

**Application under the Transport and Works Act 1992 for the Cambourne to Cambridge
Order**

**Cambridgeshire County Council's Response to the Partial Costs Application
submitted on behalf of Clare Hall, University of Cambridge**

INTRODUCTION

1. This is the response by Cambridgeshire County Council (“**the Applicant**”) to the costs application prepared by Dentons on behalf of Clare Hall, University of Cambridge (“**the Costs Application**”) [CD27-01 and CD27-02]. A detailed chronology of engagement between the Applicant and Clare Hall in relation to flood risk matters can be found at [CD27-04]. For ease of comparison, this incorporates the correspondence identified in the timeline of events contained in the Costs Application [CD27-01, **pages 4 to 6**] and includes Clare Hall's description for the relevant event contained in their timeline or the Costs Application (where relevant). It also includes relevant correspondence between the Applicant and the Environment Agency.
2. A copy of relevant correspondence and documents contained in the chronology can be found in [CD27-05].
3. This response is provided in writing at the Inspector's request. The Applicant may add to or amend this response following the presentation and testing of Clare Hall's evidence.
4. In summary, the Applicant submits that the Costs Application should be refused for the following headline reasons:
5. **First**, the Applicant has not acted unreasonably. In particular:
 - 5.1. The flood risk information in the Application was adequate. No changes to it have been made as a result of ongoing engagement with the Environment Agency, who withdrew their objection to the Scheme on 19 August 2025 [CD28-01].
 - 5.2. The Applicant responded to Clare Hall's requests for flood risk information promptly. Following receipt of the second response provided by the Applicant on 8 April 2025 [CD27-05, **pages 57 to 59** in respect of flood modelling], Clare Hall did not assert it was inadequate until 17 July 2025 [CD27-05, **page 106**], following which the full model was provided only 1 week later, on 24 July 2025 [CD27-05, **page 121 to 122**], despite this having never actually being requested by Clare

Hall. The full model was also released by the Applicant to Clare Hall prior to it being approved by the Environment Agency.

5.3. The Applicant informed Clare Hall of its ongoing discussions with the Environment Agency on 8 April 2025 [CD27-05, page 57]. The Environment Agency's late withdrawal of its objection is as a result of the Environment Agency's internal resourcing constraints [CD27-05, page 100] not the Applicant's behaviour. Clare Hall was alerted to the Environment Agency's anticipated withdrawal of objection by the Applicant at a meeting held with Create on 7 August 2025 [CD27-04]¹, and subsequently by an email dated 8 August 2025 [CD27-05, pages 144 to 145]. This was the same day the case officer at the Environment Agency emailed the Applicant to confirm its position² [CD27-05, page 148] and prior to the formal withdrawal letter having been submitted by the Environment Agency on 19 August 2025 [CD28-01]. The Applicant's behaviour is therefore quite the opposite of being 'uncooperative' and has been as open and forthcoming as might ordinarily be expected.

5.4. **Secondly**, even if the Applicant has acted unreasonably (which is not accepted), that conduct has not caused Clare Hall to incur any unnecessary or wasted costs.

5.4.1. Clare Hall had already commissioned its own flood modelling before the alleged unreasonable behaviour occurred.

5.4.2. Even if information had been provided more promptly, it would still have been necessary to review and update the pre-existing modelling.

5.4.3. In any event, Clare Hall persists with its objection on flooding grounds despite the provision of the requested information (even if late, which is not accepted) and Clare Hall continue to rely on their model having received the further information and notwithstanding the Environment Agency's withdrawal of their objection [CD28-01].³ Thus no unnecessary or wasted costs have resulted.

¹ See Clare Hall's summary of the meeting which states: "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."

² The legal officer at the Environment Agency emailed WBD on 7 August 2025 to say that their understanding was that senior managers felt comfortable removing the Environment Agency's objection [CD27-05, page 147], and this was confirmed in an email to the Applicant by the case officer at the Environment Agency on 8 August 2025 [CD27-05 page 148].

³ Graham Sinclair's Position Statement dated 9 September 2025 [CD26-08-W3-3] explains that Clare Hall maintains its objection following receipt of the further information from the Applicant and notwithstanding the Environment Agency has withdrawn their objection [CD28-01]. The Position

APPROACH

6. In order for the Costs Application to succeed, Clare Hall must demonstrate that:
 - 6.1. The Applicant has acted unreasonably; **and**
 - 6.2. **As a result of that unreasonable behaviour**, Clare Hall has incurred unnecessary or wasted costs.⁴
7. The burden of proof in respect of both matters rests on Clare Hall. This is of particular importance given the absence of particularity and detail in the Costs Application (as explained further below).
8. It is also important to note that there is a need for a causal link between the alleged unreasonable behaviour and the unnecessary or wasted costs. If there is no such link – for example, if the costs were incurred for some other reason – then the Costs Application must fail.

ISSUE 1 – WHETHER THE APPLICANT HAS ACTED UNREASONABLY

9. The Applicant submits that it has not acted unreasonably as alleged by Clare Hall.

Preliminary matters

10. The claimed unreasonable behaviour must be put in the proper analytical framework:
 - 10.1. Clare Hall does **not** allege in the Costs Application that the Applicant has failed to comply with any statutory requirements. In particular, Clare Hall does not allege that the Applicant has failed to comply with the 2004 Rules⁵ or the 2006 Rules⁶, governing the content of an application for an order under the Transport and Works Act 1992 and the procedure at an inquiry into such an application.

Statement sets out clarifications required of the Applicant, explains concerns in relation to the Environment Agency's late withdrawal of their objection, and notes concerns in relation increased flow velocity in the Bin Brock channel requiring mitigation.

⁴ Annex 1 to the DfT Circular 3/94 at paragraph 7(2) and (3).

⁵ The Transport and Works (Inquiries Procedure) Rules 2004, 2004 No. 2018.

⁶ The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, 2006 No. 1466.

- 10.2. Clare Hall does **not** allege that the Applicant has failed to comply with any deadlines set by the Inspectors. In particular, Clare Hall does **not** allege that the Applicant has failed to provide its evidence on flood risk in accordance with the statutory rules and other deadlines set by the Inspectors.
11. In these circumstances, the Costs Application must be approached on the basis that the Applicant has complied with all statutory and other procedural requirements and deadlines.
12. Therefore, the Costs Application depends on Clare Hall showing either:
- 12.1. that there was some information missing from the Applicant's Application (notwithstanding compliance with the statutory and procedural requirements) and that this omission was unreasonable; or
- 12.2. that the Applicant unreasonably failed to provide some other information requested by Clare Hall, despite otherwise complying with the statutory or procedural rules.
13. In both of these respects, Clare Hall must establish that the information allegedly omitted or not-provided was information which the Applicant was obliged to provide, exceptionally beyond the statutory framework and procedural framework set by the Inspectors, and that any omission or non-provision was unreasonable. This is especially the case in respect of information that was not in existence but which Clare Hall wished the Applicant to create through additional work.
14. As a matter of principle, it cannot be the case either (1) that the Applicant was obliged to respond to every request by Clare Hall; or (2) that any failure to provide information requested was unreasonable. Such an approach (which is implicit in the Costs Application) would impose an unreasonable and unjustified burden on the Applicant. Rather, the correct approach is to consider each request individually and to ascertain whether a response was required and, if a response was not provided, whether that was unreasonable. Clare Hall fails to adopt this approach in the Costs Application.
15. There is an important lack of particularity and detail in the Costs Application. Clare Hall makes broad brush allegations of omission or non-provision but fails to provide any specifics, in particular specifics as to why there was a (non-statutory) obligation on the Applicant to provide the particular information sought and why the response (or alleged absence of response) to that request was unreasonable. Ultimately, this lack of

particularity is fatal to the Costs Application. It also means that the Applicant can only respond in general terms, reflecting the nature of the Costs Application.

Overview of the engagement between the Applicant and Clare Hall

16. As will be apparent from the detailed chronology [CD27-04], there has been extensive engagement and a clear willingness from the Applicant to assist Clare Hall.⁷ The Applicant has responded to Clare Hall's numerous and substantial requests⁸ for information in a timely manner, despite the arbitrarily short time periods⁹ for response requested by Clare Hall.
17. It is particularly important to note that the Applicant offered to engage directly with Clare Hall's flood risk consultants on at least 3 separate occasions: (1) in Peter Blake's email of 14 February [CD27-05, pages 28 to 29]; (2) in Jo Baker's letter of 18 March [CD27-05, page 45]; and (3) in Graham Higgins' email of 30 July 2025 [CD27-05, page 139]. However, only the last offer to meet was taken up by Create.
18. The claimed failure to provide information resulting in unnecessary/wasted costs must be seen in this context. There was ample opportunity for Clare Hall to pursue its requests for information if it was dissatisfied by the Applicant's written responses (which is not accepted), but it failed to do so. This failure is particularly important because the Costs Application is based on an alleged requirement to provide information outside of the statutory framework and the procedural framework set by the Inspector. Such an allegation requires consideration of what steps Clare Hall has taken to deal with the issue as much as the Applicant's conduct.

Chronology of the engagement between the Applicant and Clare Hall

19. Dentons, on behalf of Clare Hall, responded to consultation on the Scheme on 8 July 2022 [CD27-05, pages 1 to 11]. A meeting was subsequently held on 29 November 2022 between Clare Hall and Greater Cambridgeshire Partnership ("GCP") at which Mr

⁷ [CD27-01, paragraph 4.1] notes that '...Clare Hall has been in contact with the Applicant since 2018...'. As can be seen from the Applicant's chronology engagement has been ongoing since 8 July 2022.

⁸ The requests from Clare Hall in respect of flood risk amount to 20 separate detailed points.

⁹ In their correspondence of 17 February 2025 [CD27-05, page 28], 21 February 2025 [CD27-05, pages 35 to 36]; and 25 March 2025 [CD27-05, page 49] Dentons requested substantial volumes of information within 10 days of receipt. Whilst the Applicant considered this timescale was arbitrary and unduly short given the volumes of information sought, the Applicant endeavoured to respond as promptly as possible.

Haider of Pulsar was identified by Clare Hall as their main point of contact. A subsequent meeting was held on 16 December 2022 to discuss technical matters raised by Clare Hall at which requests for information were made by Clare Hall and summarised in an email dated 3 January 2023 [**CD27-05, page 18**]. As can be seen, the requests for information in the email of 3 January 2023 included a request for a drawing of the proposed Bin Brook crossing, but did not include any requests for information concerning flood risk.

20. The Applicant responded to the email dated 3 January 2023 on 12 January 2023 [**CD27-05, page 21**]. This response included confirmation that the Applicant would be happy to discuss access issues and requested details of existing access rights and development plans. Further requests were made by Pulsar on 6 February 2023, and a response was provided by the Applicant on 9 February 2023 [**CD27-05, pages 20 and 21**]. Whilst flood risk was raised in Clare Hall's consultation response [**CD27-05, page 3**], it is apparent from these exchanges that no requests for flood risk information were made by Clare Hall in 2022 or 2023.
21. The Applicant first became aware that Clare Hall had undertaken its own flood modelling on review of Clare Hall's objection (OBJ 213) to the Scheme dated 7 January 2025 [**CD2-OBJ-213**]. At paragraph 2.3.2, Clare Hall's objection states (our emphasis):

"Clare Hall believes that, based on detailed flood modelling and mitigation reporting commissioned by the college, there is significant increased flood risk associated with the Scheme and that these risks have been inadequately assessed as part of the proposed route."

22. It is important to note at this juncture that Clare Hall had already commenced modelling work before the Application was made and outside of the period to which the Cost Application relates.
23. Following receipt of Clare Hall's objection, Peter Blake, on behalf of the Applicant, wrote to Clare Hall on 14 February 2025 specifically in relation to flood modelling and mitigation stating [**CD27-05, pages 28 to 29**]:

"We would be pleased to ask our consultants to engage with your advisors to understand these concerns in more detail."

In order to try and address the matter could you please provide the flood modelling and mitigation report referred to and a contact point to take this forward."

24. Dentons on behalf of Clare Hall responded by email dated 17 February 2025 [**CD27-05, page 28**]. They declined to provide Clare Hall's flood modelling to the Applicant because it was said to have not been finalised pending receipt of further information which was required from the Applicant.¹⁰ Attached to Dentons' email dated 17 February 2025 was a document prepared by Create containing "Queries of the Applicant" [**CD27-05, pages 30 to 33**]. This was the first time information was requested by Clare Hall from the Applicant in respect of flood modelling.
25. The request for information dated 17 February 2025 [**CD27-05, page 30**] contained a total of 20 detailed requests for information in relation to flood risk. The Applicant was also asked by Clare Hall to respond to a separate request for information in relation to transport matters dated 17 February 2025 [**CD27-05, pages 37 to 38**] containing 16 questions, and a request for information relating to heritage and landscape matters [**CD27-05, page 39**] containing 3 separate requests. In total, 39 different points were raised with the Applicant.
26. Due to the volume of the information sought, Clare Hall's request was initially acknowledged on behalf of the Applicant on 27 February 2025 [**CD27-05, page 34**] with confirmation that a response was being prepared. A response was subsequently provided by the Applicant on 18 March 2025 [**CD27-05, page 45** in respect of flood risk]. The cover email from Jo Baker, on behalf of the Applicant, made it clear that the Applicant was open to discussing these matters further [**CD27-05, page 43**].
27. The Applicant's letter of 18 March 2025 [**CD27-05, page 45**] also made it clear that there had been engagement with the Environment Agency during the pre-application stage; that pre-application comments on the model had been received from the Environment Agency; and that these comments had been addressed in the model submitted with the Application, stating (our emphasis):

"The CtoC FRA and supporting flood risk modelling was developed and run having first agreed the scope with the Environment Agency. The

¹⁰ This is despite the modelling being sufficiently finalised to (i) inform Clare Hall's objection as per [**CD2-OBJ- 213**], (ii) be referred to as 'detailed flood modelling' for the purposes of [**CD2-OBJ-213**] and (iii) inform Clare Hall's conclusion in [**CD2-OBJ-213**] that there is significant increased flood risk and inadequate assessment of flood risk.

Environment Agency were engaged via a pre-application agreement. They reviewed a baseline and the proposed modelling before providing feedback on required revisions. **These points were actioned and the FRA updated to reflect the Environment Agency's comments on the modelling.**

As part of the draft TWAO application the updated modelling was supplied to the EA for re-review."

28. Where details requested could be provided to Create at this stage, they were provided in the Applicant's letter of 18 March 2025 [CD27-05, page 45]. In some instances, the Applicant disagreed with the purpose, necessity or benefit of providing the requested information. However, where this was the case, the Applicant's position was explained and justified in that letter.
29. On 25 March 2025 [CD27-05, pages 49 to 50 in respect of flood risk], Dentons wrote to the Applicant seeking information which they felt had been omitted in the Applicant's response of 18 March 2025. On 8 April 2025, the Applicant provided a further response [CD27-05, pages 57 to 59 in respect of flood modelling] to address this. Again, where information could be provided to Clare Hall at that stage, it was set out in the letter. Many of Clare Hall's requests related to matters of detailed design and so it was explained that this information was not currently available.
30. Although it has never been expressly requested by Clare Hall, the Applicant took the view that it may assist Clare Hall to share the Applicant's full flood risk model with Create (for checking purposes) once it had been approved by the Environment Agency. The letter therefore explained:

"The Environment Agency undertook a review of the modelling during the pre-application engagement and are currently re-reviewing the updated modelling. We anticipate releasing the model comments sheets along with the model once this has concluded."

31. The Environment Agency had written to the Applicant on 15 November 2023 [CD27-05, page 23] to confirm the matters that needed to be addressed within the model to ensure it was suitable for its intended use. The Environment Agency also confirmed on 20 December 2023 that resolving "*...the red and orange items should resolve our concerns regarding the model*" [CD27-05, page 27].

32. Therefore, in parallel with engagement with Clare Hall, the Applicant was seeking to resolve the concerns of the Environment Agency set out in its objection letter dated 8 January 2025 [CD2-OBJ-301]. The Environment Agency's objection letter stated, *"The model will need to be re-submitted to the Environment Agency to ensure that these issues have been addressed. We therefore object until an acceptable model is submitted."*
33. Given the contents of the Environment Agency's objection, it would have been fully apparent to Clare Hall that the Applicant would be re-submitting the model to the Environment Agency for its review. As set out above, the Applicant also advised Clare Hall that its discussions with the Environment Agency were ongoing as at 8 April 2025. It is untenable for Clare Hall to say it was not aware of those discussions taking place. Indeed, these discussions are acknowledged in Dentons' letter of 17 July 2025 [CD27-05, page 106].
34. Clare Hall's Statement of Case [CD23-17] was submitted on 11 April 2025. This was ambiguous as to what, if any, information on flood risk Clare Hall considered was outstanding following the Applicant's correspondence of 8 April 2025. It stated that information provided by the Applicant on 8 April 2025 had yet to be fully reviewed. However, it still suggested that the Applicant had not adequately responded to the questions raised by Clare Hall (our emphasis):

"2.10 In addition, written requests for additional and clarificatory information were made to the Applicant on 17 February and 21 February 2025. A partial response was not provided by the Applicant until 18 March, which failed to provide the majority of the information requested. A further letter was sent to the Applicant on 25 March identifying the information still outstanding. Three days before the deadline to submit this SoC (being 8 April 2025), the Applicant provided a response to that letter

2.11 Accordingly, Clare Hall and its advisers **have not had sufficient time to review the information contained in the Applicant's Statement of Case or response to further requests for information** prior to the submission of this document and thus reserves the right to raise further details of objection in light of this." [CD23-17, page 5, paragraphs 2.10 to 2.11]; and

"6.3 Create raised a number of additional queries and requests for information from the Applicant which would help inform its modelling work and to better understand the impacts of the proposed Scheme. As noted above, responses to these requests were inadequate **and further information sought from the Applicant has not yet been provided.**" [CD23-17, page 12, paragraph 6.3]

35. In respect of the flood risk model, Clare Hall's Statement of Case did acknowledge that certain details requested by Clare Hall were provided by the Applicant on 8 April 2025, stating:

"It has recently been confirmed by the Applicant the exact model that has been used to support the FRA and has been used as the basis for the Applicant's analysis. Despite multiple requests for this information, it was only confirmed on 8 April 2025." [CD23-17, page 12, paragraph 6.4.2].¹¹

36. Importantly, no further requests in respect of flood modelling were received from Clare Hall by the Applicant until 17 July 2025 when there was a *"request that these discussions are extended more broadly to consider other specific matters, including flood risks raised by Clare Hall's consultants, so as to assist the Inspectors in producing a well-developed Statement of Common Ground"* [CD27-05, page 106].
37. Therefore, until Dentons' letter of 17 July 2025, **more than three months later**, it was entirely reasonable for the Applicant to proceed on the basis that its response of 8 April 2025 was acceptable to Clare Hall and that they agreed to the approach of being sent the model once it had been approved by the Environment Agency. In this regard, releasing of the model following the Environment Agency's approval of it is an entirely reasonable position for the Applicant to take (and no different than the position taken by Clare Hall in refusing to release its unfinished model to the Applicant in Dentons' correspondence of 17 February 2025 [CD27-05, page 28]).¹²

¹¹ Note that the basis of the model was actually first provided by the Applicant in its response dated 18 March 2025 [CD27-05, page 40]. In Create's email to WSP of 25 July 2025 [CD27-05, pages 139 to 140] following receipt of the model, Create stated that *"2.2 The exact model used as a starting point is now confirmed as the 2017 Gough Way Model"*, but this was confirmed in the Applicant's correspondence of 18 March 2025 [CD27-05, page 45] and again in the Applicant's correspondence of 8 April 2025 [CD27-05, page 57]. Claire Hall's Statement of Case acknowledged this [CD23-17, page 12, paragraph 6.4.2], but Clare Hall's position changed in Denton's letter of 17 July 2025 [CD27-05, page 108] erroneously stating that their query had not been addressed.

¹² It should be noted that Clare Hall has never released its model to the Applicant, despite having received the Applicant's model on 24 July 2025 and the further information requested on 8 August 2025.

38. In early April 2025, it had been hoped by the Applicant that the Environment Agency's review would be completed swiftly. The Applicant was confident that the pre-application requests made by the Environment Agency had been actioned in the submitted Application, as was explained to Clare Hall [**CD27-05, page 45**].
39. On 7 April 2025, the Applicant's flood risk expert wrote to the Environment Agency [**CD27-05, page 53**] to provide responses to their review documents and show how the Environment Agency's comments had been addressed in the model used for the Application. The Applicant also undertook to produce a technical note with the results of a sensitivity test on storm duration.
40. The Environment Agency's email of 9 April 2025 [**CD27-05, page 61**] explained that the responses would be reviewed at the same time as the technical note [**CD27-05, pages 63 to 68**] which was subsequently produced and submitted to the Environment Agency on 2 May 2025 [**CD27-05, page 62**]. The Environment Agency's email of 7 May 2025 [**CD27-05, page 69**] explained they would require 10 working days to review the information and suggested a meeting from 22 May 2025 onwards. However, on 13 May 2025 the Environment Agency explained that the re-review would need to be undertaken by external consultants [**CD27-05, pages 76 to 77**] and as the review would take 4 weeks, on 16 May 2025 the Environment Agency suggested a meeting in the week commencing 23 or 30 June 2025 [**CD27-05, page 74**].
41. The Costs Application questions why there was a gap in engagement between the Applicant and the Environment Agency between February 2025 and July 2025. The Applicant had already informed Clare Hall that the Environment Agency's pre-application requests had been actioned in the submitted Application in its letter of 18 March 2025 [**CD27-05, page 45**] and that the model had been resubmitted to the Environment Agency for re-review [**CD27-05, page 57**]. Following the provision of further information by the Applicant to the Environment Agency in April/ May 2025, there was nothing further that the Applicant could do other than chase the Environment Agency to review that information and the model, and to confirm their position having seen it.¹³
42. From 10 June 2025, the Applicant continued to chase the Environment Agency for an update [**CD27-05, page 86**] and on 20 June 2025, the Environment Agency said that they were working to respond by 5 July 2025 or sooner if possible [**CD27-05, pages 82**

¹³ On 17 July 2025, the Environment Agency were still undertaking their review of the model [**CD27-05, page 114**] and so no substantive update could be provided to Clare Hall on the Environment Agency's position between February and July 2025 (despite the Applicant regularly chasing the Environment Agency for an update as per the Applicant's Chronology [**CD27-04**]).

to 83]. Following the Applicant's further chasing on 1 July 2025 [CD27-05, page 102], the Environment Agency revised their internal deadline of 25 July 2025 and explained that it was not possible to complete the review sooner due to resourcing issues [CD27-05, page 100].

43. At this stage, on behalf of the Applicant, Womble Bond Dickinson wrote on 7 July 2025 to the legal officer at the Environment Agency to escalate the lack of progress [CD27-05, pages 115 to 116]. Chasing of the Environment Agency's response continued by Womble Bond Dickinson and WSP during the remainder of July and early August 2025.
44. In the period between 8 April 2025 and 17 July 2025, correspondence continued between the Applicant and Clare Hall, as can be seen from the detailed chronology [CD27-04], and a site meeting took place with both parties in attendance on 10 June 2025.¹⁴ At no point until 17 July 2025 did Clare Hall assert that the responses provided on 8 April 2025 in respect of flood modelling were insufficient or that in view of ongoing delays in the Environment Agency's approval of the model, it should be released to Clare Hall in advance of that approval. It is entirely reasonable for the Applicant to expect that Clare Hall would have raised this with the Applicant before 17 July 2025 if earlier receipt of the model had been so important to Clare Hall's case.
45. In the correspondence of 17 July 2025, and for the first time since their correspondence of 25 March 2025, Dentons referred to their previous requests for information and stated [CD27-05, page 107]:

"We continue to believe that many of the queries and concerns have not been addressed satisfactorily or indeed at all."

46. When the Applicant received Denton's letter of 17 July 2025, the model was promptly released and made available to Dentons, within one week, on 24 July 2025 [CD27-05, pages 121 to 122]. This was because of the Applicant's concerns that the Environment Agency was continuing to delay and extend the expected date for reviewing the model beyond anything which could have been expected by the Applicant.¹⁵

¹⁴ In this respect, it should be noted that the primary purpose of the site visit was to discuss heritage matters. Jo Baker (on behalf of the Applicant) first requested a site meeting on 2 May 2025 [CD27-05, page 93], but no response was received from Dentons until 19 May 2025 [CD27-05, page 93] to confirm that the principle of a site visit was agreed, following which a site visit was subsequently arranged for 10 June 2025 [CD27-05, page 90]. Other matters, including access rights were also discussed at the site visit as per David Conboy's minutes [CD27-05, page 98] prepared on behalf of Clare Hall.

¹⁵ The initial timescales for the Environment Agency's review were 22 May 2025 [CD27-05, page 69], extending to 23 June 2025 [CD27-05, page 74], extending to 5 July 2025 [CD27-05, page 82 to 83], extending to 25 July [CD27-05, page 100], extending to 1 August 2025 [CD27-05, page 139], extending

47. Even after the Applicant released its model to Clare Hall, Create continued to raise a number of points¹⁶ as seen in their email dated 25 July 2025 [CD27-05, page 139 to 140]. These requests were ambiguous [CD27-05, page 139]¹⁷, and it was unclear what further information Create required. As a result, WSP suggested that a meeting be arranged to discuss matters further. A meeting was subsequently held on 7 August 2025, following which the Applicant provided further information to Create on 8 August 2025 [CD27-05, pages 144 to 145]. No further flood risk information has been requested by Clare Hall from the Applicant to date.
48. Once Clare Hall realised the Environment Agency had withdrawn their objection, they proceeded to engage directly with the Environment Agency in an attempt to encourage them to change their position [CD27-02, pages 63 to 64]. Clare Hall have also continued to rely on their model and the updates made to it [CD26-08-W3-3] so there can be no question of Clare Hall have incurred wasted or aborted costs. Given Clare Hall's fundamental opposition to the Scheme, their disappointment that the Environment Agency withdrew its objection is perhaps understandable but, for the reasons explained above, this should not have been unexpected and the lateness of that withdrawal was in no way as a result of the Applicant's conduct in the inquiry.

Conclusions on Issue 1

49. Having regard to the matters above, the Applicant submits that it has not behaved unreasonably.
50. **First**, the information provided in the Application was adequate and there was no omission that was unreasonable. In this regard:
- 50.1. No changes to the Application have been made as a result of ongoing engagement with the Environment Agency, who withdrew their objection to the Scheme on 19 August 2025 [CD28-01].
- 50.2. Clare Hall has failed to identify precisely in the Costs Application what information it says was omitted from the Application and Clare Hall has failed to explain why that omission was unreasonable.

to 6 August 2025 [CD27-05, page 137] and being confirmed on 8 August 2025 [CD27-05, pages 144 to 145].

¹⁶ Create raised 13 points which they said had still not been addressed despite having received the full model from the Applicant.

¹⁷ Graham Higgins' email of 30 July 2025 states: "*We suggest that Jack meets with you when he is back from leave to discuss your various points below, to ensure we understand exactly what information you need, noting that some of the items below are **statements rather than questions**.*" (Our emphasis).

50.3. The Applicant notes there is an apparent dispute between Create on behalf of Clare Hall and WSP on behalf of the Applicant as to what information is “expected” in a flood risk assessment.¹⁸ However, what might be expected is not the same as what must be provided in order to avoid behaving unreasonably. It is notable that neither Clare Hall nor Create have referenced any failure to comply with best practice guidance or policy in the preparation of any of the Application documents.

51. **Secondly**, the Applicant has not unreasonably failed to provide any information requested by Clare Hall. In particular:

51.1. The Applicant responded to Clare Hall's request for information of 17 February 2025 on 18 March 2025 [**CD27-05, page 45**] and on 8 April 2025 [**CD27-05, page 57**]. This was a reasonable timescale within which to respond given the extensive nature of the requests made (which included matters additional to flood risk) and particularly as one week in this period was taken up by Clare Hall's delayed response of 25 March 2025 to the Applicant's letter of 18 March 2025.

51.2. In the first of the Applicant's responses on 18 March 2025, not only was information provided, but the Applicant also stated – in respect of all queries related to flooding – that (our emphasis):

‘The Create report includes several requests to see **existing information**, as well as requests for information that **necessitate the preparation of additional materials**. We would be happy **to provide the former and to discuss these with you and your consultants**, while also seeking to address other queries in the Create report. **The provision of any further information, especially where this necessitates additional work, can be agreed on a case-by case basis.**’ [**CD27-05, page 45**].

51.3. The available existing information was provided, as explained. However, Clare Hall never took up the opportunity to discuss matters with the Applicant.

51.4. In the second of these responses on 9 April 2025 an itemised response was provided to each numbered item in Clare Hall's letter of 25 March 2025. Information was provided and where it was not provided a reason was given.

¹⁸ Note, Create refer to ‘*items that we would expect to see in an FRA*’ [**CD 27-02 at [1.1] on p. 5**] but does not say that such items are requirements of an acceptable FRA.

- 51.5. It is notable that Clare Hall has not explained that the Applicant's response on each point – both at 18 March 2025 and 9 April 2025 – was unreasonable. In particular, where the Applicant explained that it would not be providing the requested information at that time, Clare Hall has not explained why that approach was unreasonable.
- 51.6. Despite significant ongoing engagement between the parties, Clare Hall did not at any time assert that the response provided on 8 April 2025 was inadequate until Dentons' letter of 17 July 2025 [CD27-05, page 106]. Following receipt of this further request for information, the Applicant provided the flood risk model to Create promptly on 24 July 2025 [CD27-05, pages 121 to 122], even though it had still not been approved by the Environment Agency at that point in time.
- 51.7. A meeting was held on 7 August 2025 [CD27-05, page 145] to discuss Create's additional requests for further information of 25 July 2025, following which additional information was provided the very next day on 8 August 2025 [CD27-05, pages 144 to 145]. No further requests for information have been received by the Applicant from Clare Hall in relation to flood risk matters.
52. In these circumstances, there has been no unreasonable behaviour as alleged in the Costs Application.

ISSUE 2 – WHETHER THE ALLEGED UNREASONABLE CONDUCT HAS RESULTED IN UNNECESSARY OR WASTED COSTS

53. The Applicant submits that even if it has behaved unreasonably (which is denied) this has not resulted in any unnecessary or wasted costs.

The critical question in respect of this issue

54. The unreasonable conduct alleged is **the delay** in providing information. The unreasonable conduct is **not** the provision of further information (particularly as it was Clare Hall who sought this information).
55. Accordingly, the critical question is whether **the delay** (which is denied in any event) has resulted in Clare Hall incurring unnecessary or wasted costs.

56. If the costs claimed would have been incurred in any event, notwithstanding the alleged delay, then they are not unnecessary or wasted costs.¹⁹

The itemised costs at paragraph 6.1(a)(i) – (iii) of the Costs Application

57. Notwithstanding the generalised complaints in the Costs Application, it is only at paragraph 6.1(a) of the Costs Application that Clare Hall particularises the claimed costs.
58. Each head of claim in paragraph 6.1(a) is addressed below, but before doing so it is important to note that Clare Hall instructed Create to undertake flood modelling on 7 May 2024 [CD27-01, paragraph 4.2] and it was later updated on 12 November 2024 [CD27-01, paragraph 4.3]. This was therefore done without Clare Hall giving any notice of its intention to undertake flood modelling to the Applicant²⁰, and prior to Clare Hall making any request in respect of flood modelling to the Applicant.²¹
59. **Paragraph 6(a)(i).** The alleged delay did not cause Create to update its own hydraulic modelling following submission of the Application. Even if it was reasonable for Create to produce its own hydraulic model (which is not conceded), it was always the case that this model which was voluntarily produced before the Application was made would need to be updated on the making of the Application. The alleged delay does not change this fact: it might go to when the update occurred (although no details are given by Clare Hall) but this does not change the fact that the costs of updating the model were inevitable and thus neither unnecessary or wasted. This is all the more the case as there is no allegation of unreasonable conduct before the lodging of the Application.²²
60. **Paragraph 6(a)(ii).** The response to paragraph 6(a)(i) applies equally here. It was always the case that the model would need to be updated on the provision of further information by the Applicant. The alleged delay does not change this fact. Critically, Clare Hall has not (and, logically, cannot) say that it would not have updated its model if the information requested had been provided at some earlier time.
61. **Paragraph 6(a)(iii).** This head of claim is hopeless for three reasons.

¹⁹ Even if the costs would have been incurred at a different point in time, which is immaterial.

²⁰ [CD27-01, paragraph 4.2] confirms that Create obtained the EA's most up to date model by way of a Freedom of Information request

²¹ The first request from Clare Hall to the Applicant in respect of flood modelling was received on 17 February 2025 [CD27-05, page 28]

²² Note, in particular, the start of the paragraph 6(a) – 'from the date of the acceptance of the Application'.

61.1. **First**, it is based on the Environment Agency's "late withdrawal" of its objection, not the Applicant's conduct or the alleged delay in providing information to Clare Hall.²³ The fact that the Environment Agency's objection was withdrawn at a late stage during preparation of the inquiry can in no way be attributed to the fault of the Applicant or due to the Applicant's unreasonable conduct during the course of the inquiry. Rather, as explained, it was a result of the Environment Agency's own processes. The Applicant alerted Clare Hall to the withdrawal at the first opportunity, on the day it received written confirmation of this from the Environment Agency's case officer and prior to the formal withdrawal of the Environment Agency's objection [CD28-01].

61.2. **Secondly**, even if the Environment Agency's late withdrawal was as a result of unreasonable conduct by the Applicant (which is not accepted), the timing of the Environment Agency's withdrawal has not resulted in any unnecessary or wasted costs. If the Environment Agency had withdrawn its objection at an earlier point in time or, alternatively, not objected at all, Clare Hall would still have incurred costs in considering the Environment Agency's position.

61.3. **Thirdly**, it is apparent that a great deal of Clare Hall's costs under this head are likely to relate to its attempts to persuade the Environment Agency to change its position or in challenging the Environment Agency's position (see, for example, the correspondence between Clare Hall and the Environment Agency [e.g. CD27-02, pages 63 to 64]). In any case, these costs did not arise from the Applicant's conduct and are therefore not recoverable from the Applicant. Instead, the expenses were incurred by Clare Hall due to actions taken by the Environment Agency, not the Applicant.

62. For these reasons, the Costs Application is fundamentally flawed because it simply seeks to claim costs which either (1) would have been incurred in any event, irrespective of any alleged delay, or (2) are as a result of the EA's conduct, not the Applicant's conduct.

Other matters

63. Without prejudice to the specific response above, the Applicant makes the following additional submissions:

²³ It is important to note that Clare Hall does not allege that the Applicant unreasonably delayed the provision of information to the EA. This would be utterly unsustainable on the facts set out in the chronology prepared by the Applicant [CD27-04].

63.1. Even today, having received the information requested, Clare Hall continues to oppose the Scheme on the grounds of flooding: see Mr Sinclair’s “Position Statement” [CD26-08-W3-3]. Clare Hall has not withdrawn its evidence on flooding and, seemingly, still intends to call Mr Sinclair, notwithstanding the provision of all the requested information. **Clare Hall could have reviewed that material and decided not to call Mr Sinclair, but it has not done so.**

63.2. Thus, this is not a case – in notable contrast to the Department’s guidance relied on by Clare Hall²⁴ – where unreasonable conduct has caused an objector to call a professional witness to attend unnecessarily. It appears that Clare Hall still intend to call Mr Sinclair to give evidence. Thus, the alleged delay has clearly had no impact on Mr Sinclair’s attendance to the inquiry.

CONCLUSION

64. For the reasons set out above, the Costs Application should be refused.

Womble Bond Dickinson (UK) LLP

14 October 2025

²⁴ [CD27.01] at [3.3] on p. 2.