

**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**

**SUMMARY STATEMENT OF EVIDENCE**

**ROBERT SMITH MRICS**

**CHARTERED SURVEYOR, BRUTON KNOWLES LTD**

**on behalf of**

**THAMES WATER UTILITIES LIMITED**

**NEGOTIATIONS AND ENGAGEMENT**

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

**23rd February 2024**

## **1. QUALIFICATIONS AND EXPERIENCE**

- 1.1 I am Robert Frederick Smith, an Associate in the firm Bruton Knowles Ltd with the head office of Olympus House, Olympus Business Park, Quedgeley, Gloucester. The firm operates from 14 offices in England, Wales and Scotland. I am a member of the Royal Institution of Chartered Surveyors (RICS) having qualified in 1992 and have worked for Bruton Knowles since 2013.
- 1.2 I was instructed in March 2023 by Thames Water Utilities Limited (TWUL). My role in this matter has been to provide advice to TWUL on all aspects of the impact of the Order (CD: H.1) general and objecting to the same associated with the principles of compensation as covered by the CPO Compensation Code.

## **2. INTRODUCTION AND SCOPE OF EVIDENCE**

- 2.1 The scope and structure of my Statement of Evidence is set out in this section.

## **3. RELEVANT POLICIES AND GUIDANCE**

- 3.1 The relevant guidance in respect of compulsory land acquisition is set out in the revised Guidance on Compulsory Purchase Process and The Crichel Down Rules February 2018 and updated in July 2019 ('the Guidance') (CD: H.10). Although revised numerous times, the latest version sets out new 'standards' of the expectation of efforts to try to acquire land by agreement before resorting to compulsory purchase.
- 3.11 It is my considered opinion that the Guidance has not been fully taken into account in respect of the Acquiring Authority's engagement with TWUL. In particular, I consider that there have been no meaningful attempts to enter into negotiations in parallel with preparing and making a compulsory purchase order, and I set out below the details evidencing this. For the reasons explained later in my evidence, drawing on the evidence of Mr Paton, I do not consider that there is a compelling case in the public interest for the compulsory acquisition of TWUL's interest.

## **4. BACKGROUND**

- 4.1 TWUL owns and operates the Culham Sewage Treatment Works, Abingdon Road, Culham, Abingdon, OX14 3DD ("the Culham Works"). TWUL are a statutory objector to the Order.
- 4.2 If confirmed, the Order would authorise the compulsory purchase of land held as operational land, comprising part of the Culham Works, which has been identified by TWUL as required in order to accommodate future growth as explained in the evidence of Mr Paton.

## 5. THE LAND

- 5.1 TWUL is the freehold owner of plots as set out in the schedule to the Order and this comprises plots 9/24, 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/11i, 17/14a and 17/14b (the "Land") and as shown on the Order Plans. The total land area for the above plots extends to 3,707 sqm as stated in the Order.
- 5.2 The Land within TWUL's ownership which is subject to the Order (save for plot 9/24) is located at Culham Works which comprises an operational sewage treatment works covering the catchment area of the villages of Berinsfield, Culham, and Clifton Hampden, as well as the Culham Science Centre.
- 5.3 The land at Culham Works is held by TWUL as operational land, part of which contains TWUL's operational equipment. We note that the Acquiring Authority raises the question as to the operational status of the Land proposed to be permanently acquired. TWUL are of the view that they hold the land as operational land for the purposes of TWUL providing its statutory undertaking, notwithstanding that the Land (save for plot 17/11i which contains monitoring equipment) does not presently contain operational equipment but has been identified for the expansion of the Culham Works, which is necessary to respond to increased growth in the immediate vicinity.
- 5.4 The Order authorises the compulsory purchase and temporary of use of land held by TWUL as operational land.

## 6. NEGOTIATIONS AND ENGAGEMENT

- 6.1 The Order was made on 21<sup>st</sup> December 2022 and the application for planning permission submitted prior to this on 4<sup>th</sup> October 2021 (CD:AO2). It is important to note, that by this date, the application for planning permission had been submitted, such that the design of the scheme (and therefore the land required for it) had been fixed by the Acquiring Authority.
- 6.2 On the 17 March 2023, I was instructed to submit a letter of objection to the Order on behalf of TWUL. The grounds for objection stated in the letter were as follows:
- 6.3 There was other more suitable land available:

- 6.3.1 *"This is a strategic asset for my client and its operational performance is likely an increase in the near future. The availability of existing land under its ownership will help to safeguard this requirement TWUL believe that with reconsideration and redesign it would not be necessary for the acquisition of TWUL's land as outlined in the plots above and that either the land is not required, or more suitable land can be provided to accommodate the works."*

#### 6.4 Lack of Consultation:

6.4.1 *"The acquiring authority has not sought to negotiate the acquisition of TWUL's land and as such TWUL is lacking considerable detail in relation to the proposals. Any works must allow for the protection of TWUL's assets so that they remain fully operational during the construction works and in the longer term are not compromised by the works. TWUL is a statutory undertaker and without proper consultation and agreements in place they are concerned that they will be unable to fulfil their statutory obligations. "*

6.5 In the objection letter, I concluded, that *"unless and until my client has been engaged in meaningful negotiations and discussions my client's preference would be for a public inquiry to hear its objections to the Order."*

6.6 By the lack of early engagement, the Acquiring Authority have failed to understand the significance of TWUL's assets at Culham Treatment Works and its operational requirements.

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

7.1 In their statement OXCC's agents state *'the Acquiring Authority have been in regular correspondence with the landowner's agent since February 2022 regarding the scheme proposals and landowner's concerns.'*

7.2 I do not consider that that OXCC's agents summary in their Statement of Case accurately reflects the current position between OXCC and TWUL and this has been demonstrated as follows:

7.2.1 Whilst OXCC's agents assert that discussions had commenced in March 2021 with TWUL and that the Acquiring Authority have been in regular correspondence with the landowner's agent since February 2022 , there were no substantive discussions between TWUL or its representatives and OXCC's agents ahead of the Order being made in December 2022, at which point the red line boundary was fixed.

7.2.2 By this date, the application for planning permission had been submitted (4<sup>th</sup> October 2021) (CD:AO2), such that the design of the scheme (and therefore the land required for it) had already been determined.

7.2.3 Discussions with myself and OXCC's agents commenced in March 2023 immediately after my appointment by TWUL and clearly after the red line boundary was fixed.

- 7.2.4 Any discussions associated with replacement land were not entered into until December 2023, after the pre-inquiry meeting had been held and shortly before proofs of evidence were due.
- 7.3 In my view there was no meaningful engagement with TWUL at any stage at which TWUL could meaningfully shape the development of the scheme or the extent of land to be acquired under the order. The engagement that has taken place since has been hamstrung by the late stage at which it began.
8. **BACKGROUND AND CURRENT POSTION IN RESEPECT OF SECTION 16 OBJECTION UNDER THE LAND ACQUISTION ACT 1981**
- 8.1 Section 16 of the Acquisition of Land Act 1981 enables relevant Ministers to prevent land owned by a statutory undertaker from being acquired via compulsory purchase. The Order includes the acquisition of land from TWUL (a statutory undertaker) by the Acquiring Authority.
- 8.2 As referred to above the original objection to the Order was submitted by myself to the Department for Transport on behalf of TWUL on 17<sup>th</sup> March 2023.
- 8.3 On 23<sup>rd</sup> March 2023, clarification was sought by Defra as to whether this was to be regarded a S16 objection under The Acquisition of Land Act 1981.
- 8.4 On 23<sup>rd</sup> March 2023, I confirmed it was to be regarded as such. However on 3/11/2023, Defra confirmed that procedurally the objection fell outside section 16 due to the fact that procedurally, it was not submitted to the correct minister within the relevant time period and nor was it stated to be a section 16 objection.
- 8.5 However, notwithstanding that the objection did not technically qualify as a section 16 objection for these reasons, Defra invited TWUL to explain how it is considered that the Order would impact upon its statutory undertaking.
- 8.6 This explanation was submitted to Defra by me on the 14<sup>th</sup> of December 2023.
- 8.7 On 15 January 2024, Defra responded to TWUL's representation. In its response, Defra found as follows:
- 8.7.1 *"Thames Water submitted a representation to the Department for Transport on 17 March 2023. The representation was not accepted under section 16 as it was made to the Transport Secretary and not the Secretary of State for Environment, Food and Rural Affairs, it also did not clearly state that the representation was being made under Section 16."*
- 8.7.2 *"Defra officials are of the belief that this was a procedural error."*

- 8.7.3 *"Whilst the land included in the proposed order does not currently contain any operational equipment, (excluding plot 17/11i which contains monitoring equipment and is already required as part of Thames Water's daily operational activity) the land has been identified for the expansion of the Culham Sewage Treatment Works (Culham Works) and is therefore essential for performance of the undertaker's activity."*
- 8.7.4 *"Thames Water have stated that confirmation of the Order will result in serious detriment to the carrying on of its undertaking at Culham Works."*
- 8.7.5 *"For these reasons, Defra would like to request that you [the Secretary of State for Transport] do not proceed to make the Order whilst it includes the land required by Thames Water for expansion of the Culham Works and the land in parcel 17/11i which is already required as part of Thames Water's daily operational activity."*

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

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

## 9. **SUMMARY AND CONCLUSIONS**

- 9.1 TWUL owns and operates the Culham Sewage Treatment Works and is the freehold owner of plots contained 9/24, 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/11h, 17/11i, 17/14a and 17/14b within the Order and shown on the Order Land plans.
- 9.2 As far as I am aware, and so instructed by my client, OXCC's agents had no substantive and/or meaningful engagement or discussions with TWUL prior to my appointment.
- 9.3 By submitting the planning in application in October 2021 the Acquiring Authority had determined the extend of the scheme and the red line boundary.

- 9.4 By making the Order in December 2022 and thus fixing the red line boundary ahead of any meaningful engagement, the options available to the parties were limited to:
- 9.4.1 a 'light touch' re-design of the scheme by the Acquiring Authority, which ultimately has proved to be wholly unsatisfactory; or
  - 9.4.2 the provision of replacement land from the adjacent landowner which was only explored some 7 months after first being suggested by myself and thus allowing a wholly insufficient period of time ahead of the Inquiry in which to reach a possible agreement as admitted by OXCC's agents.
- 9.5 The lateness of the engagement meant that OXCC was never going to be able to accommodate TWUL's requests to change the design and/or the red line to avoid the adverse effects to perform its statutory undertakings.
- 9.6 By the lack of early engagement, the Acquiring Authority have failed to understand the significance of TWUL's assets at Culham Works and its operational requirements.
- 9.7 The exploration of the provision of replacement land was of paramount consideration and should have become the focus for the Acquiring Authority much earlier in the process.
- 9.8 The dialogue with and response from Defra in relation to the S16 objection underlines the strong objection to the making of the Order, as proposed, will result in serious detriment to its statutory undertakings at Culham Treatment Works.
- 9.9 Taking the above into account I request that the Inspector does not confirm the Order until such time as a contractual agreement is reached between the parties for the provision of equivalent replacement land, or TWUL's objection is otherwise overcome.

## 10. **DECLARATION**

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.



Robert F Smith BSc MRICS

23 February 2024