

**REBUTTAL PROOF OF EVIDENCE IN RESPECT OF THE ORDERS INQUIRY
SUBMITTED ON BEHALF OF THE TRUSTEES OF THE W E GALE TRUST**

Oxfordshire County Council (Didcot Garden Town Highways Infrastructure – A4130 Improvement (Milton Gate to Collett Roundabout), A4197 Didcot to Culham Link Road, and A415 Clifton Hampden Bypass) Compulsory Purchase Order 2022 (“the CPO”)

Oxfordshire County Council (Didcot to Culham Thames Bridge) Scheme 2022 and 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 (the SRO”)

REBUTTAL PROOF OF EVIDENCE OF TIM BROOMHEAD

FOR THE TRUSTEES OF THE WILLIAM EDWARD GALE TRUST (BEING MR PATRICK ROSSINGTON GALE, MRS ELIZABETH ANNE MASON, and MR EDWARD ROSSINGTON GALE

- 1 I, Tim Broomhead, make this rebuttal proof of evidence on behalf of the Trustees of the W E Gale Trust (“The Trustees”) having read the proofs of evidence produced on behalf of Oxfordshire County Council as Acquiring Authority (the Council”) from Steven Moon, Timothy Mann and Andrew Blanchard. Each heading below specifies the topic and the proof of evidence the content of which I am responding to in this document.

Late and inadequate engagement from the Council before the CPO was made – Steven Moon, Timothy Mann and Andrew Blanchard

- 2 In Section 3 of Steven Moon’s proof of evidence commencing on page 6 (**Proofs-OCC-12**), Mr Moon states that there was early engagement with all parties affected by the scheme. For all the reasons set out in my proof of evidence, and below in this rebuttal proof, I do not agree.
- 3 Furthermore, the evidence of Timothy Mann suggests that the Council intended that negotiations would take place prior to a compulsory purchase order being made:

- a. Paragraph 4.6 of Timothy Mann’s proof of evidence (**Proofs-OCC-4**) states:

“On 23 April 2019, [the Council]’s Cabinet resolved to approve delegation of the exercising of Compulsory Purchase powers to the Director of Planning and Placefor the purchase of any land required for the delivery of the Scheme in the event that the land cannot be acquired by negotiation”.

- b. Paragraph 4.7 of that same proof of evidence states:

“Cabinet also noted that should the whole or any part of lands required not be acquired by negotiation, the making of a Compulsory Purchase order under provisions contained in Part XII of the Highways Act 1980 for the acquisition of land would be progressed”.

4. Despite these clear statements of the Council’s intention, the evidence of Steven Moon at paragraphs 3.7, 3.18.9 and 3.21 of his proof of evidence (**Proofs-OCC-12**), is that the Council did not seek to engage with the Trustees to seek agreement in respect of their property before December 2022, the same month in which the CPO and SRO were made. The Council’s agents’ record of engagement at Appendix SM2.16 (**Proofs-OCC-12**) suggests there was no engagement with the Trustees about anything more substantive than the Council gaining access to the Property for surveys, prior to November 2023. In fact, negotiations commenced between myself and the Council’s agents, Gateley Hamer, after I telephoned Ian Miles of Gateley Hamer on 7 February 2023 to arrange a meeting, and the subsequent Teams meeting with Gateley Hamer which took place on Friday 24 February 2023.
5. At para 3.21, Mr Moon confirms that the Council *“accepts that due to delays in the finalisation of the Scheme design it was unable to share plans with landowners which confirmed the exact extent of the land and rights which were required for the Scheme until December 2022”*. There are three points to make from this statement:
- a. It is clear from Timothy Mann’s proof of evidence that the CPO was prepared in or following June 2021, and was resolved to be made in July 2022 (paras 4.12 and 4.16, **Proofs – OCC-4**). It is clear from Andrew Blachard’s proof of evidence that the preparation of the design of the scheme in this location was concluded in Autumn 2021 (Para. 1.8 **Proof – OCC-8**). Therefore, the Council knew at least in June 2021 or the Autumn 2021 that the Trustees’ Property would be required for the scheme.
- b. The landowner plan that was shared with the Trustees at the end of November 2022 stated that the land shaded green on the landowner plan (**P.01**)(“the Green

Land”) was “*Land to be Acquired Temporarily*”. That was not correct and was misleading.

- c. it has become apparent during negotiations that in fact the Council has still not ascertained whether the whole of the Green Land is actually “required” for the worksite. If the Council does not yet know how much space it needs for the worksite, it cannot justify including the whole of the Green Land in the CPO. Therefore, contrary to the statement at paragraph 4.215 of Mr Moon’s proof of evidence (**Proof- OCC-12**), and at paragraph 2.7 of Timothy Mann’s proof of evidence (**Proofs-OCC-4**), neither are in a position to confirm that “*all of the land that is within the CPO is required to facilitate the delivery of the Scheme*”.
- 6 Had early engagement taken place, the Council would have given opportunity for an agreement to be reached which would exclude the Green Land from the Orders with the Trustees before the CPO was made, and so could have avoided the need for the Trustees to a) object to the scheme, b) now be readying their case for inquiry, and c) incur the costs of doing both a) and b).

Ongoing Negotiations with the Council - Steven Moon

- 7 As set out in my proof of evidence, the provision in the CPO for the permanent acquisition of land for a temporary purpose and the lack of engagement from the Council on alternatives to permanent acquisition prior to the CPO being made, remain the Trustees’ main objections to the CPO.
- 8 Since the CPO was made in December 2022, I have met with the Council’s agent to discuss terms for an agreement whereby the Council would acquire permanently only the land shaded pink on the landowner plan at **P.01** (“the Pink Land”) and would take an option to lease or license the Green Land.

Undertaking on its own not sufficient

- 9 In view of legal advice the Trustees have received, it appears that the *Ayr Harbour** case confirms that an acquiring authority cannot fetter its compulsory purchase

**Ayr Harbour Trustees v Oswald (1883) 8 App. Cas. 623*

powers by agreement, and therefore an agreement or undertaking from the Council not to use its compulsory purchase powers to permanently acquire the Green Land will not, on its own, give the Trustees sufficient comfort that the Green Land will not be permanently acquired in the future. Also, the Trustees have a buyer for their retained land and the Green Land, which understandably is unwilling to exchange contracts and complete on the purchase with the Trustees unless it has a reliable confirmation that the Green Land will not be acquired for the scheme at a later date.

Need for written request for the CPO to be modified to remove the Green Land

10 Therefore, as part of the negotiations, the Trustees have asked that simultaneously with the exchange of contracts for the sale of the Pink Land to the Council and completion of the option to lease or license in respect of the Green Land, the Council provides an undertaking:

a) not to permanently acquire the Green Land, and

b) that the Council will write to the Secretary of State and the Planning Inspector to formally request that the Green Land be removed from the CPO and that the Council will endeavour to ensure that the CPO is then modified to remove the Green Land.

11 The process for requesting a modification to the CPO is as set out at paragraph 44 on page 26 of the Government's Guidance on the Compulsory Purchase Process and the Crichel Down Rules (**H.10**). This process was confirmed to the Council in a letter from the Trustees' solicitors to the Council's legal team on 23 January 2024 (**Proofs-Orders-OBJ27-pages 32-36**).

12 In order to avoid the Trustees incurring the cost of preparing for, and attending, the Inquiry, and also to facilitate negotiations with the Council and with the Trustees' buyer, the Trustees' solicitors' letter of 23 January 2024 also asks the Council to write to the Secretary of State and the Planning Inspector as quickly as possible before the Inquiry to request that, subject to the exchange of contracts for the sale of the Pink land and to an option to lease or license being completed, the CPO be modified to remove the Green Land from the CPO.

13 The Council has not yet responded to the Trustees' solicitors' letter of 23 January.

Further delays, inaction and contradiction by the Council

- 14 In an email I received from the Council's agent on 31 January, it was stated that:
- a. the Council was drafting copies of a "*transfer agreement and the license agreement*" for us to consider; but
 - b. "*it does not include for the removal of the plots from the order but hopefully along with an undertaking to not use powers in the event that they [are] granted and with the agreements complete this should go some way to assuring your client*".
- 15 The Council's response does not deal with the legal issue identified by the Trustees' legal advisors that an undertaking not to use CPO powers cannot be relied upon or give sufficient comfort to the Trustees or the third party buyer. Also, no draft documents have yet been received from the Council for consideration.
- 16 This unwillingness to make a request for the Green Land to be removed from the CPO is at odds with the proof of evidence from Steven Moon (**Proofs-OCC-12**) where at paragraph 4.227 he states: "*It is the Acquiring Authority's intention to continue those negotiations with a view to reaching a voluntary agreement right up until the implementation of compulsory purchase powers if the Secretary of State were to see fit to confirm the Order. However, it is essential that these plots remain within the Order in the meantime, as the Acquiring Authority does not have the certainty of a legally binding agreement with the landowner which would provide it with the land and rights it requires to deliver the scheme*".
- 17 Paragraph 4.227 of Steven Moon's proof of evidence suggests that the only thing preventing the Council from removing the Green Land from the CPO is the fact that the parties have not reached a legally binding agreement. Yet the reason the agreement has not yet been finalised is because a) the Council has failed to produce draft agreements and the undertaking for review, and b) the Council has not agreed to request the modification of the CPO.
- 18 At a further meeting with the Council on Tuesday 6 February, the Council's representative could see the sense in the Council making the request now to the Secretary of State for the removal of the Green Land from the CPO and confirmed

that instructions would be sought for this to be approved. It was also confirmed that the draft documents for review would be sent to us certainly on Wednesday 7 February, if not before.

- 19 We have heard nothing further from the Council since last Tuesday about either:
- a) whether it will agree to request the removal of the Green Land from the Order, or
 - b) to provide us with the draft documents to document the heads of terms.
- 20 The Council's indecision, inaction and delays are stalling progress with this matter and are preventing agreement being reached before the Inquiry.
- 21 That delay, indecision and inaction from the Council means that the Trustees have incurred and are continuing to incur professional costs of the inquiry process.
- 22 The delay, indecision and inflexibility from the Council also means that the Trustees could lose their buyer for the Green Land and the retained land.
- 23 As at today 12 February, now just over one week before the start of the combined inquiries, the Trustees are still waiting to receive from the Council:
- a) confirmation that the proposed undertakings are agreed;
 - b) confirmation that the Council will write to the Secretary of State and to the Planning Inspector to request a modification to the CPO; and
 - c) draft documents to progress the agreement between the parties, for the Trustees' consideration.

Unfair reliance on Crichel Down Rules by the Council – Steven Moon

- 24 At paragraph 4.215 onwards in Mr Moon's evidence (**Proofs-OCC-12**), he suggests that the Crichel Down Rules should give some comfort to the Trustees in respect of the Green Land and its possible return.
- 25 The Crichel Down Rules would not be a comfort for the Trustees in the situation where the Green Land has been compulsorily purchased, and such a suggestion is misplaced. To the contrary, a compulsory purchase of the Green Land which is required only for a temporary use, and for a temporary period, would put the trustees at a significant disadvantage.

- 26 The existence of the Crichel Down Rules does not provide any certainty that the Green Land will be returned to the Trustees. This is highlighted in Steven Moon’s proof of evidence at paragraph 2.7 where he states: *“the land which is required temporarily during construction could be available to return to landowners providing certain criteria are met”*.
- 27 Further still, the Crichel Down Rules provide that the land will be offered back at open market value. Paragraph 26 of the Crichel Down Rules on page 145 of the Guidance at **H.10** provides: *“As a general rule, departments should obtain planning consent before disposing of properties which have potential for development. Where it would not be practicable or appropriate for departments to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the government’s or public body’s obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case”*.
- 28 At paragraph 3.45 of Andrew Blanchard’s proof of evidence (**Proofs – OCC-08**), he states that *“it is anticipated that the Trustees would repurchase plots 6/3d and 7/1a”*. Again, there is no guarantee that the Trustees would be in a position to re-purchase the Green Land if offered back, so any such assumption is misplaced.

Statement of truth

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

Declaration

I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.

I confirm that I understand and have complied with my duty to the Inspector as an expert witness which overrides any duty to those instructing or paying me, that I have given my

evidence impartially and objectively, and that I will continue to comply with that duty as required.

I confirm that I am not instructed under any conditional or other success-based fee arrangement.

I confirm that I have no conflicts of interest.

I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.



Signed:.....

Tim Broomhead MRICS FAAV

Date:.....12 February 2024.....