in chief (day 20, 8 May 2024).

Conclusion on objection by occupiers of New Farm

154. The concerns based on noise, disruption and safety raised by the New Farm objectors will be appropriately addressed by mitigation measures. They do not show any unacceptable impact and do not provide a basis not to confirm the Orders.[171]

Obj. 27: W E Gale Trust ("the Trustees")

155. The Trustees' have written to the Inspector to confirm that, given the advanced state of negotiations with OCC for a private agreement, they have decided not to present evidence at the inquiry.[172] They explain that once the agreement is reached, their objection can be withdrawn. The nature of the proposed agreement is outlined in the letter and is broadly as follows:

    a. The Trustees will transfer to OCC the freehold title in plots 6/3a, 6/3c, 6/3e, 6/3f, 7/1b, 7/1c and 7/1d for the HIF1 development;

    b. The CPO powers over these plots will remain, but it is anticipated they will not be required as the land should be transferred under the agreement;

    c. There is a buy-back provision in relation to these plots in the event that the HIF1 development does not proceed;

    d. The Trustees will grant OCC a lease of plots 6/3d and 7/1a[173] for construction purposes;

    e. OCC will apply to modify the CPO to exclude plots 6/3d and 7/1a; and

    f. The Trustees will withdraw its objection to the CPO.

156. This agreement does, therefore, contemplate a modification to the Order. It is anticipated that the agreement will be completed, the modification requested and the objection withdrawn before the deadline of 20 May 2024 indicated by the Inspector.

[171] See generally Mr Blanchard proof 3.39 – 3.41 responding to this objection.
[172] Letter from Excello Law dated 7 May 2024.
[173] The 'green land' on the plan at CD P.01

157. Although it is positive that negotiations have reached this advanced state, the Trustees have not yet withdrawn their objection and hence OCC needs to address it.

158. The Trustees have an interest in a number of plots to the north of the Didcot northern perimeter road.[174] The various plots are shown on document CD P.01, which is a landowner plan prepared by the Trustees. This divides the plots into 'pink land' that OCC requires permanently, and 'green land' that it only requires on a temporary basis for construction. Mr Diment makes clear[175] that *"… the Trustees 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"*; that is the pink land. As, again, Mr Diment explains[176], the objection focusses on that *"75% of the land to be acquired from the Trustees is land which is needed only for a temporary period"*; that is the green land.

159. The Trustees' objection raises various points, none of which have any substantive merit.

Need for the 'green land'

160. The objection focuses particularly on what has been referred to as the 'green land', which comprises plots 6/3d and 7/1a.[177]

161. As explained by Mr Blanchard,[178] the green land (and the very small plot 6/3e which provides access) is required only temporarily during construction. All the other plots owned by the Trustees are required permanently for the construction of the road and associated infrastructure.

162. The green land is required in particular for a construction compound, which has been justified in the evidence of Mr Blanchard. The size of this compound area has been determined as necessary to provide sufficient space to include elements such as a site office area, welfare facilities, stores, car parking for staff, material laydown and material storage. The compound location has been chosen as it is adjacent to the Scheme, and critically provides a location that will serve the eastern section of the works area of the

[174] Plots 6/3a, 6/3b, 6/3c, 6/3d, 6/3e, 6/3f, 7/1a, 7/1b, 7/1c and 7/1d.
[175] Mr Diment proof para 20
[176] Mr Diment proof para 20
[177] The 'green land' and the 'pink land' is shown on CDP.01.
[178] Mr Blanchard proof paras 3.42 – 3.43, including figures 25 – 26.

Didcot Science Bridge element of the Scheme. The site will also have good access to the existing A4130 Northern Perimeter Road, via which the majority of materials will be transported. The proximity of the compound area to the proposed road alignment will minimise transport distances, programme and cost for the construction.[179]

163. Contrary to the assertion by Mr Broomhead that the worksite could be located elsewhere (which is not supported by any evidence of where that might be),[180] there are no alternatives for the compound in the vicinity, due to the land either being built up or suffering from constraints. To the east is land which is the subject of the application for the Local Development Order. To the south of the northern perimeter road is an industrial estate. To the west, construction for the northeastern section of the Didcot Science Bridge element of the Scheme (i.e., away from the main bridge over the Great Western main line) is complicated by the presence of the Moor Ditch watercourse, the main access into the former power station site, and the associated drainage lagoons. All these issues limit the practical location of a construction compound, and the green land has been identified as the preferred choice.

164. The Trustees did suggest an alternative location (although it is not pursued in the Trustees' written evidence to the inquiry), but it was concluded that it would not be suitable on account of its distance of 1.5km from the Scheme. It is typical for a construction compound to be located adjacent to the scheme in question, to avoid increased financial and carbon costs, and delays associated with transportation between a remote compound and the construction works.[181] OCC also had an early contractor involvement process which allowed for the input of a contractor, John Graham Construction Ltd., whose advice supported the approach adopted in respect of these plots and this compound. No evidence, expert or otherwise, has been adduced to counter Mr Blanchard's expert evidence as to why the green land is required for a construction compound.

165. Mr Broomhead on behalf of the Trustees criticises the use of compulsory purchase powers in respect of land that is only needed temporarily. There is, however, no power for highways authorities to acquire land only temporarily under the Highways Act 1980, as

[179] Mr Blanchard rebuttal para. 3.2.
[180] Mr Broomhead proof para. 35b.
[181] Mr Blanchard proof para. 3.43 and rebuttal para. 3.2.

conceded by Mr Broomhead.[182] The compelling case in the public interest justifies the CPO in respect of plots that are needed both permanently and temporarily. Even if there were no agreement between the parties, if (as is anticipated) the green land becomes surplus and no longer required following completion of the Scheme, then OCC confirms that in accordance with the Crichel Down Rules it would offer this land back to the landowner for re-purchase. Although Mr Broomhead criticises the Crichel Down Rules for not providing a landowner with certainty, they are Government policy. Mr Broomhead suggests that a private agreement would be a more equitable route for a landowner (whereby a lease or licence is granted over the land for the temporary period that it is required),[183] and indeed OCC will continue to endeavour to agree a private agreement with the Trustees that would facilitate the plot only needed temporarily to be returned once it is no longer needed. However, no agreement has yet been reached and hence the CPO is needed and should be confirmed in the public interest.

Development potential of the green land

166. The written evidence produced on behalf of the Trustees goes to considerable lengths to seek to demonstrate the development potential of the green land (along with land also in the ownership of the Trustees to the north of the green land, which has been referred to as the retained land).[184] This is of limited relevance. Any development potential of the land cannot undermine the need for it as part of the Scheme.

167. To the extent that it is suggested that the development potential of the land weighs against its compulsory acquisition for the Scheme, that is unfounded. As explained in the Note on Planning Matters produced by Mr Greep,[185] the Trustees' land in this location, including the pink land required for construction of the road, the green land, and the retained land to the north, is greenfield agricultural land served by an existing agricultural access from the A4130. It does not have planning permission for any form of development, or for an improved or alternative access; and nor is there even a planning application for any such use.

[182] Mr Broomhead proof para. 45.
[183] Mr Broomhead proof para. 35d.
[184] In particular Mr Nick Diment's proof of evidence.
[185] Contained at Appendix SM4.2 to Mr Moon's rebuttal proof.

168. The land is within the area covered by the adopted Vale of the White Horse Local Plan Parts 1 and 2, the emerging draft Joint Local Plan (for South Oxfordshire and the Vale of the White Horse), and the Didcot Garden Town Delivery Plan, but it is not allocated for development in any of those documents.[186] Whilst it is right that the land has been considered within previous SHLAA and HELAA documents, this does not mean that the land will be allocated for development or, indeed, that it will be the subject of a grant of planning permission in the future.

169. Similarly, whilst the land adjoins the Didcot built-up area and is in close proximity to other land which is allocated for development and/or is the subject of a grant of planning permission, those factors by themselves do not mean that the land will be allocated for development or will be the subject of a grant of planning permission in the future. The Trustees have stated that they are in negotiations with a third party buyer,[187] but that does not change the planning status of this greenfield agricultural land. It is not the function of the planning inspector or, indeed, the Secretary of State to opine of the future planning potential of the land and that is particularly so in a context where the local planning authority (Vale of White Horse DC) has had no opportunity to express a view.

170. Given the absence of any planning permission (or even submitted application) or any allocation for development, and the speculative position in respect of any development potential, it cannot be said that the Trustees' evidence about development potential materially weighs against compulsory acquisition of the land.

Ongoing access to the Trustees' land

171. The Trustees' suggestion that confirming the Orders would deprive them of access to their land is incorrect. As Mr Blanchard has explained,[188] during the construction phase, a right of access through plots 6/3d, 6/3e and 7/1a would be granted to the Trustees' retained land to the north of plots 6/3d and 7/1a. In the absence of the proposed agreement and lease of the green land, OCC will compulsorily acquire that land and, on completion of the construction phase, it is anticipated that the Trustees would repurchase plots 6/3d and

[186] Conceded by Mr Diment at proof paras. 29 and 44.
[187] E.g. Mr Diment proof paras. 52 – 54.
[188] Mr Blanchard proof para. 3.45.

7/1a. The green land would then be provided with an equivalent access to that existing. In the event that the land was not re-purchased by the Trustees and all of the land comprising plots 6/3d, 6/3e, and 7/1a remained in OCC's ownership then Mr Blanchard has confirmed that OCC would grant a right of access to the Trustees over the land in its ownership to re-provide a suitable access to the retained land.[189] Accordingly, no landlocking would occur, either during the construction phase, or subsequently.[190]

172. Mr Broomhead suggests that the SRO may compound the issue, but the SRO provides for a new private means of access in essentially the same location as the current private means of access to the agricultural land that is to be stopped up.[191]

173. Protection is also provided by the proposed planning conditions. Proposed condition no.3 provides that the Construction Environmental Management Plan must include "*Details of how continuous access would be provided to third party land and development where existing access arrangements are affected*".[192]

Standard of replacement access

174. Mr Broomhead raises a further point about the standard of access being re-provided, stating that "*the new access is not suitable for any future sustainable development of Trustees' retained land*".[193] He puts forward an alternative access proposal, comprising a ghost island priority junction with a right turn lane.[194]

175. This alternative access design is not part of the Scheme for which planning permission is sought in the called-in planning application. Currently, the access into the site is a simple agricultural access. The called-in planning application re-provides an access in that form. Mr Blanchard as a highways designer has given expert evidence that the re-provided access is "*equivalent*" to the existing access.[195] Mr Broomhead's proposal would be an enhancement of what is there at present. There is no suggestion that it is needed to serve the current agricultural use of the site; rather, Mr Broomhead states that it is intended to

[189] Mr Blanchard proof para. 3.45.
[190] Contrary to the suggestion in Mr Broomhead's proof at paras. 37 – 38 for example.
[191] See SRO plan no.6 at CDH.4-c.
[192] Proposed condition set out in CDQ.1 at para. 22.
[193] Mr Broomhead proof para. 58.
[194] Mr Broomhead proof paras. 64 – 66.
[195] Mr Blanchard proof para. 3.45.

be suitable for future development of the site. However, as explained above, there is no planning permission (or even planning application) for future development of the site (or any revised access), and no allocation in the development plan. There is no basis to say that what is proposed is inadequate or that it weighs against confirmation of the Orders in any way.

Negotiations

176. The Trustees' allegation of insufficient attempts by OCC to acquire by agreement is completely unfounded. OCC has engaged and negotiated with the Trustees for acquisition for a significant period of time.

177. OCC engaged with the Trustees during 2021 and 2022, as evidence by Mr Moon's engagement record.[196] There were numerous meetings, phone calls, and emails, particularly about access for surveys but also providing updates as to the Scheme (e.g. entries for 4 July, 12 July and 21 July 2022). Plainly the Trustees would have been aware of the need for land acquisition, given the design of the Scheme crossing their land in the October 2021 planning application, and the extensive survey access and engagement with Mr Miles of Gateley Hamer during this period. The Trustees' evidence does not suggest otherwise. The need for land temporarily for the construction compound was also specifically highlighted to the Trustees in pre-application advice as early as 3 December 2020, concerning a proposed application by the Trustees for an alternative access. The pre-application advice stated:

> "*OCC also note that a compound for the HIF1 construction works is to be provided in the south-western corner of the site and if the developer comes forward prior to the HIF1 works, the space required for this will be expected to be maintained, as agreed*."[197]

178. The Trustees engaged actively in the consultation process for the Scheme: see the Savills letter on their behalf dated 3 April 2020.[198] The final red line for the Scheme, as shown in application submitted in October 2021, includes all of the permanent and temporary land-

[196] Updated engagement record at Appendix SM4.1 of Mr Moon's rebuttal.
[197] Pre-application advice from OCC dated 2 December 2020 (CDP.04, at pdf p.4).
[198] CDP.02.

take required from the Trustees.[199] The application documents showed a construction compound on the Trustees land.[200] Accordingly, the need for permanent and temporary land take was obviously apparent to the Trustees.

179. On 23 November 2022, Mr Miles issued land plans to the Trustees (noting that "*as you are aware*", OCC is progressing the Scheme) and explained that OCC would like to enter into an option agreement in respect of the Trustees' land required for the Scheme.[201] Contrary to Mr Broomhead's suggestion,[202] this plainly was not the first written contact from OCC; the engagement record shows considerable email correspondence in 2021 and earlier in 2022.

180. Mr Broomhead is wrong to suggest that it was misleading of Mr Miles to state in his 23 November 2022 email that the green land was only required temporarily.[203] That statement was correct; OCC anticipates that the land will be returned once it is no longer needed.

181. The Trustees are incorrect to suggest that not issuing land plans and starting negotiations in respect of specific plots until close to the date when the CPO was made is contrary to the CPO Guidance.[204] The Trustees do not cite any part of the CPO Guidance which says that. As stated above in the *"Approach to Negotiations"* section of these closing submissions, the CPO Guidance states that there can be benefits in undertaking negotiations in parallel with preparing and making a CPO, but the CPO Guidance does not make that a mandatory requirement.[205] In the present case, there is an urgent need for the Scheme and a significant amount of planned development in Science Vale depends on it coming forward, as set out in OCC's call-in closing submissions. There is a public interest in the Scheme proceeding in a timely manner and not being delayed. There are a large number of landowners given the linear nature of the Scheme, which inevitably requires compulsory purchase to be pursued alongside negotiations. The funding for the Scheme from Homes England was being made available in a funding window which delay would

[199] See e.g. General Arrangement Drawing Sheet 6 (CDD.06).
[200] See ES Ch 2 – The Scheme, Figure 2.6 at p.10 (CDA.15.2) and Transport Assessment Figure 7.1 at pdf p.122 (CDA.07).
[201] See entry in Appendix SM2.4 engagement record and the email itself at Mr Broomhead's Annex TB3 (pdf p.37).
[202] Mr Broomhead proof para. 41.
[203] Mr Broomhead rebuttal para. 5b.
[204] Mr Broomhead proof para.
[205] Section 17, p.15.

have been inconsistent with. A balance has to be struck between engagement and progressing an urgently needed scheme expeditiously. With the Trustees there was significant engagement prior to December 2022, and there have been 16 months of detailed land negotiations since December 2022. That is clear compliance with the CPO Guidance.

182. Since December 2022, the negotiations have been extensive and undertaken diligently and in good faith by OCC, as indicated by the engagement record. Heads of terms were sent by Mr Rob Brown of Gateley Hamer on behalf of OCC in March 2023, within a month of Mr Broomhead's instruction in February 2023. There was very regular contact between then and July 2023 regarding negotiations and the heads of terms. There was a two month break between 18 July 2023 and mid-September 2023 due to uncertainty over the planning position, but negotiations then promptly resumed (at OCC's instigation) and continued up to the end of the year. In 2024 negotiations have also been continuous and very frequent, with emails, calls and meetings at least every few days and often at shorter intervals.

183. There is no evidential basis for Mr Broomhead's suggestion that negotiations have been "*slow and intermittent*", or that OCC have been at fault. In particular:

    a. The factual account in the engagement record and in Mr Moon's proof and rebuttal[206] shows that while negotiations may have been protracted, they certainly have not been intermittent, but very regular. OCC has been negotiating in good faith and diligently to reach agreement and Mr Broomhead provides no evidence to the contrary.

    b. The engagement record notably records OCC having to chase the Trustees' representatives on at least four occasions for a response.[207]

    c. The suggestion by Mr Broomhead that OCC delayed in issuing heads of terms is plainly unjustified[208]: a meeting was held between the parties on 24 February 2023 within two weeks of Mr Broomhead confirming that he had been instructed (on 7 February

[206] See in particular Mr Moon's proof para. 4.277 and rebuttal paras. 2.2 and 2.10.
[207] Mr Moon rebuttal Appendix SM4.1, entries for 31 March 2023, 20 June 2023, 26 June 2023 and 26 September 2023.
[208] Mr Broomhead proof para. 75.

2023), there was another meeting two weeks later on 8 March 2023, and Gateley Hamer issued heads of terms eight days later on 16 March 2023. It was then in fact Gateley Hamer who had to chase Mr Broomhead for a response to the heads of terms two weeks later (on 31 March 2023), and offered dates for a further meeting.

d. The letter from Excello Law on behalf of the Trustees dated 23 January 2024, which Mr Broomhead appends, must be seen in the context of the detailed ongoing negotiations at that time.[209] Indeed, it acknowledges that it was simply seeking "*to make a final push to progress negotiations and to get a deal finalised as quickly as possible"*.[210] Further, Mr Moon explains that the requests set out in that letter had not been received by OCC until they were made in that letter.[211] Indeed, it is notable that the first request in that letter (for an undertaking from OCC that it would not exercise powers of compulsory purchase) goes beyond the private agreement for acquisition of the land mentioned in the third request.[212] Mr Broomhead appears to concede that this was a new request.[213] Making new requests at this late stage obviously had the potential to hold matters up.

e. Mr Broomhead takes issue with the fact that OCC did not immediately accept the proposal to remove the plots from the CPO.[214] However, it is unnecessary to do so if a private agreement is reached, and in any event no private agreement has yet been reached which would allow for the removal of the plots.

Compensation

184. Mr Broomhead's evidence includes significant discussion of compensation matters, and includes criticism of OCC for not to date offering compensation to the Trustees.[215] It is not correct to say that compensation has not been discussed during engagement with the Trustees – see, for example, the substantive discussion of compensation recorded in Mr Broomhead's email of 24 February 2023 setting out matters discussed in a meeting with

[209] Mr Broomhead proof appendix TB2, pdf p.32.
[210] Pdf p.34.
[211] Mr Moon proof rebuttal para. 2.10.
[212] Pdf p.34-35.
[213] Mr Broomhead rebuttal paras. 10-11.
[214] Mr Broomhead rebuttal paras. 14-17.
[215] E.g. Mr Broomhead proof paras. 50 – 51.

Gateley Hamer.[216] In any event, however, it is well-established that compensation and valuation are not matters for determination in the context of the decision as to whether to confirm a CPO. To the extent that there is a dispute about compensation, that is to be resolved either by agreement or by a reference to the Lands Chamber.

Conclusion on the Trustees' objection

185. Whilst it is anticipated that this objection will be withdrawn, in the event that it is not it is OCC's case that the objection by the Trustees provides no proper basis not to confirm the Orders. The 'green land' is required for a construction compound and is the only suitable area available, as confirmed by the uncontradicted expert evidence of Mr Blanchard. If (as anticipated) the green land is no longer required after construction, it will be offered back to the landowners in accordance with the Crichel Down Rules. Access to the Trustees' land will be preserved during construction and operation. The replacement access proposed and secured by the SRO is equivalent to what exists, and there is no basis to suggest that an enhanced access should be re-provided to facilitate future development on the Trustees' land which currently does not have planning permission and concerns a site which is not allocated in the development plan. The Trustees' suggestions of inadequate negotiation are wholly misconceived: engagement and negotiations have been extensive and continuous, and are more than sufficient to show compliance with the CPO Guidance.

Obj. 31: RWE Generation UK plc

186. RWE has a number of land interests around the Didcot Science Bridge road that are needed for the Scheme, temporarily or permanently. RWE has submitted an objection to the CPO and SRO based on the potential impact on access to the former Didcot A Power Station and the still operational Didcot B Power Station, which RWE owns and operates. RWE has not made a valid representation under s.16 of the Acquisition of Land Act 1981, as accepted by RWE at the inquiry and in its closing submissions, with Mr Trigg accepting that the assertion to the contrary in his proof was incorrect.[217] It is therefore not the case that the CPO cannot be confirmed without a certificate from the relevant minister that the land in question can be purchased "*without serious detriment to the carrying on of the undertaking"*.

[216] Mr Broomhead proof appendix TB7 (pdf p.164-165).
[217] Mr Trigg cross-examination by Mr Flanagan, day 18 (25 April 2024). See RWE closing submissions para. 4.

187. RWE seeks a private agreement containing protective provisions in respect of access, drainage and utilities. OCC is amenable to entering into such an agreement, and heads of terms have now been agreed between the parties. RWE has however indicated that it will not withdraw its objection until the legal agreement is signed, pursuant to those heads of terms, which will take some further time to draft and agree. It is unfortunate that RWE are taking this position, thus meaning that OCC and the Inspector have to deal with the remaining objection despite the advanced stage of negotiation that has been reached, agreement having been reached in the heads of terms to both OCC's and RWE's satisfaction.

188. The substantive points of objection raised by RWE are essentially fivefold, as set out in RWE's closing submissions (para. 2(1)(a) – (e)), and also set out by Mr Trigg and agreed in cross-examination.[218]

Access: 24/7

189. RWE raises various issues in respect of access. By way of preliminary observation, it is important to note that the Scheme has been designed around RWE's site in a process of joint working between OCC and RWE that dates back to at least 2020.[219] A specific link road has been incorporated into the Scheme to provide access to RWE's site.[220]

190. RWE says that it requires 24/7 access to its site for operational and safety reasons, including during the period of construction of the Scheme.[221] As to construction access, Mr Blanchard has explained that during the construction period, access to RWE's premises will be provided at all times, i.e. on a 24/7 basis as RWE requires, by the proposed contractor for the works. This access will be through the construction site and will remain in place until such time as the new road and the permanent replacement means of access to RWE premises is constructed and available for use. Conditions will be included within the construction contract documents to secure this requirement, including access for the

[218] Mr Trigg cross-examination by Mr Flanagan, day 18 (25 April 2024).
[219] Mr Blanchard proof 3.46.
[220] Shown on Mr Blanchard's proof figure 26 (p.25).
[221] Mr Trigg proof para. 3.13.1; 3.16.

proposed data centre campus. Through phasing of the construction works, round the clock access can be maintained.[222]

Access: standard of access to be provided

191. RWE says that the access must be "*qualitatively suitable"*, including in respect of HGVs and abnormal loads, and also in respect of access to accommodate future development of the site (notably RWE's data centre proposal).[223] Mr Blanchard gave expert evidence as a highway designer that the access to be provided would meet these requirements, both during construction and operation. He stated that: "*It is my opinion that with the Scheme, future access arrangements to the former Didcot A Power Station site are equivalent to those already existing in terms of heavy and wide loads. The design of the new site access has been developed with RWE in 2020 and 2021, and will provide a ghost right turn lane on the Science Bridge Link Road and, separate left and right exit lanes from the RWE site, to provide capacity for reasonable future development within the site*".[224] RWE has not disputed that view, let alone called any contrary expert evidence.

The Gatehouse

192. This issue is also about access. The existing RWE gatehouse on Purchas Road will be severed from the RWE site access by the Didcot Science Bridge Link Road. Accordingly, outline planning permission has been obtained (granted on 29 November 2022) for a replacement gatehouse on the new RWE access road that OCC has designed as part of the Scheme.[225]

193. Mr Trigg has queried how and when the replacement gatehouse would be provided,[226] but OCC has confirmed publicly through Mr Moon that it has no intention of creating a circumstance in which a replacement gatehouse would not be provided. Further, there is already a mechanism for its delivery in a s.106 agreement between OCC and the adjacent landowner Clowes Developments (UK) Limited, who will be constructing part of the Science Bridge Link Road (rather than OCC). That s.106 agreement provides for the construction of

[222] Mr Blanchard proof para. 3.47.
[223] RWE closing submissions, para. 2(1)(b).
[224] Mr Blanchard proof 3.47 – 3.48.
[225] See Mr Blanchard proof para 3.51 and Figure 28 ("Existing and proposed gatehouse locations"). The outline planning permission for the new gatehouse is at Mr Blanchard's Appendix AB2.1, ref. P22/V2467/O.
[226] Mr Trigg proof paras. 3.18 – 3.19.

that section of the Scheme. As part the same section 106 agreement, it has also been agreed that a replacement gatehouse will be constructed, by either Clowes Developments or the Acquiring Authority, at a timescale to be agreed with RWE. Accordingly, there is a legally binding agreement in place which commits Clowes Developments and Oxfordshire County Council to delivering a replacement gatehouse, at a time to be agreed with RWE. RWE are not a party to that agreement, but it ensures re-provision of the replacement gatehouse.[227] RWE has observed that the s.106 agreement has not been produced to the inquiry, but it comprises multiple deeds (the original s.106 agreement and subsequent deeds of variation) which it was not proportionate to produce, especially as it was not until RWE's oral evidence in chief that any issue was raised in respect of it. Further, RWE does not actively dispute what OCC says about it, but only says that RWE may not be able to enforce it as they are not a party. That does not take away from the fact that a legally binding mechanism to provide a replacement exists.

Drainage

194. There are two existing RWE lagoons to the north-west of the Purchas Road / A4130 / Hawksworth roundabout. The westerly of the two needs to be demolished to construct the Science Bridge Link Road, and accordingly the Scheme provides for a replacement lagoon. Mr Trigg explains that RWE needs continuity of provision, so that the replacement lagoon is constructed and operational before the demolition of the existing lagoon.[228] Mr Blanchard has explained that this is fully recognised and it is what OCC will do: the proposed sequencing for the works will be the construction of the replacement lagoon, followed by demolition of the existing lagoon and construction of the Link Road.[229]

Utilities

195. Mr Trigg states that services that currently exist must be suitably protected and provision made for future service corridors to ensure that the operation of the RWE site is not affected.[230] In response, Mr Blanchard has confirmed that the design of the Scheme will

[227] This is explained in Mr Moon's rebuttal at paras. 5.5 – 5.7. RWE did not dispute any of the content of those paragraphs.
[228] Mr Trigg proof para. 3.13.2.
[229] Mr Blanchard proof para. 2.39, 3.49, fig. 12 and 26.
[230] Mr Trigg proof para. 3.13.3.

allow for apparatus and utilities identified beneath the main RWE access road to be protected, diverted to the new RWE access road or stopped up. The amendment to the apparatus and utilities will be sequenced in collaboration with RWE once a contractor is appointed.

Securing the commitments

196. The above shows that all of RWE's requirements will be met. OCC has committed to doing so, and it has adduced expert evidence from Mr Blanchard that it is feasible to do so within the highway design and that it is what will happen.

197. None of that is disputed. Mr Trigg's written evidence does not dispute any of Mr Blanchard's evidence as to how all five of the operational issues which he raises will be addressed as part of the design and construction of the Scheme. Mr Trigg does not say that what Mr Blanchard proposed is inadequate. Mr Trigg confirmed this when Mr Blanchard's responses were put to him, item by item, in cross-examination.

198. RWE's sole point of dispute, leaving aside certain comments about negotiation which will be dealt with below, is about securing the commitments. In particular, RWE says that a private agreement is needed to protect RWE's operations.

199. It was said by RWE that Mr Trigg can provide expert knowledge about RWE's operations, which Mr Blanchard and Mr Moon cannot. That misses the point that Mr Trigg did not take any issue with the design and construction solutions explained by Mr Blanchard which would address RWE's concerns. As to Mr Trigg saying that a private agreement rather than other securing mechanisms is necessary (such as conditions in construction contracts, or a planning condition), that is not expert evidence from Mr Trigg. The adequacy of the legal or planning mechanism by which RWE's interests are protected is something that Mr Blanchard, Mr Moon and the Inspector are just as able to reach a conclusion on as Mr Trigg.

200. RWE is also incorrect in its closing submissions to suggest that Mr Blanchard and Mr Moon conceded that they were not qualified to opine on the adequacy of using construction contract conditions to protect RWE's interest (and planning conditions, if necessary).[231] Mr Moon and Mr Blanchard were making clear that they were not purporting to give evidence

[231] RWE closing submissions para. 10.

on technical aspects of RWE's operation, but they plainly can give evidence on how RWE's interests will be protected. Indeed, Mr Blanchard as a highway engineer is significantly more qualified than Mr Trigg to do so.

201. Contrary to RWE's closing submissions, Mr Blanchard obviously did not concede that in the absence of a private agreement, RWE's operations would suffer serious detriment.[232] Mr Blanchard's point was that in the absence of some protection RWE's operations might be detrimentally affected, but Mr Blanchard went on to make clear that protection could be obtained through conditions in construction contracts, which he said was usual: "*The construction contract would be the usual mechanism"*.[233] That protection can also be provided by planning conditions.

202. Likewise, Mr Moon did not concede that a private agreement was necessary to avoid serious detriment to RWE; indeed, he expressly stated that it was "*the opinion of the Acquiring Authority"* that there would be no serious detriment to RWE's operation.[234] RWE is quite wrong to suggest that absence of serious detriment to RWE "*does not form part of OCC's case"*;[235] it is absolutely OCC's case that RWE will not suffer serious detriment, as construction contract conditions and, if the Inspector considers necessary, planning conditions, will provide entirely adequate protection for RWE's interests.

203. As to 24/7 access to RWE's site during construction of the Scheme, that can be secured by conditions in a construction contract, as explained above. The same applies to the other matters, i.e. the qualitative adequacy of the access; not severing the existing gatehouse until a replacement one is in place; protecting utilities; and sequencing the construction of the replacement lagoon to be operational before demolition of the existing one. These are all things that can and will be built into the arrangements agreed between OCC and its contractors, and secured in conditions in construction contracts. Mr Blanchard explained in oral evidence that it was normal that such matters were controlled through contracts with a contractor. This is not disputed in RWE's evidence nor was Mr Blanchard challenged on it.

[232] RWE closing submissions para. 9.
[233] Mr Blanchard in cross-examination by Mr Mackenzie, day 18 (25 April 2024).
[234] Mr Moon in cross-examinatino by Mr Mackenzie, day 18 (25 April 2024.
[235] RWE closing submissions para. 10.

204. Rather it was said that RWE could not enforce those construction contracts. But OCC recognises that the operational interests of RWE's site need to be protected. Those commitments, and the scope for this to be controlled by contracts with the contractor, provide the necessary security. RWE also speculates that the contractor might depart from contractual standards in some respect,[236] but shortcomings by a contractor are something that could arise whether a private agreement exists or not. As to RWE's suggestion that the contractor might provide an access that would be "*clogged with traffic*", or would provide an inadequate temporary road surface,[237] those and similar matters could obviously be overcome by sufficient specificity in the construction contract.

205. In respect of the gatehouse, there is the added security of the s.106 agreement, as set out above.

206. In order to provide a further level of protection, OCC has now proposed planning conditions, bespoke to RWE's interests, to address RWE's concerns. If the legal agreement between OCC and RWE pursuant to the heads of terms is agreed and signed, as it is anticipated that it will be, then that might obviate the need for conditions, but given that it cannot be known with certainty when the agreement will be finalised, OCC asks the Inspector and Secretary of State determining the called-in planning application (i.e. the Secretary of State for Levelling Up, Housing and Communities) to impose these conditions. That provides more than enough protection to enable the Orders to be confirmed, notwithstanding the fact that RWE may not have removed its objection.

207. Making provision in planning conditions in respect of maintaining access to neighbouring properties during construction of a development, and phasing or sequencing of development so as to ensure continuity of operation for neighbouring land uses, is entirely normal in planning conditions. Indeed, the existing Construction Environmental Management Plan condition already provides for the CEMP to include these two matters.[238] RWE is in this respect simply seeking the protection that many adjoining landowners will require. There are, of course, important assets on RWE's site, and that can

[236] RWE closing submissions para. 17(4).
[237] RWE closing submissions para. 17(2).
[238] CDQ.1, condition 3, bullet point 2 ("Details of construction phasing") and 8 ("Details of how continuous access would be provided to third party land and development where existing access arrangements are affected").

justify making specific provision for RWE in the conditions, but there is no reason why such a condition is incapable of addressing RWE's concerns.

208. RWE has not been able to advance any cogent reason why a planning condition would be inadequate. The extent of RWE's response is essentially a brief remark in its closing submissions that RWE is not personally able to enforce a planning condition (as it would fall to the LPA to do so), and it could (in theory) be varied without RWE's consent.[239] But the LPA has been given the statutory function of enforcing planning conditions by Parliament and they are duty bound to exercise it appropriately. RWE can make representations to the contractor, to OCC as applicant, and to OCC as LPA if any issue arises. There is no reason to think that any remedial action would be less expeditious or effective than if it was taken under a private agreement between RWE and OCC, which would still require formal steps and potentially enforcement action against a third party contractor. As to RWE's concerns about the condition being varied without RWE's consent, the LPA would be bound to determine any such application to vary in the public interest, and any adverse impact on RWE's operations would plainly be a highly material consideration which would not be left out of account.

209. Because the called-in planning application and Orders are being considered together in conjoined inquiries, there is the opportunity to address concerns raised by objectors to the Orders in planning conditions. OCC asks the Inspector to take that opportunity here and recommend an appropriately worded condition which responds to RWE's concerns.

210. A draft condition has been proposed and shared with the OCC LPA officers, who have no objection in principle and whose remarks are confined to drafting points.[240] OCC as Acquiring Authority and Applicant are not entirely convinced that the LPA amendments are necessary, but is content to accept them if the Inspector thinks otherwise. RWE's closing

[239] RWE closing submissions para. 15.

[240] The new condition wording is contained in OCC's revised Conditions Table submitted on 8 May 2024. The new condition wording comprises a proposed addition to draft condition no.3 within that table (pages 2 – 5), which condition requires a Construction Environmental Management Plan. A new sub-heading is proposed to be added addressing matters relating to the RWE site concerning access, the drainage lagoons sequencing, utilities, and gatehouse demolition / construction sequencing. The same table includes the comments from Mr David Periam of OCC as LPA on the proposed condition, and the response of OCC as Applicant and Acquiring Authority to Mr Periam's comments.

submissions suggest that the condition was not shared prior to those closing submissions,[241] which is incorrect: it was shared on Tuesday 30 April 2024.[242]

Engagement and negotiation

211. RWE's criticisms of the extent to which OCC has negotiated with RWE and used compulsory purchase as a last resort are wholly without merit.

212. Importantly, it should be noted that the case advanced by RWE in its closing submissions does not reflect the evidence of Mr Trigg, RWE's only witness and an RWE employee who has been involved in the process for many years. Mr Trigg expressly accepted, when it was put to him cross-examination, that he did not contend that OCC had failed to comply with the CPO Guidance which advises that acquiring authorities should negotiate for land acquisition and only use CPO as a last resort. Mr Trigg stated only that he considered OCC had been "*slow*".[243] OCC does not accept that and it is plainly wrong for reasons set out below, but it is quite different to suggesting that the Orders should not be confirmed due to a failure to negotiate. In re-examination, Mr Trigg was pointed to a paragraph of his proof which alleges a failure by OCC to make reasonable attempts to acquire by agreement,[244] but it is important that Mr Trigg did not feel able to maintain that allegation when asked about it in cross-examination. This is no doubt for the obvious reason that it is unsustainable. OCC say that is clear from the evidence of negotiation, as well as Mr Trigg's concession in cross-examination.

213. RWE's closing submissions are wrong to suggest that the CPO Guidance imposes some mandatory "*test*" in respect of detailed land negotiations having to start prior to making the CPO.[245] It is notable that RWE do not cite any part of the CPO Guidance in support of that suggestion. The CPO Guidance does not say that. As stated above in the *"Approach to Negotiations"* section of these closing submissions, the CPO Guidance states that there can be benefits in undertaking negotiations in parallel with preparing and making a CPO, but

[241] RWE closing submissions para. 15.
[242] By email from OCC to Mr Trigg at 10.56am on 30 April 2024. In light of RWE's closing submissions, the draft condition wording has been re-sent to RWE and its advisors (on 8 May 2024).
[243] Mr Trigg cross-examination by Mr Flanagan (day 18, 25 April 2024).
[244] Paragraph 4.3.3.
[245] RWE closing submissions para. 27.

the CPO Guidance does not make that a mandatory requirement.[246] In the present case, there is an urgent need for the Scheme and a significant amount of planned development in Science Vale depends on it coming forward, as set out in OCC's call-in closing submissions. There is a public interest in the Scheme proceeding in a timely manner and not being delayed. There are a large number of landowners given the linear nature of the Scheme, which inevitably requires compulsory purchase to be pursued alongside negotiations. The funding for the Scheme from Homes England was being made available in a funding window which delay would have been inconsistent with. A balance has to be struck between engagement and progressing an urgently needed scheme expeditiously. With RWE there was significant engagement prior to December 2022, and there have been 16 months of detailed land negotiations since December 2022. That is clear compliance with the CPO Guidance.

214. As to the detail of that engagement and negotiation, Mr Trigg himself explains that "*RWE has engaged with OCC on its Scheme since 2018. This early engagement enabled the design of the Scheme to evolve to take account of some of the concerns that have been raised by RWE".*[247] Mr Blanchard further explains that the design team working on behalf of OCC held a number of workshops with RWE in 2020 and 2021 to coordinate RWE's operations, plans for development, and the Scheme design. The result is a Scheme which has, right from the outset, been designed around RWE's operations and requirements, including their proposed future development. Plainly, it would have been obvious to RWE that building the new Science Bridge Link Road across RWE's land, and severing RWE's existing site access, would require land acquisition from RWE. Accordingly, RWE knew of the need for land acquisition from an early stage. Indeed, RWE in its closing submissions concedes that:

    a. "*RWE acknowledges that the final HIF1 scheme was designed to accommodate RWE's requirements …"* (para. 30); and

    b. "*RWE also acknowledges that it was aware that OCC would need to acquire interests from RWE in order to deliver HIF1"* (para. 30).

[246] Section 17, p.15.
[247] Proof para. 4.1.1.

215. Mr Trigg did not dispute that RWE had "*general awareness*" of the need for land-take prior to the finalisation and issue of detailed land plans in December 2022. Mr Moon also confirmed that it was his understanding that RWE had such awareness.[248] But RWE also knew the detail of what was required, because it was in detailed discussions about the design of the Scheme which directly determines what is needed by way of land-take.

216. It is quite wrong for RWE to assert in its closing submissions that "*in 2020 and 2021, OCC's only interaction with RWE concerned access arrangements for geotechnical surveys"*.[249] That is a clearly incorrect statement in light of the acknowledgment that OCC and RWE had been liaising closely during these years as to the design of the Scheme going directly across RWE's land, not just about access and surveys.

217. Although detailed negotiations for the land acquisition only started after December 2022, there was considerable engagement prior to December 2022, including on matters which made clear the need for land-take, and since then there have been 16 months during which there has been extensive negotiation. Mr Trigg in fact acknowledged the full and genuine attempts to negotiate by OCC in his September 2023 written representation to the OCC Planning and Regulatory Committee meeting, when he stated that RWE "*wish to place on the public record"* that "*RWE is progressing the previously well-established positive dialogue with officers and OCC's land agent to resolve and agree the requirements under S106 which will provide a more efficient and effective mechanism to deliver works as needed on RWE's operational land"*.[250] It is inconsistent for RWE to put in evidence to this inquiry alleging a failure to negotiate, given that clear acknowledgement to the contrary.

218. Mr Moon explains that plans outlining the OCC's proposals for a voluntary agreement were issued to RWE in January 2023 and meetings to discuss the plans and proposals and queries raised took place between Gateley Hamer and RWE in February and April 2023.[251]

219. RWE's closing submissions are wrong to suggest that "*It was only after RWE objected to the Orders in March 2023 that OCC (and its land acquisition agents, Gateley Hamer ("GH"))*

[248] Mr Moon re-examination by Mr Flanagan, day 18 (25 April 2024).
[249] Paragraph 27.
[250] CDM.7, Tab 4 (RWE Statement of Case).
[251] Mr Moon proof para. 4.277.

started engaging with RWE in land acquisition terms".[252] In his evidence in chief Mr Trigg expressly quoted from an email from Mr Ian Miles, who is Mr Moon's predecessor at Gateley Hamer, which Mr Trigg explained was dated 14 February 2023 and in which Mr Miles stated that he acknowledged that RWE would like to deal with matters by way of a s.106 agreement, but that there was a need to start negotiating.[253] It is not open for RWE to seek to go behind that clear factual evidence of its own witness in closing submissions.

220. OCC then provided responses to a number of queries raised in respect of specific plots in May 2023, and further queries were raised and further responses and information was provided during June 2023. OCC's Schedule of Engagement for RWE shows that these communications in May and June 2023 were particularly frequent. Following a brief pause after the call-in of the planning application in July 2023, negotiations then resumed in September 2023 and Gateley Hamer prepared heads of terms for an agreement which were issued to RWE in November 2023. A further virtual meeting to discuss the heads of terms took place on 24 November 2023. OCC and Gateley Hamer received further feedback and a response from RWE on the proposed heads of terms on 11 January 2024. Further communications and meetings took place between January and April 2024, leading to the agreement of the heads of terms in April 2024.[254]

221. The evidence is clear that the principal reason why the legal agreement has not yet been entered into is RWE's misconceived attempts to secure the protective provisions they require in a s.106 agreement, tied to a planning permission for their new data centre development. In principle, OCC has no objection to that route, but it creates the obvious stumbling block that it is dependent on the grant of planning permission for that data centre development, which has not yet been issued. RWE's closing submissions make two unmeritorious attempts to counter this:

    a. RWE says: "*there being no prohibition on executing s.106 agreements before consent is granted, with an appropriate clause to render the agreement effective only in the*

[252] Paragraph 33.
[253] Mr Trigg evidence in chief (day 18, 25 April 2024).
[254] Mr Moon proof para. 4.277 – 4.278, proof appendix SM2.9 (RWE engagement record), and rebuttal para. 5.9. Also Mr Moon evidence in chief regarding RWE (day 18, 25 April 2024), in which Mr Moon provided more detail on the communications between January and April 2024.

event that consent was later granted".[255] First, even if legally the s.106 agreement could be executed early, that would depend on Vale of White Horse District Council being willing to do so, and there is no evidence that they would wish to take this unusual route. Secondly and more fundamentally, the existence of "*an appropriate clause to render the agreement effective only in the event that consent was later granted"* means that the s.106 would have no effect prior to the grant of planning permission, and it is not known when, if ever, planning permission will be granted. It provides no guarantee that OCC will ever actually get the land that it needs for this hugely important scheme.

b. RWE says that "*there was precedent for such a mechanism of the same site"*.[256] That is a reference to the s.106 agreement for the Clowes Developments Ltd site to the south. But that s.106 agreement was first made in 2015, and planning permission has been issued for the development in question, such that it does not face the fundamental stumbling block which faced RWE's suggested use of this mechanism.

222. Mr Trigg explained that RWE made a planning application to Vale of White Horse District Council for planning permission for the data centre development in 2022 and, as of today, it is still to be determined. He also explained that it will need to be a tripartite agreement, to which the District Council are party.[257] The District Council will of course not enter into a s.106 agreement until there is a committee resolution to grant planning permission for the data centre development, or if it is to be determined under delegated powers until a decision has been made to grant permission. By insisting on going down the s.106 route, RWE has therefore been directly responsible for holding up the reaching of a private agreement to resolve their concerns, which could otherwise have been done by a more straightforward bilateral agreement between OCC and RWE, and which would not have been contingent on the grant of planning permission for the data centre.

223. The narrative is clear that this is what has happened. As stated above, Mr Trigg quoted from an email from Mr Ian Miles, who is Mr Moon's predecessor at Gateley Hamer, dated 14 February 2023 in which Mr Miles stated that he acknowledged that RWE would like to

[255] Paragraph 35(1).
[256] Paragraph 35(2).
[257] Mr Trigg cross-examination by Mr Flanagan (day 18, 25 April 2024).

deal with matters by way of a s.106 agreement, but that there was a need to start negotiating.[258] Accordingly, OCC has been making the point for over a year that the s.106 route cannot be relied upon, and negotiations for an agreement need to progress.

224. Mr Moon explained that RWE's continued insistence on the s.106 had continued to delay matters in late 2023 and early 2024. In particular:[259]

a. On reviewing the heads of terms returned by RWE on 11 January 2024, OCC found that they had been re-drafted and referred to the section 106 agreement for the data centre.

b. Further email correspondence and telephone calls were exchanged between 24 January 2024 and 5 February 2024 regarding the heads of terms and RWE's s.106 agreement.

c. During a virtual meeting which took place on 9 February 2024, OCC and Gateley Hamer explained to RWE why OCC cannot rely on such an agreement and why it is necessary for the parties to agree the alternative voluntary agreement in the event that their s.106 agreement is not concluded within a reasonable timeframe.

d. Extensive further communications then took place in February – April 2024, with OCC proposing the addition of a long stop date in a private agreement, which would allow time for a s.106 to be issued, but maintaining the private agreement route if that did not take place. As Mr Moon explained, this was his proposal. It broke the deadlock which had been caused by RWE's unreasonable insistence on the s.106 route.

[258] Mr Trigg evidence in chief (day 18, 25 April 2024).

[259] See Mr Moon evidence in chief and re-examination regarding RWE (day 18, 25 April 2024); see also Mr Moon's proof paras. 4.277 – 4.280. Notably in para. 4.280 he says: "*In respect of the above proposals the Acquiring Authority has acknowledged the ongoing discussions taking place between officers of the LPA, the Vale of White Horse District Council and RWE and has confirmed that should an appropriate section 106 agreement be agreed prior to the implementation of any compulsory purchase powers, under which the land and rights it requires to deliver the Scheme would be secured within an appropriate timeframe, then it would proceed with this arrangement and would not implement its compulsory purchase powers in such a circumstance, if the Orders had been authorised. However, it has pointed out that this is a separate planning process over which it does not have control and that currently neither the proposed section 106 agreement has been agreed nor planning permission at the current time. It is, therefore, unable to rely upon such an arrangement until such a time as planning consent for RWE's proposed development has been granted and a legally binding section 106 agreement, which would secure all the land and rights it requires to deliver the Scheme, within an appropriate timeframe, has been completed. It has therefore confirmed that it is necessary for the parties to agree the alternative voluntary agreement referred to above at 4.264 to 4.266.*"

225. Mr Trigg's written and oral evidence provided no refutation of that factual account. Mr Trigg's allegation that OCC has been "*slow*" is plainly unsubstantiated in light of what actually happened. It is RWE that has been entirely responsible for slowing the process.

226. RWE's closing submissions give a heavily distorted impression of the factual account. RWE says that "*RWE had to re-draft the HOTs and did so in January 2024"* (para. 35). That fails to acknowledge that this re-drafting was an attempt to revert to the s.106 route, which RWE has subsequently abandoned. The heads of terms that RWE agreed are <u>not</u> for a s.106 agreement. Rather they are for a private agreement, but incorporating a window of time with a long stop date, so as to allow the s.106 route to be pursued if the planning application progresses quickly enough. What has happened is that RWE has belatedly accepted the need for a private agreement, having abandoned their insistence on the s.106 route. In so far as the private agreement allows for the s.106 route to be pursued for a period of time, that was down to be Mr Moon being pro-active and creative in order to resolve matters.

227. RWE acknowledges that it was left to Mr Moon to come up with the long stop idea, but says that "*It is not clear why this approach, which reflected RWE's preference for a s.106 agreement, was not advanced by Mr Moon at an earlier stage in the process"*.[260] RWE can hardly criticise Mr Moon for devising a solution which RWE have now accepted, and which RWE never identified themselves.

228. In short, RWE's allegation of inadequate attempts to acquire by agreement is, frankly, fanciful. It is wholly unsupported by what actually took place. The CPO Guidance requiring attempts to negotiate is not an obligation to have reached agreement, and OCC's engagement and negotiation with RWE in the present case clearly goes above and beyond what is required to comply with the Guidance.

<u>Alternatives</u>

229. RWE is wrong to suggest there are alternatives to compulsory purchase, in particular due to the existence of a "*pathway to voluntary acquisition of the relevant interests"* i.e. the proposed private agreement between OCC and RWE, such that the Orders should not be

[260] RWE closing submissions para. 36.

confirmed in respect of RWE's land.[261] OCC hopes to enter into such an agreement with RWE and will continue to endeavour to do so. But no agreement yet exists, and OCC must be able to acquire the relevant interests in order to deliver its important and beneficial Scheme in the public interest.

230. RWE says that "*There is no reason to think that RWE will place any spanners in the works"*,[262] but OCC cannot control that. The Scheme should not be placed at the mercy of RWE's willingness to expeditiously enter into an agreement. Further, what RWE is suggesting is the creation of a situation whereby RWE could hold OCC to ransom. It is very often the case in the CPO context that parties are seeking and hoping to reach agreement, but that the CPO is confirmed because of the public interest in the scheme and to protect against the risk that agreement may not be reached. That applies with great force here, given all the public benefits that depend on the delivery of the Scheme.

231. RWE is likewise wrong to suggest that its plots can be removed from the Scheme without prejudice to OCC.[263] Removing the guaranteed mechanism by which OCC can acquire the necessary land would jeopardise the Scheme, including its programme and funding (which is dependent upon the programme). It would be hugely prejudicial.

Conclusion on RWE's objection

232. RWE's objection provides no proper basis not to confirm the Orders. The Orders can be recommended for confirmation by the Inspector and confirmed by the Secretary of State regardless of whether or not the private agreement between OCC and RWE is signed.

233. RWE's concerns that their operational interests are protected and that their ability to further develop their land is not prejudiced are all fully addressed by the design of the Scheme and the steps in respect of access, sequencing and protection of utilities that will be put in place during construction. They will be secured through conditions in construction contracts in the usual way, as they are for other landowners who may require ongoing access or other provisions. OCC will be able to provide control in that way. The evidence is clear that those operational interests will be protected. To the extent that OCC's

[261] RWE closing submissions para. 38.
[262] RWE closing submissions para. 40.
[263] RWE closing submissions para. 3.

commitments in that respect need to be further secured, a planning condition(s) is entirely capable of providing adequate security.

234. RWE's criticisms in respect of negotiation are wholly unsubstantiated and unevidenced. OCC has been liaising with RWE for many years in respect of the Scheme, and since early 2023 has been in detailed negotiations with RWE over land acquisition. It has been RWE's insistence on using a s.106 agreement for land acquisition (despite there being no certainty if or when the necessary planning permission will be granted), rather than a normal bilateral private agreement, which has slowed matters considerably. The fact that RWE has now abandoned that suggestion and has agreed heads of terms for a private agreement is recognition of the problems that their former approach was causing.

235. RWE is wrong to suggest that removal of RWE's plots from the CPO will not prejudice the Scheme. That would remove OCC's ability to guarantee the necessary land assembly in the necessary timescale, and would fundamentally jeopardise the Scheme, its programme and funding.

236. There is no valid representation under s.16 of the Acquisition of Land Act 1981, such that the restriction in that section does not apply.

Modifications

237. A table of modifications has been provided in respect of the CPO and SRO and discussed in the modifications session. OCC invites the Secretary of State to confirm the Orders with those modifications, including further updates subsequently provided or to be provided.

Compelling case in the public interest

238. The evidence before the conjoined call-in and Orders inquiries overwhelmingly demonstrates that there is a compelling case in the public interest for the Scheme. The need for and benefits of the Scheme can only attract very substantial weight. The adverse environmental effects are few and far between and overall the environmental effects are significantly positive. There has been no serious challenge to the compelling case in the public interest for the Scheme by any objector. To the extent that there is any in-principle opposition to the Scheme (for example by Mr Mockler), the points of objection raised are unevidenced and have been shown to be wholly without merit by the evidence put forward

by OCC. The remaining objectors to the Orders are principally concerned with protecting their particular private interests. To the extent that TWUL and RWE suggest that, as statutory undertakers, they raise concerns of wider public interest, those concerns have been appropriately addressed and do not provide a reason not to confirm the Orders.

239. A wider view also needs to be taken. This is a major £330m scheme, it has significant central government support and funding, it has the strong backing of both District Councils and very widespread support from local organisations and people, and it is essential to enabling the tens of thousands of houses and jobs planned for in the development plans to go ahead, along with facilitating the growth of the world-leading research at the Culham Science Centre. The points raised by the remaining objectors need to be seen in that context. None of the objectors' concerns come close to providing a proper reason not to confirm the Orders, which would prevent this hugely important Scheme going ahead. This includes TWUL's objection based on the vacant northern parcel of the CTW, when there are clearly other options to expand the CTW; RWE's concerns about ensuring it has continuity of access, services and drainage in respect of its operations, which OCC has committed to maintaining; MPL's and W E Gale Trust's objections based primarily on maintaining access and on returning land required for construction once it is no longer required, which issues OCC has shown will be addressed to the satisfaction of the landowners and which plainly do not present any particular difficulties; and the other detailed points raised by the other remaining objectors. The objections are heavily and comprehensively outweighed, and the compelling case in the public interest is clearly made out.

Conclusion

240. For all the above reasons, OCC ask that the Orders be confirmed, subject to modifications.

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9 May 2024

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