

THE HIGHWAYS ACT 1980

AND

THE ACQUISITION OF LAND ACT 1981

THE NOTTINGHAMSHIRE COUNTY COUNCIL (B684 TO A612 LINK ROAD) A6211 GEDLING ACCESS
ROAD (SIDE ROADS) ORDER 2018

THE NOTTINGHAMSHIRE COUNTY COUNCIL (GEDLING ACCESS ROAD) COMPULSORY PURCHASE
ORDER 2018

PROOF OF EVIDENCE

OF

ANDREW WILLIAM PROWSE OF BRUTON KNOWLES

ON BEHALF OF THE ACQUIRING AUTHORITY

1. QUALIFICATIONS AND EXPERIENCE

- 1.1. My name is Andrew William Prowse, I hold a First Class Honours Degree in Estate Management (Bsc) from Oxford Brookes University. I am a member of the Royal Institution of Chartered Surveyors ("**RICS**") having qualified in 2006 and I am an RICS Registered Valuer. My background is in commercial surveying and my expertise extends to a variety of property types to include most of those affected by the Gedling Access Road ("**Scheme**").
- 1.2. I am a Partner at Bruton Knowles, a firm of Chartered Surveyors. The firm operates from 12 offices throughout England and Wales and I am based in the Nottingham office. The practice deals with all major aspects of property consultancy, including valuation, landlord and tenant advice, regeneration, insolvency, acquisition, disposal, agency, development, investment, strategic land assembly and Compulsory Purchase Orders ("**CPOs**").
- 1.3. I have worked for Bruton Knowles since 2008 and have practiced predominantly within the field of CPOs and compensation. I have acted on behalf of acquiring authorities and claimants affected by projects including CPOs , Transport and Work Act Orders and Development Consent Orders across the United Kingdom.
- 1.4. I have over 10 years' experience advising on CPO and compensation matters.
- 1.5. My role in the Scheme is as part of a team tasked with managing property negotiations with the affected parties.
- 1.6. I have knowledge of the details of the Scheme from the study of the application documents including the drawings. I have familiarised myself with the properties affected and the locality of said properties through various site visits. I have also attended meetings with the Scheme engineers.
- 1.7. Where I have not undertaken discussions with landowners personally, I have been provided with relevant information by colleagues and other members of the project team.
- 1.8. Where I have not been able to inspect a property, I have studied publicly available information in relation to that property and have considered the objections and representations that have been submitted.

2. INVOLVEMENT WITH THE GEDLING ACCESS ROAD

- 2.1. I was first instructed by Nottinghamshire County Council ("**NCC**") to provide advice in relation to compensation arising as a result of The Nottinghamshire County Council (Gedling Access Road) Compulsory Purchase Order 2018 ("**CPO**") [**CD3.1**] on 2 February 2018.
- 2.2. I, together with my colleagues and members of VIA East Midlands' project team, have been responsible for negotiations with landowners affected by the CPO on behalf of NCC.

3. SCOPE OF EVIDENCE

3.1. This Proof of Evidence focuses upon the exercise of compulsory purchase powers under the CPO. The CPO is necessary in order to acquire interests in, or obtain rights over, the Order Land which are required in order to deliver the Scheme. The Order Land comprises all interests and potential rights over the various plots set out within the Schedules to the CPO.

3.2. This Proof of Evidence focuses on the approach of NCC, being the acquiring authority, to the acquisition of the Order Land. In particular, addressing the objections that have been received from the following parties:

- Cadent Gas Limited (“**Cadent**”);
- Western Power Distribution Limited (“**WPD**”);
- Alkane Energy UK Limited (“**Alkane**”);
- Midlands Land Portfolio Limited (“**MLP**”);
- Jigsaw Homes Limited (“**Jigsaw**”);
- Mr Christopher Reckless (“**Mr Reckless**”);
- Mr Carl Walker (“**Mr Walker**”);
- Mr David John Prince and Mrs Pamela Marye Prince (“**Mr and Mrs Prince**”); and
- Openreach (non-statutory objection).

Of the above, only the objections of Cadent, WPD, Mr Reckless, Jigsaw and MLP have been sustained. The objections of the following parties have now been withdrawn:

- Openreach;
- Alkane;
- Mr Walker; and
- Mr and Mrs Prince;

3.3. All other matters, such as the background to the Scheme and the justification for the use of CPO powers are addressed in evidence provided by others.

4. ACQUIRING AUTHORITY’S APPROACH TO LAND ACQUISITION

4.1. By the exercise of the powers under the CPO, NCC seek:

- To acquire the Order Land / rights over the Order Land, being those that are reasonably required in order to construct and operate the Scheme in a safe, timely and economically efficient manner; and
- To ensure that all of the land required for the Scheme can be acquired within a realistic timescale and to ensure that no individual landowner is able to hold up the Scheme

through a refusal to sell or license their interest and further that no adverse interests prevent the Scheme from going ahead.

5. ANALYSIS OF OBJECTIONS

5.1. I address each of the sustained objections below, together with NCC's response.

5.2. Cadent Gas Limited ("Cadent")

5.2.1 Cadent submitted an objection **[CD12.2]** on the basis that that they have existing apparatus within the CPO limits that will need to be protected. The letter of objection confirms that the objection will be maintained until such time as an Asset Protection Agreement ("**APA**") is in place.

5.2.2 In responding to the objection NCC confirmed that they would continue discussions with a view to securing an APA. NCC have also been working with Cadent to determine the impact on its apparatus in respect of diversions and protecting assets as part of the development of the Scheme, this is discussed further in evidence of Mike Barnett at **[MB01]**.

5.2.3 At the date of this Evidence the parties' an APA has been executed by both parties and Cadent's objection to the CPO will be withdrawn within 24 hours in line with the terms of the APA.

5.3. Western Power Distribution ("WPD")

5.3.1 Osborne Clarke submitted a holding objection **[CD12.1]** on behalf of WPD on the basis that that they were unable to determine the impact of the CPO on their electricity network. In particular they sought to understand:

- how the proposals will ensure security of electricity supply in the area;
- how the proposals will protect the electricity network during the constructions phase of the Scheme and any potential operational implications;
- precise details of the design or construction of the Scheme and any potential operational implications; and
- precise details of the property rights and interests that will be affected by the implementation of the CPO.

5.3.2 The letter of objection confirms that WPD would expect to withdraw their objection following further negotiation regarding the protection of WPD's apparatus and the completion of an APA.

5.3.3 In responding to the objection, NCC confirmed that they were committed to minimising the impact of the Scheme upon WPD and working with WPD to ensure that that their statutory rights and duties were protected by way of an APA. This response also referred to long standing discussions with WPD in respect of various diversions and connections required for

the Scheme. These negotiations are covered in the Proof of Evidence of Mike Barnett at **[MB01]**.

5.3.4 A draft APA was prepared by Osborne Clarke, solicitors for WPD and NCC have provided comments on this draft. The document is in agreed form however NCC are advised that completion has been delayed due to administrative issues at WPD. It is expected that this objection will be withdrawn imminently.

5.4. **Midlands Land Portfolio Limited (“MLP”)**

5.4.1 MLP submitted an objection **[CD12.4]** on the basis that, whilst they were supportive of the Scheme, it did not consider that NCC had followed Government guidance on the use of CPOs. The following grounds for objection were given:

- NCC has not adequately demonstrated reasons for the final design of the junction of the Scheme and A612;
- NCC has not made adequate efforts to agree terms for the acquisition of the land required by agreement; and
- NCC has not provided sufficient information regarding the maintenance of access to the site and how access will be taken following the implementation of the Scheme.

5.4.2 NCC responded to this objection by letter on 31 January 2019 addressing each of the above-mentioned objections. A copy of this letter is appended to this Proof at Appendix 1. In respect of design, NCC explained that the Scheme had been designed using detailed traffic modelling so that it could be connected to and integrate with other local roads including Burton Road and the Nottingham Road service road. NCC also explained that land was required from MLP to provide storage and attenuation for highway drainage.

5.4.3 NCC acknowledge that guidance provided by the Ministry of Housing, Communities and Local Government requires that NCC demonstrate that they have taken reasonable steps to acquire interests by agreement. However, NCC also referred the objector to those parts of the same guidance **[CD3.5]** stating that an acquiring authority is not required to wait until land negotiations have failed before commencing the CPO process. NCC also point out that there had been discussions with MLP regarding the proposals and acquisition of their land dating back to July 2016.

5.4.4 In response to concerns regarding access, NCC confirmed that the construction of the Scheme will require road closures and temporary traffic management arrangements more detail on which is provided within the evidence of Mike Barnett at **[MB01]**. Road closures would be secured by way of Temporary Traffic Regulation Orders and NCC would ensure that any traffic management was clearly communicated to those affected. NCC also confirmed that access to MLP’s property would be maintained, providing routing details for the required diversion. NCC also offered an assurance that any disruption would be minimised through a programme and communication strategy.

5.4.5 At the date of this evidence NCC and MLP have reached agreement in principle whereby the MLP's objection can be withdrawn. NCC are advised that the documentation of an agreement has been delayed due to the availability of MLP's solicitors. It is expected that this objection will be withdrawn imminently.

5.5. **Jigsaw Homes Limited ("Jigsaw")**

5.5.1 Jigsaw submitted an objection [CD12.5] on the basis that NCC have not adequately described the purpose for which their land is required. More specifically, the following grounds for objection were given:

- NCC have not provided adequate explanation as to the extent of rights required for the scheme.
- NCC should have provided a 'fuller' description of the rights sought including timescales for the works for Jigsaw to better understand potential operational issues.

5.5.2 In response to the concerns raised in the objection, NCC have engaged with Jigsaw and provided further information regarding the nature and scope of works affecting their land.

5.5.3 At the date of this evidence there are ongoing discussions between NCC and Jigsaw in relation to the implementation of the Scheme and terms whereby Jigsaw's objection can be withdrawn.

5.5.4 A draft licence and compromise agreement have been provided to Jigsaw and negotiations with their agents are ongoing. It is expected that this objection will be withdrawn imminently.

5.6. **Mr Christopher Reckless ("Mr Reckless")**

5.6.1 Mr Reckless submitted an objection [CD12.6] on following grounds:

- NCC have provide insufficient explanation as the reason for the proposed route.
- NCC have provided insufficient explanation for the extent of land and rights required.
- If implemented, the CPO would result in a breach of his rights under Article 1 of the European Convention on Human Rights ("ECHR").

5.6.2 NCC responded to this objection by letter on 11 February 2019. A copy of this letter is appended to this Proof at Appendix 1. In this response NCC explain that the route of the Scheme was determined by reference to physical constraints, traffic modelling and an attempt to minimise impact on affected landowners. NCC explain that alternative routes

were considered but that these alternatives had a larger footprint and impacted upon a greater number of private land interests. At the point the Scheme interacts with Mr Reckless' property, the largest proportion of the land required to deliver the Scheme is within NCC's ownership.

- 5.6.3 NCC did not understand the objection that an insufficient explanation of the land required had been provided and referred to ongoing discussions between NCC and Mr Reckless beginning in October 2016.
- 5.6.4 The reasons for the Scheme alignment and design are address in detail in the Proofs of Evidence of David Pick **[DP01]** and John Patchett **[JP01]**.
- 5.6.5 Regarding the alleged interference with Mr Reckless' human rights NCC confirmed that, in their view, any interference with Mr Reckless' rights under Article 1 of the ECHR are justifiable and in the public interest due to the fact that it will secure the Scheme and attendant benefits as shown in the Proof of Evidence of Mike Barnett **[MB01]**.
- 5.6.6 At the date of this evidence there are ongoing discussions between NCC and Mr Reckless with a view to resolving this objection in advance of the Inquiry.

6. SUMMARY

- 6.1 At the date of this evidence, NCC continue to engage with each of the remaining objectors in order to resolve objections to the CPO.
- 6.2 The land and rights to be acquired and included in the CPO have been carefully considered and reviewed throughout the CPO process.
- 6.3 All reasonable efforts have been undertaken by NCC to reduce the impact of the Scheme with the land and rights within the scope of the CPO being only those proportionate to meet the construction and design requirements of the Scheme.
- 6.4 Compensation for the exercise of compulsory purchase powers will be payable by NCC in accordance with the compensation code.

7. STATEMENT OF TRUTH

- 7.1 I confirm that I am able to give evidence in light of my relevant experience as summarised above. I can confirm that the evidence I prepared is in accordance with the guidance of my professional institution and that the opinions given are my true professional opinions.

Signed:

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Date: 21 May 2019

Appendix 1

Letter from NCC to MLPL dated 31 January 2019

Date: 31st January 2019
Our ref: 32351/AWP
Your ref: J036473

David Conboy Esq
GL Hearn Limited
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WC1V 7EE

Property Consultants

15 Castle Gate
Nottingham
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T 0115 9881160
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Offices across the UK

By email and post

Dear David,

The Nottinghamshire County Council (Gedling Access Road) Compulsory Purchase Order 2018 ("Order")
The Nottinghamshire County Council (B684 to A612 Link Road) A6211 Gedling Access Road (Side Roads) Order 2018 ("Side Roads Order")
Your Client: Midland Land Portfolio Limited ("MLP")

I write with reference to your letter and notice of objection to the above Order and Side Roads Order dated 10th December 2018. Bruton Knowles is appointed my Nottinghamshire County Council ("NCC") in this matter as you will be aware.

I note that MLP are supportive of the Gedling Access Road ("GAR") but that they have concerns regarding compliance with Government guidance in respect of the use of compulsory purchase. You refer to the Department for Communities and Local Government guidance which has now been superseded by the Ministry of Housing, Communities and Local Government Guidance ("CPO Guidance").

In terms of the grounds of objection I reference them as per your letter for ease.

- (i) The design and layout of the GAR junction as proposed follows detailed traffic modelling using anticipated traffic flows based on current information, projected traffic growth, development and trip reassignment as a result of GAR.

At this location the GAR will join the most recently constructed phase of the wider A612 Nottingham Eastern Outer Loop Road (the Gedling Major Integrated Transport Scheme). This was designed and built such that the GAR could be connected to it and integrate with other local roads including Burton Road and the Nottingham Road service road which provides access to the properties in Whitworth Drive.

In plan the GAR junction adjacent to your client's land is entirely within public highway or other third-party land. Your client's land is required to provide sufficient storage and attenuation for highway drainage in the form of a new highway pond prior to discharge into the water course parallel to the A612.

- (ii) You state that NCC have failed to adequately comply with the recommendations of the CPO Guidance in respect of efforts to acquire your client's interests by agreement. My client accepts that the CPO Guidance requires it to show that reasonable steps have been taken to acquire interests required by agreement. However, it does not require an acquiring authority to wait until

such time as negotiations fail before starting the compulsory purchase process and provides that it may be sensible for an authority to initiate the CPO process in parallel with stakeholder discussions.

You will be aware of NCC's aspiration to reach an agreement for the acquisition of MLP's interest in the land included within the Order as plots 64-66. and I would refer to Gary Wood's letter 19 July 2016 confirming this. There have been subsequent discussions and NCC have reimbursed your firms fees for advising MLP in the matter.

NCC remain committed to securing an agreement as you will be aware from our recent discussions.

- (iii) The construction of GAR at its junction with Burton Road and the A612 will require closures of Burton Road and alternative temporary traffic management arrangements along the A612. The exact date and duration of any closures is to be determined. Temporary highway closures will be secured by operation of Temporary Traffic Regulation Orders and there will be a clear communication strategy to ensure that those affected are included in the planning of any closures and kept up to date.

Access to your client's retained land will be maintained off Burton Road, however, access will be via a signed diversion along the A612, A6211 Colwick Loop Road, A6211 Burton Road towards the junction with Shearing Hill and vice versa.

NCC is committed to ensuring that any disruption is kept to an absolute minimum and any closures include provision for a signed diversion route. The safety of nearby residents and businesses, the general public, motorists and the construction workforce is of paramount importance and a key consideration in any decisions that have been and will be taken. The project team will ensure that your client and other stakeholders are kept up to date as the process of delivering GAR progresses.

I trust that the above goes some way to addressing your client's concerns and look forward to further discussing the matter on our conference call of 5th February.

Yours sincerely



Andrew Prowse BSc (Hons) MRICS
Partner

Appendix 2

Letter to Mr Reckless dated 11 February 2019

Date: 11th February 2019
Our ref: AWP/KP/32351
Your ref:

Ian Holdsworth Chartered Surveyors
Unit 1c
Normanton Lane
Bottesford
Nottingham
NG13 0EL

Property Consultants

15 Castle Gate
Nottingham
NG1 7AQ
T 0115 9881160
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Offices across the UK

By post and email

Dear Mr Holdsworth,

Nottinghamshire County Council (Gedling Access Road) Compulsory Purchase Order 2018 ("Order")
Nottinghamshire County Council (B684 to A612 Link Road) A6211 Gedling Access Road (Side Roads) Order 2018 ("Side Roads Order")
Your Client: Mr Christopher Reckless

Bruton Knowles are appointed by Nottinghamshire County Council ("NCC") in relation to the delivery of the Gedling Access Road ("GAR") as you are aware.

I am writing in response to your letter of objection addressed the Department for Transport in respect of the above Order and Side Roads Order dated 17th December 2018.

Your letter raises objections on three grounds and the responses set out below are numbered to correspond with the numbering in your letter: -

1. The proposed alignment of GAR follows the route identified in the Local Plan 2005 considering physical constraints, detailed traffic modelling and trip reassignment as a result of GAR. It has also been selected to minimise impact on affected landowners.

Position and orientation of the GAR in proximity to your client's land interest is determined by existing physical factors and design standards. A key existing physical factor is that the GAR at its south-eastern end will join the most recently constructed phase of the wider A612 Nottingham Eastern Outer Loop Road (the Gedling Major Integrated Transport Scheme). This was designed and built such that the GAR could be connected to it and integrated with other local roads including Burton Road and the Nottingham Road service road which provides access to the properties on Whitworth Drive.

During the planning application process the traffic signal junction layout, as proposed, was modelled for capacity and refined. Alternative options were explored but had a larger footprint and therefore impacted upon more third party interests.

The alignment of the GAR from this junction travelling in a north-western direction is linked to topography and design standards for road of this type. At the point where GAR interfaces with the walled garden, the largest proportion of land required is within the ownership of NCC.

2. The land and new rights required from your client as described in the Order are as follows: –

Number on map	Extent, description and situation of the land
61	All interests in 1317 square metres, or thereabouts, of walled garden and wooded area (east of The Old Stables) except those owned by the acquiring authority.
61a	A right of access with or without vehicles, plant and machinery to repair, demolish and reconstruct an existing wall and right to move foliage and trees to construct, inspect and maintain works together with a right to install a temporary fence along the perimeter and provide a zoned area for operative safety over 2054 square metres, or thereabouts of walled garden and wooden area (east of The Old Stables)

The contention that no explanation or justification for the requirement has been provided is not understood. NCC has confirmed that discussions with your client began in October 2016 and the signatory attended a site meeting with you and your client 16th August 2018 during which the land and rights requirement was discussed.

I can confirm that all the land identified within the CPO is required to deliver the scheme. NCC's preference would be to reach an agreement for the acquisition of any land and right required as you will be aware from our discussions.

3. The Order and Side Roads Order have been made in accordance with Ministry of Housing, Communities and Local Government guidance on use of compulsory purchase powers. Any interference with Article 1 of the European Convention on Human Rights is considered justified and in the public interest on the basis that it will secure the provision of the scheme and attendant benefits to the local highway network. Your Client will be entitled to compensation in accordance with the matrix of statutes and judicial decisions that make up the compensation.

I would like an opportunity to meet with you to discuss your client's concerns and to further explore the possibility of acquiring the interests land required to deliver the scheme by agreement.

I look forward to hearing from you.

Yours faithfully,



Andrew Prowse BSc (Hons) MRICS

Partner

For and on behalf of
Bruton Knowles LLP