

EMAIL ONLY

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Dear Mr Richard Clegg and Mr Geoff Underwood

Partial Costs Application on behalf of Clare Hall, University of Cambridge
Application under the Transport and Works Act 1992 for the Cambourne to Cambridge Order (the Application)

1 Application for costs

- 1.1 We act for Clare Hall, University of Cambridge (**Clare Hall**). Clare Hall requests that a partial award of costs be made against Cambridgeshire County Council (the **Applicant**) in connection with the above-mentioned Application.
- 1.2 Clare Hall's status in relation to the Application, and entitlement to make a costs application, is explained in section 2.
- 1.3 The basis for this costs application is set out in section 3. Section 4 explains the Applicant's unreasonable behaviour, and section 5 details the impact of this on Clare Hall. The costs claimed by Clare Hall are set out in section 6.

2 Clare Hall's status in respect of the Application

- 2.1 Clare Hall is a "statutory objector" to the Application by virtue of submitting an objection and having land identified in the Book of Reference which is subject to permanent compulsory acquisition pursuant to the draft Order and was notified of the proposed Order pursuant to Rule 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (the **A&O Rules**). Statutory objectors are those persons with a statutory right to be heard, as identified in section 11(4) of the Transport and Works Act 1992 (including persons affected by proposed compulsory acquisition powers).
- 2.2 Clare Hall is identified as OBJ213 for the purposes of the Application.

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- 2.3 In line with the Department for Transport's (**DfT**) Guide for Applicants and Objectors in respect of costs awards in Transport and Works Act proceedings (the **Guidance**), Clare Hall makes this application for costs because it considers that the Applicant has behaved unreasonably and has caused expenses to be incurred unnecessarily as a result of that behaviour.

3 Basis for the costs application

- 3.1 Clare Hall applies for an award of costs pursuant to the Guidance issued by DfT. Clare Hall seeks to reclaim costs incurred as a result of the Applicant's unreasonable behaviour in its management of the Application – namely in its failure to provide relevant and available information freely in good time or when specifically requested to do so by Clare Hall.
- 3.2 The Guidance confirms that unreasonable behaviour can include the way in which one party conducts his or her part in the proceedings. Examples of unreasonable behaviour include deliberately uncooperative behaviour, such as late submission of evidence.
- 3.3 Other examples of unreasonable behaviour which may justify an award of costs are given in the Department of Transport (**DOT**) (now DfT) Circular 3/94 (**DOT Circular**). The summary of the criteria provided in the Appendix to the Circular explains that Applicants are at risk of an award of costs against them if they introduce new or amended evidence late in the proceedings. Annex 2 of the DOT Circular confirms that,

"In the case of an applicant, the following are examples of what may be regarded as unreasonable behaviour in inquiry or hearing cases resulting in an award of costs if abortive expense is incurred:

[...] causing an objector to call a professional witness to attend unnecessarily – for example where a technical issue could have been resolved satisfactorily by prior discussion."

- 3.4 Pursuant to Annex 4 of the DOT Circular, Section 11(5) and 11(6) of the Transport and Works Act 1992, and section 250(5) of the Local Government Act 1972, the Secretary of State (**SoS**) is empowered to make orders as to the costs of the parties at an inquiry. This is interpreted as enabling the SoS to award to a party the costs necessarily and reasonably incurred in relation to the proceedings under consideration.
- 3.5 Clare Hall is applying for a partial award of costs, limited to the expense incurred as a result of the unreasonable behaviour of the Applicant, which is explained further below. This application is being made at the earliest opportunity to enable the Inspectors to invite a response from the Applicant, in line with the Guidance, for the purposes of making a recommendation to the SoS.

4 Unreasonable Behaviour

- 4.1 The Application was received by the Transport and Infrastructure Planning Unit (**TIPU**) on 12 November 2024; however, Clare Hall has been in contact with the Applicant since 2018 regarding its opposition to the then proposed Application (particularly in relation to the scheme's route alignment through its final phase into Cambridge).
- 4.2 Having been aware of the proposed Application for a number of years and having acute concerns about the prospect of increased risk of flooding as a result of the development, Clare Hall instructed Create Consulting Engineers (Create) on 7 May 2024 to undertake flood modelling based on a draft drawing prepared by the Applicant showing the general arrangement of the busway in the vicinity of Clare Hall. Create undertook said modelling using the Environment Agency's (**EA**) most up-to-date Bin Brook Model (obtained via a standard Freedom of Information request of the EA). The modelling

undertaken by Create assisted Clare Hall in forming a view on the flood risk impact of the proposed busway at an early stage.

- 4.3 Following publication and review of the Applicant's Flood Risk Assessment (**FRA**) [**CD1-11.13.02**], which was submitted with the Application, Clare Hall instructed Create to review its findings in light of the new information available, updating its hydraulic modelling. As detailed below, the FRA and supporting Application documents provided inadequate information required by Create to properly undertake this exercise; however, Clare Hall was sufficiently concerned with the outcome of the modelling at this stage that it objected to the Application on a number of grounds, including flood risk.
- 4.4 Whilst Clare Hall remained concerned about the increased risk of flooding, it was also apparent at the point the Application was submitted that the FRA and supporting information was lacking and not adequate properly to allow Create to assess the impact of the proposed development and advise Clare Hall accordingly. This position was reflected in the EA's objection to the Application, which included the following concerns:
- (a) the hydraulic model used by the Applicant is unsuitable for the intended use;
 - (b) additional information/clarification is required to increase confidence in the model outputs and some elements of the modules need revisiting; and
 - (c) all amber and red comments raised by the EA in November 2023 need to be addressed.
- 4.5 The EA confirmed that the Applicant would need to re-submit its hydraulic modelling to ensure these issues were addressed and that it would object to the Application until an acceptable model was submitted.
- 4.6 An updated hydraulic model was provided by the Applicant to the EA in February 2025, and further sensitivity test results were provided in May 2025, however detail of this ongoing dialogue was not communicated to Clare Hall nor shared with Create until 24 July 2025, despite several information requests by those acting on behalf of the college. This information would have been influential in the preparation of Clare Hall's Statement of Case [**CD23-17 OBJ-213**], submitted 11 April 2025.
- 4.7 Once this information was received, Create was required to update its own model, drawing on the new information provided by the Applicant. It should be noted that the information, although available long before 24 July, was only provided 17 working days before the deadline for submission of Proofs of Evidence.
- 4.8 A timeline of events since the submission of the Application can be found in the table below:

Date	Form of Correspondence	Key Topics Discussed and Key Outcomes
12/11/2024	Letter	Rule 15 Notice issued by the Applicant [CD1-24.9].
<p><i>Create was instructed by Clare Hall to build upon its hydraulic modelling using information submitted by the Applicant with the Application.</i></p> <p><i>It was clear at this point that the FRA was lacking information (including confirmation from the Applicant as to the model used in its own assessment), limiting Create's ability to (a) review and advise on the risk associated with the proposed development, and (b) meaningfully update its own modelling to accurately predict and analyse the potential impacts.</i></p>		

Date	Form of Correspondence	Key Topics Discussed and Key Outcomes
<i>Nevertheless, this process highlighted areas of concern, including risk of increased water volumes and velocity in the vicinity of Clare Hall, with flooding also predicted to occur outside of the Application redline.</i>		
07/01/2025	Letter	Objection lodged by Clare Hall [CD2-OBJ-213].
14/02/2025	Email	Email from Peter Blake (on behalf of the Applicant) requesting flood modelling and mitigation report developed by Create. Appendix A
17/02/2025	Email	Dentons advised that the flood modelling and mitigation report produced by Create was not yet in a position to be shared as outstanding information was required from the Applicant in order to finalise Create's findings. Dentons shared an itemised list of queries and questions posed by Create so that Clare Hall's Statement of Case could be developed – including a request for the flood model used by the Applicant in preparing its Application and details of discussions with the EA in respect of that model. A document was supplied with a list of queries. Dentons requested a response to the queries within 10 days. Appendix B
27/02/2025	Email	Email from the Applicant to Dentons to confirm it had received both the queries and will respond in due course. Responses not provided within the 10-day request window. Appendix C
18/03/2025	Letter	Responses provided by the Applicant more than one month after Clare Hall's request. These responses did not provide adequate or appropriate information. Appendix D
25/03/2025	Letter	Letter to the Applicant from Clare Hall in respect of the information provided on 18/03/2025. The letter highlighted where the Applicant's response failed to address requests made by Clare Hall. This included a failure to provide the flood model used by the Applicant in preparing its Application and details of discussions with the EA in respect of that model. Appendix E
08/04/2025	Letter	The Applicant responded to Clare Hall's most recent set of queries. These responses were insufficient. It should be noted that the flood model used by the Applicant and details of discussions with the EA in respect of that model were still not provided despite repeated requests. Appendix F
11/04/2025	Statement of Case	On behalf of Clare Hall, Dentons submitted its Statement of Case [CD23-17 OBJ-213]. Section 6 of the Statement of Case focussed on flooding.
17/07/2025	Letter	Letter from Dentons detailing outstanding requests for information and explaining this is likely to inform the Proofs of Evidence being prepared. Many of the requests for information

Date	Form of Correspondence	Key Topics Discussed and Key Outcomes
		<p>related to flood modelling.</p> <p>It should be noted that the flood model used by the Applicant and details of discussions with the EA in respect of that model were still not provided despite repeated requests.</p> <p>Appendix G</p>
24/07/2025	Email	<p>Email from WSP (on behalf of the Applicant) providing:</p> <ul style="list-style-type: none"> (a) the model as provided to the EA in July 2023; (b) the updated model as provided to the EA in February 2025 (the EA objected to the Application on the basis of this model and the data contained the EA review sheet on the July 2023 submission and RAG spreadsheet and WSP's responses to that first review); and (c) a copy of the model provided to the EA in May 2025 to provide sensitivity tests in response to review comments. <p>It should be noted that the Model dated 2023 was used in preparation of the Application submitted in November 2024 and was therefore available to be shared with Clare Hall long before July 2025.</p> <p>No information was provided regarding the EA's response to the February 2025 submission. As such, there remained a six-month gap – between February and July 2025 – during which it was presumed that ongoing dialogue occurred between WSP and the EA.</p> <p>Appendix H</p>
25/07/2025	Email	<p>Email from Create (on behalf of Clare Hall) requesting outstanding queries that had still not been addressed in previous letters dated 17 February, 25 March, and 17 July 2025.</p> <p>This included requests for details of discussions with the EA over the six months prior to 24 July 2025.</p> <p>Appendix I</p>
08/08/2025	Email	<p>Email from WSP (on behalf of the Applicant) providing the EA commissioned hydrology and hydraulics review by Arcadis (dated 23/07 and 24/07 respectively) and WSP's response dated 29/07. It should be noted there was no reason why the EA review documents could not have been shared as part of the data package on 24 July 2025 or shortly after.</p> <p>This email also confirmed that the EA had now indicated that, following a review of WSP's "justification documentation", they are moving to accept the modelling used by the Applicant for the purposes of the flood assessment and will be writing to the Inspectors before the proof of evidence deadline (19 August</p>

Date	Form of Correspondence	Key Topics Discussed and Key Outcomes
		2025) to remove its objection to the Application. Until this point Create and Clare Hall had understood that the EA remained in objection to the Application and were not aware of the detail of any ongoing discussions with the Applicant. Appendix J
19/08/2025	Email	Clare Hall submitted its Proofs of Evidence to the Inspectors (including the flooding evidence of Graham Sinclair). At the point of submission, there was no confirmation that the EA had formally withdrawn its objection to the Application [CD26-08 OBJ-213].
21/08/2025	Email	Create and Dentons received an email from the EA (on request) attaching its letter withdrawing its objection to the Application (dated 19 August 2025). Appendix K (EA Withdrawal Letter)
21/08/2025	Email	Email from Create to the EA setting out its concerns with the EA's decision to withdraw its objection, and the rationale and justification contained within the letter. Appendix L

- 4.9 The Applicant acted unreasonably by **failing to provide readily available information to Clare Hall and/or those instructed on its behalf in good time when it would have been aware that this information would be relevant to the preparation of Clare Hall's evidence on flood risk (both in its Statement of Case and in the Proof of Evidence of Graham Sinclair)**. This statement relates not only to the requests for information that were made following the lodging of Clare Hall's Objection Letter, but also to the inadequate information contained within the Application documents, which inhibited Clare Hall's ability to understand and interrogate the flood risk assessment that had been undertaken and thereby assess its robustness and appropriateness as an assessment of the impacts of the proposed development.
- 4.10 **This is a clear example of uncooperative behaviour. As a consequence of the Applicant's failure to provide adequate flood risk information in good time, Clare Hall had to commission further assessment work (including further hydraulic modelling work of its own) in order to better understand the impact of the proposed development, and to incur additional expense because of the further work undertaken by its own expert witness in preparation for the public inquiry.**
- 4.11 Despite several requests, the Applicant failed to provide the information sought (all of which remained within the Applicant's control), notwithstanding its obvious relevance to Clare Hall's objection and the likelihood that in the absence of that information Create would be unable to meaningfully advise Clare Hall on the impacts of the proposed development. Once the information was provided, it was clear that Create would need to undertake additional work to seek to better understand the detail of the flood modelling information that was used to prepare the Application and the potential impacts of the proposed development.

5 Impact on Clare Hall

- 5.1 Clare Hall instructed Create following the submission of the Application to review the FRA / Hydraulic Modelling Report, being sceptical of its findings. It became immediately apparent to Clare Hall, as detailed in its Objection Letter to the Application that (a) the flood risk information provided by the Applicant in support of the scheme was wholly insufficient, (b) that the flood modelling and mitigation report later commissioned by Clare Hall (undertaken by Create) demonstrates that there is a significant increase in flood risk associated with the scheme and that these risks have been inadequately assessed as part of the proposed development, and (c) the scheme would have a material impact on increasing flow rates and water levels.
- 5.2 Following submission of Clare Hall's Objection Letter, Create requested details of the hydraulic model used by the Applicant and evidence of correspondence with the Environment Agency in order to better understand the background to the FRA. Several requests were made between February and July 2025. These requests for information are set out in detail in the Proof of Evidence of Graham Sinclair, which was submitted to the Inquiry on 19 August 2025.
- 5.3 During this period, in order to prepare its Statement of Case and for participation in the public inquiry, Clare Hall continued to instruct Create to examine the risk that the proposed development presented to Clare Hall, working on the basis of its own hydraulic modelling because of the inadequacies of the information and assessment provided by the Applicant and the Applicant's failure to supply the further information sought.
- 5.4 On 24 July 2025, some 6 months following its first request for the modelling used to support the Application, WSP (on behalf of the applicant) provided the original model submitted to the EA in July 2023 and the updated model submitted in February 2025. The data package that was shared also contained additional documentation relating to the EA's approval process and the Applicant's submission, including the EA RAG review spreadsheet and WSP's responses to the EA's comments submitted as part of the February 2025 update.
- 5.5 This information provided long-awaited insight into the model build and results, which had previously been unavailable and had significantly hindered Create's ability, on behalf of Clare Hall, to undertake a comprehensive review of the submission.
- 5.6 However, critically, no information was provided regarding the EA's response to the February 2025 submission (which had also been requested). As such, there remained a six-month gap - between February and July 2025 - during which it was presumed that ongoing dialogue occurred between WSP and the EA.
- 5.7 A meeting between Create and the applicant was held on 7 August 2025. In this meeting the remaining queries raised by Create on the flood modelling were discussed. The Applicant confirmed that the data package provided on 24 July 2025 remained up-to-date with the updates request by the EA not having been incorporated. WSP confirmed that instead of incorporating the EA's suggestions, it had instead undertaken further testing of its model in order to justify its findings. WSP explained that the EA had confirmed that it was looking to withdraw its objection prior to the deadline for submission of proofs of Evidence.
- 5.8 It was confirmed by the Applicant that discussions with the EA were ongoing. Create requested that this dialogue be shared because of its obvious relevance to Clare Hall's objection on flood risk grounds. Pending the receipt of this information, Create continued to assess the flood risk of the proposed development on the basis of the submitted information and its own hydraulic modelling. This has involved additional and unnecessary expense to Clare Hall over the course of over 6 months.

- 5.9 The EA's position in response to the further information provided by the Applicant was provided on 21 August 2025. Create has asked the EA for a meeting to discuss the issues raised by that letter.
- 5.10 Create has therefore had to prepare a Proof of Evidence for participation in the public inquiry without the benefit of sufficient time to assess and respond to all relevant material. .
- 5.11 It is unclear why the information finally provided on 24 July 2025 was not provided at an earlier stage (either with the Application documents or in response to a request), having regard to the flood risk concerns raised in Clare Hall's Objection Letter and Statement of Case and the repeated requests for information.
- 5.12 The lack of timely and transparent communication has resulted in Create undertaking additional and unnecessary work to seek to interpret the Applicant's model without access to adequate supporting information - an outcome that could have been avoided through effective engagement by the Applicant and sufficient information being contained within the Application documents and subsequently.
- 5.13 This has resulted in work undertaken by Create that should have been unnecessary and is now potentially abortive. This has arisen directly as a result of the Applicant's deliberately uncooperative behaviour, its lack of adequate engagement on this matter and its failure to resolve these issues in good time prior to the start of the Public Inquiry.

6 Costs Claimed by Clare Hall

- 6.1 Clare Hall claims:
- (a) all of Create's invoiced costs, from the date of the acceptance of the Application, incurred in connection with:
 - (i) updating its own hydraulic modelling following the submission of the Application (this exercise being limited by virtue of the inadequate information contained in the Application documents);
 - (ii) further updating its own hydraulic modelling following the late provision of information by the Applicant in July 2025; and
 - (iii) reviewing and scrutinising the rationale behind the EA's late withdrawal of its objection to the Application in light of the Applicant's late provision of information, discussions with the EA regarding its late withdrawal, and considering the flood risk implications associated with that withdrawal in that context.
- 6.2 As work continues to be undertaken by Create, in light of the late provision of information and the need to engage with the EA to understand its position in light of that information, we are unable to confirm at this stage the full extent of additional expenditure that has been incurred. Confirmation will be provided to the Inspectors in due course.
- 6.3 For the reasons given above, these costs have been necessarily and reasonably incurred and, as a result of the Applicant's conduct, are wasted. We ask the Inspectors to make a recommendation to the SoS that an award of costs in respect of the costs detailed above be made.

Yours faithfully

Dentons UK and Middle East LLP

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