LANDOWNERS' RESPONSE TO RVR'S FURTHER RESPONSE TO COSTS APPLICATION

Paragraph references below are to paragraphs in RVR's Further Response

Para 1: Neither here nor anywhere else in the Further Response does RVR identify what it says are the points made in the Landowners' Reply which were not made in the application itself. It is in the nature of a Reply that it is not simply repeating what has already been said.

Para 2: Paragraphs 5-9 of the Landowners' Reply raised no new points – please see paragraphs 5.2-5.9 of the original Application which refer to contents of HE's letter of objection (which identified a failure to consult) and correspondence from 2015 and 2017. The Landowners' position on the history of discussions with HE has been set out both in evidence and in its Costs Application and Reply. It is abundantly clear that, at the date on which the HA withdrew its objection to the planning application, it had not received information which it considered necessary in order for the development to proceed, but was content for that requirement to be "moved off" into a condition. RVR's response overlooks the fact that the tests for the grant of planning permission and for the grant of compulsory purchase powers are fundamentally different, and that in applying for the TWAO, the burden was on it to demonstrate that there were no physical or legal impediments to delivery of the Scheme.

Para 3: Paragraphs 10-12 of the Landowners' Reply did not raise or take any new points. They were a direct reply to RVR's initial response which failed to explain why it took RVR until March 2019 to seek an adjournment, when it was made aware of HE's position in May 2018 (and would have known much earlier if it had undertaken proper pre-application consultation). The Landowners' cross-examination of RVR witnesses has (entirely appropriately) concentrated on points of substance which are relevant to the Secretary of State's decision on the TWAO: it would have been an entirely inappropriate use of Inquiry time to cross-examine for the purposes of furthering a costs application. Contrary to the third sentence, in the absence of the right to cross-examine HE, there is no way in which the Landowners could have raised these matters with HE's witnesses.

Para 4: Again, this paragraph is not made in response to any new point in the Landowners' Response. The Landowners have explained what the abortive work was. It relates to the assessment of, and preparation of proofs based on, a version of the Scheme which (in recognition of points which the Landowners and HE have been making for some time, and which should have been addressed before the application for the TWAO was even made) RVR has belatedly changed. It relates to the fact that RVR's failure to share the technical work underpinning and details of those changes with the Landowners until the last moment left the Landowners' witnesses with no option other than to prepare their evidence on the basis of information which, unbeknown to them, was already outdated.

Para 5: Again, this paragraph is not made in response to a new point. Paragraph 5.19-5.21 of the original Costs Application clearly set out that in the absence of any knowledge of the prospect of the cancellation of the 2019 inquiry the Landowners had no choice but to commence preparation. This work was properly and fairly undertaken. The Landowners remain of the view that, as a major party to these proceedings whose rights are directly affected, it is outrageous that they were not informed of RVR's request for an adjournment.

Para 6: Paras 23-37 of the Landowners' Reply do not expand the basis of the Costs Application, they simply provide further detail in response to RVR's Response.

Para 7: This paragraph is not made in response to any new point in the Landowners' Reply and completely misrepresents the Landowners' Case. The Landowners' Closing submissions make it abundantly clear that the question whether planning permission should be granted is entirely different to the question whether compulsory purchase powers should be granted. This Inquiry is concerned with the latter question, and not the former. As is clear from the Landowners' closing, the fact that delays on the A21 or the increased risks to highway safety do not meet the NPPF standard for refusal of planning permission does not mean that these are not highly material to the overall balance that has to be carried out when deciding whether there is a compelling case in the public interest.

Para 8-9: Again this is not made in response to a new point – the Winckworth Sherwood e-mail of 15 July 2020 was specifically referred to and appended in full to the Landowners' original Costs Application. There was absolutely no inaccuracy or misrepresentation in either the Landowners' original Application or the Response. Rather RVR has misrepresented this e-mail by omitting the relevant final sentence in their quote which stated: "It is recognised that any progress in discussions with HE will need to be shared with your client before proofs of evidence are finalised". The Inspector is invited to read the full e-mail chain at INQ128-4.

Para 10: Again, this paragraph is not made in response to a new point and the paragraph mistakenly refers to the wrong correspondence. There was no inaccurate summary in the Landowners' Response. Paragraph 35 of the Landowners Reply referred to an e-mail exchange between Richard Max & Co and Winckworth Sherwood of 7-11 January 2021 – not the letter quoted by RVR in paragraph 10. The e-mail of 11 January was referred to and quoted at paragraph 5.31 and appended in full to the original Costs Application [INQ 128-5]. The Inspector is invited to read the e-mail chain in full, which makes clear what information RVR advised would be provided with the Further Environmental Information at the beginning of March 2021 (and which was then not provided).

Para 11: This paragraph is not made in response to a new point. The Landowners fundamentally disagree that, for the purposes of a TWAO in which the applicant is seeking compulsory purchase powers, it is good enough to hide behind an argument that potential impediments are simply "matters of detail" which can be resolved at the stage when conditions or protective provisions are discharged. As the CPO Guidance makes abundantly clear, the burden is squarely on the applicant to demonstrate that those matters are not likely to be an impediment to delivery of the Scheme.

Para 12: Again, this paragraph is not raised in response to a new point - see para 4 above for the Landowners' Response.

Para 13: Noted.

3 September 2021