

IN THE MATTER OF:

THE PROPOSED CAMBRIDGESHIRE COUNTY COUNCIL

CAMBOURNE TO CAMBRIDGE ORDER

APPLICANT'S CLOSING SUBMISSIONS

I. INTRODUCTION

1. We opened this case by noting the near universal agreement that there is a need to provide a reliable public transport service between Cambourne and Cambridge. That remains the position.
2. Meeting that need is a pressing priority if the Government's ambitions for growth at Cambridge are to be realised.
3. There is little dispute that the proposed guided busway ("**the Busway**") will meet that need.
4. It is now clear that there is no realistic and deliverable alternative means of meeting that need.
5. If the need is to be met, the national ambitions for Cambridge fulfilled, and the local plan and emerging plan strategy supported, the order must be made. Mr Freeman, with all his extensive knowledge and experience was plain: if a decision is taken not to proceed with a scheme which has been in contemplation for 11 years it will undermine confidence in the Government's ability to drive growth. A decision not to make the order would send a negative signal to the investors that this country so badly needs.
6. It follows that in order to persuade the Secretary of State not to make the order, objectors would have to advance convincing arguments that harm caused or disadvantages associated with the scheme were so substantial as to justify taking a decision which would prevent that need being met,

and that the alleged harm is so significant as to justify casting aside the imperatives set out in national and local policy.

7. It is clear from the evidence that none of the objections advanced come anywhere near to providing a reason to cast aside clear national and local policy objectives.
8. In Opening we explained the status of the Applicant and the applications which have been made. We rely upon, but do not repeat, those submissions.
9. We will adopt the matters on which the Secretary of State wishes to be informed¹ as headings and then turn to the overall balance.
10. We also ask you note agreement has been reached between the Applicant and a number of parties with significant interests (including those with regulatory functions):
 - 10.1. The Environment Agency withdrew their objection².
 - 10.2. Historic England do not object³.
 - 10.3. An agreement has been made between the Applicant and National Highways in relation to the M11 overbridge⁴. National Highways have re-iterated that they are supportive of the scheme and agree⁵ that the state of negotiations is as set out in Mr Franklin's schedule⁶. It is proposed that two plots are to be removed from the order⁷. National Highways supportive position is of particular importance given that exercise of certain powers is dependent on their consent⁸.
 - 10.4. The following objections have been withdrawn:

¹ CD25-01

² CD25-17

³ CD2 Rep 08.1 and 08.2

⁴ Letter from National Highways 16th October 2025: CD29-84

⁵ CD29-95

⁶ CD29-90

⁷ Plots 9-095 and 9-096 – see note on draft order section 2. See the section on programme on the inquiry website

⁸ See Article 23(2) of the draft order, and see also Part 8 of the draft order

- 10.4.1. The National Trust⁹.
- 10.4.2. Clare Hall (together with their evidence, all other representations and its claim for costs)¹⁰.
- 10.4.3. Bedlam Farming Company and Chivers Farms Limited¹¹.
- 10.4.4. Cambridge University Rugby Union and Associations of Football Trust Limited¹².
- 10.4.5. Cadent Gas¹³.
- 10.4.6. East West Railway Company Limited¹⁴

- 11. At the time Mr Franklin gave evidence the position in relation to statutory objectors is set out in CD25-25. Cadent Gas' withdrawal occurred after that schedule was produced.

II. MATTER 1 - AIMS, OBJECTIVES AND NEED FOR THE BUSWAY

- 12. The scheme objectives¹⁵ are worthy of being set out in full:
 - 12.1. achieve improved accessibility to support the economic growth of the Greater Cambridge region;
 - 12.2. deliver a sustainable transport network/system that connects areas between Cambourne and Cambridge along the A428/A1303 transport corridor; and
 - 12.3. contribute to enhanced quality of life by relieving congestion and improving air quality within the surrounding areas along the A428/A1303 corridor and within Cambridge City.

⁹ CD28-02

¹⁰ CD28-03

¹¹ CD28-05

¹² CD28-04

¹³ CD28-06

¹⁴ CD28-07

¹⁵ CD1-04 paragraph 4.1

13. There has been little or no challenge to the scheme aims¹⁶ and objectives or to the identified key drivers for the need for change¹⁷. They may not be shared by all, but the vast majority of those participating in the inquiry see it as desirable that those aims and objectives be advanced.
14. In order to deliver those objectives it is necessary to deliver a reliable public transport service between Cambourne and Cambridge.
15. Greater Cambridge has a vital role to play in the Government's mission to 'kickstart' economic growth¹⁸. The local plan strategy received express endorsement in the Case for Cambridge¹⁹. In his letter appointing Peter Freeman as Chair of the Cambridge Growth Company, Matthew Pennycook MP set out the Government's priorities²⁰. Those priorities include developing an evidence base to support development of an infrastructure first growth plan. The current government's emphasis on growth in Greater Cambridge also places emphasis on building on (and going further than) local plans²¹. The Government's support for the local plan strategy could not be clearer.
16. A central element of the adopted local plan strategy is to promote strategic scale development at Cambourne. 2 out of the 3 strategic scale developments identified in policy S/6(3)²² of the South Cambridgeshire Local Plan are at Cambourne – a new village at Bourn Airfield and Cambourne West.
17. The new village at Bourn Airfield is dependent on significant improvements in public transport provision including provision of high quality bus priority measures or busway on the CtoC route²³. That dependency is demonstrated by the imposition of condition 13 on the Bourn Airfield planning permission²⁴ (which provides that no more than

¹⁶ CD1-04 paragraph 4.2

¹⁷ As set out in paragraph 8.1 of CD1-20-5 The Strategic Case

¹⁸ Matthew Pennycook MP letter 23rd August 2024 CD7-43 page 1

¹⁹ CD7-01 page 33

²⁰ CD7-39 page 4

²¹ CD7-39 page 4

²² CD6-02 page 40

²³ Local plan policy SS/7(8)((a)(iii) CD 6-02 page 86

²⁴ CD4-06 page 13

500 (of the 3,500) dwellings shall be occupied until the CtoC scheme is operational). As Mr Kelly explained, given the early investment required to bring forward a development of this scale, investors and funders are unlikely to incur expenditure until it is known that the full 3,500 units can be delivered. Mr Sensecall took a similar view. Mr Kelly also explained the background to the imposition of condition 13 – the members decided to delete the ‘facility’²⁵ to agree a variation as had been suggested by officers.

18. It is clear from the policy framework and the specific terms of the planning permission that the order scheme is required in order to unlock the major development anticipated at Bourne Airfield.
19. Contrary views – such as that put by the Mayor when he said in oral evidence that such conditions can be changed “by agreement” – are unrealistic and incorrect. It now appears from the Mayor’s closing submissions that it was based on a mistaken understanding that the restriction was “in the Section 106 agreement”.²⁶
20. A similar policy approach is taken in relation to Cambourne West. The policy provides that the development will need to address the provision of high quality segregated bus priority measures on the A1303 corridor²⁷. Mr Kelly explained that when planning permission was granted for the Cambourne West scheme the view was taken that the busway scheme could be secured by requiring the developer to make phased financial contributions – the decision was taken in the light of the City Deal arrangements which secured funding for the busway.
21. At the same time as promoting a significant scale of development at Cambourne, West Cambridge is promoted as an academic and employment centre of significant scale – Policy 19 in the Cambridge Local Plan²⁸ identifies the West Cambridge Area of Major Change. As noted in the reasoned justification, key to the success of the proposals is an

²⁵ The officers had suggested a ‘tailpiece’ which would have allowed the condition to be varied by agreement

²⁶ At PDF p. 5, third paragraph.

²⁷ CD6-02 page 92 – policy SS/8(12)(b)

²⁸ CD6-01 page 80

integrated and sustainable transport strategy which includes public transport²⁹. The outline planning permission which has been granted is a model for the type of development which makes Cambridge a focus of the Government's growth ambitions – it combines academic and research floorspace with commercial areas (the permission is for 383,000m² of floorspace comprising up to 370,000m² of academic floorspace of which not more than 170,000m² will be commercial³⁰). This is the very type of development proposal which will facilitate the in person interactions³¹ which lie at the heart of the Cambridge phenomenon. Realising this development at this scale, is dependent upon the public transport service which the order scheme will provide.

22. The emerging local plan goes further. It is designed to meet the need for 73,300 additional jobs to support knowledge intensive employment, and a minimum of 48,195 new homes over the plan period (2024-2045)³² whilst also looking beyond that period.
23. Among the factors which influenced the plan strategy are the constraints imposed by GB³³ and the opportunities offered by existing and committed public transport schemes including the order scheme³⁴.
24. The spatial strategy which has been devised to meet that need whilst respecting the constraints and taking advantage of schemes such as CtoC is well illustrated by Figure 75³⁵.

²⁹ CD6-01 page 83 – paragraph 3.74

³⁰ CD4-05

³¹ Kelly XiC

³² CD29-71-2 page 49 Policy S/JH(1)

1. The need for jobs and homes will be met as far as possible in the following order of preference, having regard to the purposes of the Cambridge Green Belt:

a. Within the Cambridge urban area;

b. On the edge of Cambridge;

c. At an expanded Cambourne;

d. At other new settlements; and

e. In the rural southern cluster and wider rural area at Rural Centres and Minor

Rural Centres.

³³ CD29-71-2 policy SD/S Development Strategy

³⁴ CD29-71-2 paragraph 2.88

³⁵ CD29-71-4 page 3

25. As Mr Kelly explained the opportunity to expand Cambridge further without harm to GB purposes is almost exhausted³⁶. As a result it is necessary to look beyond the GB. The emerging local plan strategy reflects that position – as it promotes strategic sites beyond the GB, such as at an expanded Cambourne. That strategy depends upon the delivery of transport infrastructure early in the process. The order scheme is an essential part of that infrastructure³⁷.
26. Delivery of many key policies in the emerging local plan are dependent upon the order scheme.
- 26.1. Policy S/CB for Cambourne is premised upon the basis that the order scheme will be delivered and expanded³⁸.
- 26.2. Policy S/CBN (allocation of Cambourne North for approximately 13,000 homes and 108,000 sq. m of employment floorspace) is also based upon a premise that the CtoC busway will be integrated within the new development³⁹.
- 26.3. The policy for West Cambridge explains that connectivity is dependent upon the order scheme⁴⁰.
27. Mr Kelly's conclusions are based upon the detailed work that has been undertaken to support the emerging local plan. That work includes the Bus Integration Report which states that due to current network constraints, development at Cambourne will be subject to a vehicular trip budget⁴¹. The provision of CtoC is essential in order to allow the anticipated level of development to take place, whilst not exceeding the vehicular trip budget.
28. The views of Mr Kelly should be given particular weight. He spoke as the Joint Director of Planning for the Greater Cambridge Shared Planning

³⁶ Kelly XiC

³⁷ Kelly XiC

³⁸ CD29-71-4 Policy S/CB(12) on page 27

³⁹ CD29-71-4 S/CBN(38)(b) on page 13

⁴⁰ Policy S/WC (4) CD29-71-3 on page 137

⁴¹ CD29-71-1 page 7

Service of behalf of South Cambridge District Council and Cambridge City Council – the head of the service responsible for the local plans. He said there is absolute alignment between the order scheme and the local plan strategy.

29. There can be absolutely no doubt that the CtoC scheme is required in order to deliver the existing and emerging local plan strategy. The need to provide the scheme is abundantly clear. Indeed there are few applications which benefit from such strong policy support.
30. In addition to the strong policy support, and the need based upon providing a public transport scheme to facilitate and support the local plan strategy, the scheme will also meet a need to address delays and unreliability which affect traffic movements and the current bus services.
31. The transport network is unable to accommodate vehicle movements (based on 2041 Do Minimum baseline transport conditions). Volume to capacity (V/C) figures for junctions in the study area demonstrate V/Cs of greater than 100% at 24 locations in the AM peak⁴², 6 locations in the interpeak period⁴³, and 28 locations in the PM peak⁴⁴. On Madingley Road between the Madingley Mulch roundabout and the M11 junction, the model predicts eastbound congestion in the AM peak and east and westbound congestion in the PM peak.
32. Whether one takes the model outputs based upon the F series model⁴⁵ or Mr Leigh's inbound journey time information for 2024⁴⁶, it can be seen that there is significant variation in bus journey times on the A1303. That variation and the consequent unreliability of the service demonstrates the transport need for the scheme.
33. As a result most objectors do not seek to argue that there is no need for enhanced public transport provision; they accept there is a need.

⁴² CD1-25 paragraph 6.3.8 on page 35

⁴³ CD1-25 paragraph 6.3.10 on page 36

⁴⁴ CD1-25 paragraph 6.3.12 on page 37

⁴⁵ Cd1-21-02 Table 4-4 on page 13 pdf

⁴⁶ Leigh Figure 13.1.1 on page 66 CD26-10-W3-1

34. The position is best demonstrated by considering the position of CPPF/Coton Parish Council:

34.1. CPPF agree with the scheme objectives (as set out above)⁴⁷.

34.2. Mr Johnstone accepted that an intervention is necessary in order to address bus delays between Cambourne and Cambridge whether based on the 2019 figures (or CPPF's 2024 figures). He said that there was a policy requirement for such a scheme. Mr Johnstone also accepted that the Applicant's scheme would meet the need (whilst arguing that the CPPF alternative is to be preferred).

34.3. Mr Leigh agrees that there is a need (in principle) for a reliable public transport service between Cambourne and Cambridge and that an intervention is required in order to meet that need and achieve the scheme aims and objectives⁴⁸.

34.4. Mr Littlewood says that there is a compelling need to improve public transport between Cambourne and Cambridge⁴⁹. Mr Littlewood went on to agree that the Applicant's scheme will meet that need⁵⁰. He also said that CPPF did not seek to challenge the strategy set out in the adopted local plan⁵¹.

35. Other objectors took the same view. As examples:

35.1. Mayor Paul Bristow supports growth at Bourne Airfield and Cambourne and that in order to facilitate that growth there is a need for a transport scheme in the form of the CtoC scheme or equivalent⁵².

⁴⁷ Littlewood XX

⁴⁸ Leigh XX

⁴⁹ Littlewood XX, and PoE 6.3(i)

⁵⁰ Littlewood XX

⁵¹ Littlewood XX

⁵² Bristow XX

- 35.2. Mr Davidson accepts the principle of a Cambourne to Cambridge busway and that it is needed to serve the Cambridge West development⁵³.
- 35.3. The Coton Busway Action Group ("CBAG") supports the initiative to provide better public transport links between developments west of Cambridge and employment and education opportunities in and around the city⁵⁴.
- 35.4. The Federation of Cambridge Residents Associations considers that improving public transport, including from Cambourne to Cambridge, should be a priority⁵⁵.
- 35.5. Dr Green said that a busway to West Cambridge is desirable⁵⁶.
36. Mr Leigh suggested that, as the worst congestion is experienced in the AM peak there is no requirement for a two way busway. Such a suggestion is inconsistent with the acceptance of a need for a reliable public transport service between Cambourne and Cambridge. A bi-directional segregated busway eliminates the possibility of interference from other road users, and thereby provides the greatest reliability⁵⁷. If, as agreed, the need is for a reliable public transport system, that need would not be met by a one-way only route. Even Mr Leigh (in his report) recognises the difficulties with a one-way route and contemplates that further interventions may be necessary (westbound at Madingley Mulch)⁵⁸.
37. For those reasons it is clear that:
- 37.1. It is widely accepted that there is a need to provide reliable public transport between Cambourne and Cambridge.

⁵³ Davidson XX

⁵⁴ CBAG PoE page 3, CD26-06-1

⁵⁵ XX Blythe

⁵⁶ XX Green

⁵⁷ CD13-11 page 15 first paragraph under Table 3

⁵⁸ CD7-10 page 21 paragraph 4- Feb 2021 Edward Leigh report

- 37.2. Without a scheme to provide such a public transport, the Government's aims for growth at Cambridge will be thwarted and the local plan and emerging local plan strategy will fail.
- 37.3. The scheme objectives are wholly desirable. The scheme will meet the identified and acknowledged need, and will support the local plan and emerging local plan strategy.
- 37.4. In the absence of a deliverable and preferable alternative the order must be made so that the need can be met and the policy objectives achieved.

III. MATTER 2 - WHETHER ALL STATUTORY PROCEDURAL REQUIREMENTS HAVE BEEN DEALT WITH

38. The submissions we make in this section of the closing are restricted to procedural requirements relating to the making of the application for the order (as distinct from any other statutory requirements).
39. The County Council has complied with the procedural requirements in relation to the making of the applications as set out in the Note dated 19 June 2025.⁵⁹
40. There is no substantive challenge on this matter from other parties.
41. On the first day of the inquiry we told the inquiry that the requirements of rule 13(6)(b) of Transport and Works (Inquiries Procedure) Rules 2004 ("**the 2004 Rules**")⁶⁰ had not been complied with, in that the notices posted at the South Cambridgeshire District Council and Cambridge City Council offices, being the places where public notices are usually posted in the area in which the proposals contained in the application relate, were not put on the notice boards 2 weeks before the date fixed for commencement of the inquiry.

⁵⁹ CD 25-04.

⁶⁰ CD5-17

42. Rule 13(6)(a) and (c) were complied with in full. In addition further steps had been taken by the Applicant to publicise the inquiry⁶¹.
43. The approach to be taken when considering a failure to comply with a statutory procedural requirement was summarised in *A1 Properties (Sunderland) Ltd v Tudor Studios* [2024] 3 WLR 601 at [61]⁶² per Lords Briggs and Sales JJSC (with whom the other members of the court agreed):

“The point of adoption of the revised analytical framework in *Soneji* was to move away from a rigid category-based approach to evaluating the consequences of a failure to comply with a statutory procedural requirement and to focus instead on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process is armed notwithstanding the breach of the procedural requirement.”

44. From this, the following principles emerge:
- 44.1. A failure to comply with a procedural requirement does not automatically invalidate a step taken.
- 44.2. To determine the consequences of a procedural failure, an evaluation of the following factors must be undertaken:
- 44.2.1. The purpose served by the requirement.
- 44.2.2. The specific facts of the case having regard to any and what prejudice might or has been caused.
- 44.2.3. Whether any injustice might arise.

⁶¹ CD29-10 paragraph 5

⁶² CD29-06

45. Our submissions dated 16th September 2025 addressed purpose, prejudice, injustice and fairness⁶³. We repeat those points adapted to take account of the fact that the two week period from first publication has now elapsed.
- 45.1. **Purpose.** First, the purpose of rule 13(6)(b) is to give notice of the inquiry to persons who are not active participants (given such active participants will otherwise have been aware of the inquiry through the preparation of their evidence etc. which has to be submitted the required four weeks before the inquiry commences⁶⁴).
- 45.2. **Prejudice.** Secondly, the potential prejudice arising is that a non-active participant may not be alert to the inquiry starting. However, that prejudice was wholly avoided in this case because the Applicant published the notices on 16th September 2025. Therefore, given the inquiry has lasted well beyond two weeks, any non-active participant who saw the notice on 16th September 2025 (or in the two weeks thereafter) had the ability to attend the inquiry before it closes and make any representations (at the Inspectors' discretion) which they wish to make. In addition, as the inquiry has been livestreamed (and the recording is available on YouTube) any person who had not been able to attend has been able watch the recording.
- 45.3. **Injustice.** Thirdly, in circumstances where the potential prejudice has been wholly avoided (as explained in the preceding paragraph), no injustice has arisen.
- 45.4. **Fairness.** Fourthly, a non-active participant who saw the notice later than otherwise would be the case and decided to attend the inquiry would not only have the opportunity to be heard (as explained above) but would be in a better position than a similar person interested in an inquiry into an appeal pursuant to section 78 of the Town and Country Planning Act 1990 who would have received no notice.

⁶³ CD29-10 pages 7-8

⁶⁴ CD5-17 2004 Rules rule 16(3)(a)

46. Having considered the submissions set out in CD29-10 and those made orally at the inquiry, the inspectors decided that the inquiry could continue despite the failure to adhere to Rule 13(6)(b) and we invite the Secretary of State to endorse their decision.

IV. MATTER 3 – MAIN ALTERNATIVES CONSIDERED

47. Consideration of alternatives is an important issue in this case.
48. Most objectors accept, there is a need to provide improved and reliable public transport between Cambourne and Cambridge. Most objectors also accept that the Applicant's scheme would meet that need.
49. As a result a very large number of objectors object to the Applicant's scheme on the ground that there is a deliverable alternative which will achieve the scheme aims (and objectives) whilst causing a lesser degree of environmental harm. If there is no such deliverable alternative most of the objectors' cases fall away. In addition the arguments against taking a busway across agricultural land and a County Wildlife Site in the Green Belt are also much diminished. Indeed if there is a compelling need, and no alternative means of meeting that need, the benefits of the Applicant's proposal become overwhelming and outweigh the harm that will result, whether to Green Belt, agricultural land, traditional (or other) orchard, or otherwise.
50. Given that context, the Secretary of State's consideration of alternatives is likely to play a central role in the decision making process. In order to seek to assist the Secretary of State in that process, and you, in making recommendations to her, we will address the issue of alternatives by addressing the following issues:
- 50.1. Identifying the applicable legal framework;
- 50.2. The rationale for the preferred option and the alternatives considered.

50.3. The cost of the scheme and overall benefits.

50.4. Alternatives supported by objectors.

Legal framework

51. Pursuant to rule 11(1)(d) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“**the 2006 Rules**”) the environmental statement must include:

‘a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed works and their specific characteristics, and an indication of the main reason for the options chosen, taking into account the significant effects of the proposed works on the environment.’⁶⁵

52. Two matters must be noted:

52.1. This obligation is to study and provide information about alternatives for the purposes of informing the Secretary of State’s reasoned conclusion pursuant to section 13B TWA 1992. Thus this obligation is about the provision of information, not about the attainment of a particular outcome. Environmental impact assessment (“**EIA**”) is a tool but it does not dictate an outcome: the least environmentally harmful option need not be the chosen option or the consented option.

52.2. At the EIA stage – in comparison to the earlier stage of strategic environmental assessment (“**SEA**”) – the legislative framework does not require alternatives to be worked up in the same level of detail as the preferred option: see *R. (Buckinghamshire County Council) v Secretary of State for Transport* [2014] UKSC 3; [2014] 1 WLR 324 per Lord Carnwath JSC at [44].⁶⁶ Equally, the reasons for choosing the preferred option over those alternatives need only be the “main” reasons⁶⁷. Thus the statutory requirement does not

⁶⁵ CD 5-18 at PDF p. 20.

⁶⁶ CD 5-31 at PDF p. 17. See also CD5-32 *Holohan and others v An Bord Pleanála* [2019] PTSR 1054 at paragraph 66

⁶⁷ 2006 Rules Rule 11(1)(d) CD5-18

require the detailed working up of alternatives or the provision of a detailed side-by-side comparison.

53. Outside this statutory framework of the TWA 1992 and the 2006 Rules, the principles set out *R. (Mount Cook Land Ltd) v Westminster City Council*⁶⁸ per Auld LJ at [30] apply in relation to planning applications:

53.1. Whether any proposed use is acceptable in planning terms depends on whether it would cause planning harm judged according to relevant planning policies where there are any.

53.2. In the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms.

53.3. Where an application proposal does not conflict with policy, or otherwise involves no planning harm, any alternative proposals would normally be irrelevant.

53.4. Even, in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.

54. When considering compulsory purchase of land. The principle of providing a reliable public transport service between Cambourne and Cambridge is generally accepted. Once the principle is accepted the question becomes, how will the objective be achieved⁶⁹. If alternative means of achieving that objective are put forward, they are to be considered when determining, as a matter of judgment, whether there is a compelling case in the public interest to justify the compulsory acquisition of land. If an alternative scheme is not deliverable, viable, or feasible, it can (as a matter of judgment) be rejected as not providing an alternative means

⁶⁸ [2017] PTSR 1166 CD5-38

⁶⁹ See *Hall and Another v. First Secretary of State* [2007] EWCA Civ 612 at paragraph 20

of achieving the objective. If an alternative scheme is considered to be deliverable, its advantages and disadvantages can be compared to the proposed scheme. A judgment must then be made on whether the alternative would serve equally well to achieve the desired purpose after all relevant considerations including cost and delay have been taken into account⁷⁰.

The rationale for the preferred option and the alternatives considered by the Applicant in this case

55. The requirements of rule 11(1)(d) of the 2006 Rules are met in the ES, in particular at chapter 4 of the main volume and in ESA1 and ESA2⁷¹.
56. In his evidence Mr Baker sets out the history of option selection and consultation. There was no substantive challenge to that element of his evidence.
57. As Mr Baker explained the analysis was detailed and extensive, including multiple rounds of consultation. The output of that assessment was the route for the Busway as it is presented at the inquiry.
58. Although some objectors had suggested that they would seek to argue that the Applicant's consideration of alternatives had been deficient, in that an on road alternative had not been assessed, that point has not been pursued with any vigour at the inquiry.
59. It is easy to see why that argument was not pursued with vigour as it is clear that on road options have been considered, as accepted by many, including Mr Leigh⁷². As an example, the 2017-2018 consultation include two on-road options, Routes A and B⁷³. Route A was for an inbound nearside bus lane. Route B was for a central tidal bus lane.

⁷⁰ *De Rothschild v. Secretary of State for Transport* (1989) 57 P&CR 330 at page 341

⁷¹ CD1-10-1 pages 38-58. ESA1 paragraph 2.4, CD1-10-06, and ESA2 section 5, CD1-10-07

⁷² Leigh XX

⁷³ CD1-06-06 page 9

60. It is clear from the extensive documents that the Applicant considered much more than the principle of an on-road route- they considered principle and detail. The Mott Macdonald report is an example of how the detail was considered⁷⁴.
61. It is clear that the Applicant has undertaken a clear, transparent, and comprehensive consideration of alternatives and the options considered included on road solutions on the existing A1303.
62. The scheme that has been promoted at this inquiry is the product of that extensive process.

The cost of the scheme and overall benefits

The Funding Statement

63. In accordance with rule 10(3)(a) of the 2006 Rules a Funding Statement has been submitted⁷⁵.
- 63.1. The anticipated cost of the scheme is £192,284,900.
- 63.2. The scheme is to be funded by City Deal monies together with contributions from dependent developments including Cambourne West⁷⁶, Bourn Airfield⁷⁷ and West Cambridge⁷⁸ as confirmed by Mr Baker⁷⁹.
64. No objector has presented detailed evidence to the inquiry that the scheme will not be funded. Ms Gazeley sought to cast some doubt on funding but did not question the fact that the GCP has been allocated funding under the City Deal. There can be no serious doubt that funding is available.
65. It is clear that, should the order be made, there are sufficient funds available to deliver the scheme.

⁷⁴ CD13-07, see in particular 3.4.1 on page 4

⁷⁵ CD1-07

⁷⁶ CD1-07 paragraph 6.1

⁷⁷ CD1-07 paragraph 6.2

⁷⁸ CD1-07 paragraph 6.3

⁷⁹ Baker PoE 5.4.2-5.4.7 page 29

The Business Case

- 66. Much time has been spent at the inquiry discussing the economic case which forms part of the business case.
- 67. The discussion of this topic must be seen in context.
- 68. As agreed by Mr Leigh:⁸⁰
 - 68.1. The business case process provides the basis for investment decisions not decisions on whether to make a TWA order.
 - 68.2. The economic case is one element of the business case.
 - 68.3. The value for money framework itself is not limited to monetized benefit costs ratios – it requires a holistic approach⁸¹.
 - 68.4. The business case analysis is not a substitute for the overall planning balance- a monetary value is not placed on every element of the scheme⁸².
- 69. Given that context, and given that the scheme meets the important strategic objectives of contributing to the growth of Cambridge in line with the extant and emerging local plan strategy, it is not necessary to resolve all the detailed points made about assumptions made in the economic case.
- 70. Given that context and the role that the economic case plays we are not going to spend a large amount of time assessing each of the points taken in great detail. The ‘big picture’ points are that:
 - 70.1. Funding is secured;
 - 70.2. The balance of benefits and harms cannot be captured fully in a BCR metric.

⁸⁰ Leigh XX

⁸¹ CD8-32 paragraph 1.1.3 on page 4 pdf

⁸² See *R (Save Stonehenge World Heritage Site) v. Secretary of State* [2021] EWHC 2161 (Admin) at paragraph 232 CD29-82 That case was concerned with a DCO scheme to which a national policy statement applied

70.3. It is clear, for the reasons we give later in these submissions, that the benefits far outweigh any harm.

71. When attention is turned to the economic case and value for money assessments it is also important to bear in mind the May 2025 Value for Money Framework⁸³ which identifies three BCR metrics, initial, adjusted, and indicative. The indicative impacts are the last stage of the assessment⁸⁴. Indicative impacts are of particular importance in this case given the central role that the scheme will play in facilitating development at Cambourne.

72. The indicative BCR for this project (at 1.8:1⁸⁵) indicates that the scheme is medium value for money.

73. Objectors have sought to attack the analysis undertaken by WSP on behalf of the Applicant on a number of different grounds. The main grounds of attack are:

73.1. Use of a pre-Covid transport model (CSRM Series F).

73.2. Account taken of East West Rail.

73.3. Assumptions made as to development dependency.

The Transport Model

74. CPPF/Coton Parish Council argue that a new sub regional transport model should have been developed to take account of post Covid pandemic travel conditions.

75. It is to be noted that this point was taken by CPPF on the basis of Mr Johnstone's evidence⁸⁶ that a 'normal' or 'steady' state has now been reached. CPPF called no substantive evidence, in relation to the Cambridge sub region, to support that contention. In fact, the most up to date recovery tracker figures suggest that the bus passenger numbers have

⁸³ CD8-32 at paragraph 4.3.3 on page 17

⁸⁴ CD8-32 page 18

⁸⁵ CD9-32 Table 4 on page 4

⁸⁶ Johnstone PoE 2.09

not returned to a steady state (there was a 31% increase in the existing guided bus passenger numbers from 2024 to 2025⁸⁷).

76. The Applicant was alert to the need to consider changes following Covid lockdowns. The approach taken was to test the materiality of the uncertainties arising from post Covid pandemic travel conditions applying the guidance in TAG Unit M4 Forecasting and Uncertainty⁸⁸.
77. The issue to be determined is not whether different approaches could have been taken but whether the approach taken by the Applicant fell within a reasonable range of options.
78. TAG Unit M4 states that 'ideally' analysts should consider rebasing their model in response to events such as the Covid pandemic, but that since rebasing can come at considerable cost and takes time more proportionate approaches can be considered⁸⁹. Guidance on proportionate accounting for Covid-19 is set out in Appendix B.3. The applicant selected one of the permissible options. Others may take a different view, but so long as the decision fell within the ambit of what was reasonable it cannot, and should not, be criticised. The essence of a proportionate response in these circumstances is to avoid excessive re-working of models, and will often be based upon applying broad sensitivity tests.
79. The Applicant considered that applying a post model adjustment was the appropriate response⁹⁰. The Covid sensitivity test gave a lower value for conventional transport benefits, but made no material difference to the overall value for money (the sensitivity test produced an indicative BCR of 1.7:1⁹¹). CPPF's focus on the travel benefits to the exclusion of others (e.g. closing submissions at paragraphs 21 and 25) is unduly narrow.

⁸⁷ CD29-09 page 8

⁸⁸ CD9-32 paragraphs 18-24

⁸⁹ CD8-21 paragraph 3.3.2

⁹⁰ CD9-32 paragraph 20 – Contrary to Mr Parker's submission at [18], that there was no evidence of any contemporaneous decision making, it is clear from this account – and reaffirmed by Mr Whitehouse's oral and written evidence – that this decision was made during the preparation of the business case.

⁹¹ CD9-32 paragraph 23

80. CPPF sought to rely on the Introduction to the F Series model forecasting report⁹². The introduction notes that the F Series improved the level of detail in areas that are the focus of current transport scheme projects and added a 2019 current year validation to extend the life of the model until such time a whole new base year can be created once the disruption attributable to Covid-19 has settled to a new normal state. The forecasting report does not specify a particular date when a new base year is to be created.
81. Mr Johnstone accepted that TAG Unit M4 was relevant, but then sought to argue that it was not appropriate to follow the approach set out in that TAG unit when a proposal includes powers of compulsory purchase⁹³. Mr Johnstone's approach is misconceived. The purpose of the business case is to inform public sector investment decisions. Although the business case can be relevant, the decision on whether or not to authorise compulsory acquisition of land is based on much wider considerations.
82. The Applicant's approach followed the relevant guidance in the TAG unit⁹⁴ and applied a post model adjustment⁹⁵. Given the part played by transport benefits in the overall economic case outputs, that approach was proportionate and reasonable and we invite you to so find.

East West Rail (EWR)

83. The issue in dispute is whether the effects of EWR should have been modelled in detail in the business case.
84. The Applicant's position is that, in accordance with the relevant TAG guidance it was not appropriate to model EWR as part of the core scenario. That point was agreed by Mr Leigh⁹⁶. The reason for not including EWR in the core scenario is quite simple – the scheme still has some way to go in the consenting process. Table A2 in TAG Unit M4 provides guidance

⁹² CD1-25-7 page 11

⁹³ Johnstone XX

⁹⁴ CD8-21 B3.4 page 51

⁹⁵ CD9-32 paragraph 20

⁹⁶ Leigh XX

on when future inputs should be included in the core scenario⁹⁷. EWR has not been consented. Indeed no application has yet been made for a DCO for the relevant part of the route. It does not fall into the category of a scheme which should be part of the core scenario.

85. The TAG unit also notes that it is important that analysis of alternative scenarios is proportionate.⁹⁸ CPPF assert that EWR should have been part of an alternative scenario.⁹⁹ However, Table A2 is clear: reasonably foreseeable or hypothetical inputs 'may form part of the alternative scenario' but whether they do or not remains a matter of proportionality and judgment.
86. The Applicant's judgment that modelling an alternative scenario to account for EWR was not proportionate cannot be faulted.
87. Our submissions and the application of TAG Unit M4 are not affected by the fact that the LPAs modelled the effect of EWR for the purposes of local plan preparation¹⁰⁰. The LPA modelled EWR as an additional scenario, not as part of the baseline or core, which was a matter for their judgment in different circumstances for a different output.
88. In any event, as Mr Whitehouse explained¹⁰¹ the order scheme and EWR are anticipated to complement each other; one scheme goes to West Cambridge and to the City centre, the other to Cambridge South and Central railway stations. If that point was not clear from the existing planning policy framework it is abundantly clear from the emerging plan and its evidence base. The Bus Integration Report makes plain that both EWR and CtoC are required to support and facilitate sustainable growth¹⁰². If that was not sufficient further support for the view that EWR and CtoC are complementary is provided by the fact that EWR Limited have withdrawn their objection and in so doing, state that CtoC project

⁹⁷ CD8-21 page 51

⁹⁸ CD8-21 paragraph 5.1.2 on page 18

⁹⁹ Closing at [28].

¹⁰⁰ Kelly – inspector's questions

¹⁰¹ Whitehouse PoE 4.3.7 – see references to the Strategic Case Addendum (CD1-21-01 7.2.12 on page 43) and to the independent audit (CD8-27 7.1.15 on page 72)

¹⁰² CD29-71-1 page 32

will enhance public transport and facilitate sustainable development being outcomes which are very much aligned with the objectives of EWR¹⁰³.

89. As with the criticisms of the approach taken to the version of the transport model used, this point does not advance the case made by the objectors. The majority of the economic benefits that flow from the scheme are derived from land value uplift. If there are changes to transport patterns as a result of other transport schemes (such as EWR) there will be no impact on land value uplift¹⁰⁴ and no material impact on the value for money category as demonstrated by the sensitivity analysis¹⁰⁵.

Development Dependency

90. **The first point** raised is whether certain development, in particular, housing at Cambourne West should have been included as dependent development.
91. TAG unit A2.2¹⁰⁶ gives guidance on this issue.
- 91.1. Paragraph 3.2.2 indicates that the issue of whether a development is dependent is not usually clear cut.
- 91.2. A dependency is likely to occur where a development will breach a 'reasonable level of service' on the transport network (3.3.2).
- 91.3. Decisions regarding dependency are ultimately judgment based (3.3.2).
92. In making the judgments the correct criterion was applied (the reasonable level of service point)¹⁰⁷.
93. Further, in making the judgment for the purposes of the business case account was taken of the basis upon which planning permission was

¹⁰³ EWR letter withdrawing objection page 1 CD28-07

¹⁰⁴ Whitehouse Rebuttal 3.4.4 CD26-01-APP-W6-4

¹⁰⁵ CD1-21-02 page 18 Table 4-13

¹⁰⁶ CD9-50

¹⁰⁷ CD1-21-02 paragraph 4.4.22 on page 20 shows this point being applied directly. Therefore CPPF's closings at [34] and [35] are obviously wrong.

granted¹⁰⁸, namely that the developer was required to enter into a planning obligation to make a financial contribution towards the cost of funding improvements to highway infrastructure so as to improve links by bus from Cambourne to Cambridge¹⁰⁹. Such a planning obligation could only have been sought if it was necessary to make the development acceptable in planning terms¹¹⁰. If a contribution is necessary in order to make a development acceptable that development must be dependent upon the infrastructure to be funded. To put it another way (and based on Mr Kelly's words¹¹¹) the payment was necessary to mitigate the impacts of the development proposal that the CtoC scheme 'unlocked'.

94. The clear conclusions to reach are that:

94.1. In carrying out the business case assessment, the Applicant applied the correct test.

94.2. Cambourne West, like Bourn Airfield, is a development that is dependent upon the provision of the order scheme or equivalent.

95. **The Second point** raised relates to the values adopted when making the assessment, and in particular, house price values and house price growth assumptions.

96. In order to arrive at house price value assumptions the business case¹¹² relied upon an expert surveyors report (prepared as part of the local plan evidence base). In contrast Mr Leigh took figures which were not based upon the type of houses likely to come forward in the relevant developments and took no account of new build premium. There can be little doubt that the Applicant's figures are to be preferred.

97. Although the analysis took up a lot of inquiry time, one may wonder what the purpose of raising these points was, as Mr Leigh accepts the figures¹¹³

¹⁰⁸ CD1-20-16 Table 8 on page 68

¹⁰⁹ CD4-08 page 82

¹¹⁰ CD8-1 NPPF paragraph 58(a)

¹¹¹ Kelly XiC

¹¹² CD1-21-02 page 22 paragraph 4.4.31

¹¹³ Described in CD29-60 as the Calculated BCR metric

set by Mr Whitehouse in CD29-60 'Response to alternative scenarios for Land Value Uplift assessment'.

97.1. With Bourn Airfield only (i.e. with Cambourne West excluded) the BCR is 1.5.

97.2. With house prices adjusted down the BCR is 1.3

97.3. With lower house price growth the BCR is 1.3

97.4. In order for the BCR to fall below 1 it is necessary to make multiple inappropriate assumptions, namely Bourn Airfield only + house prices adjusted + nil future growth.

97.5. If one adopts a nil future growth sensitivity test one should also consider the other end of the range¹¹⁴ (5% house price growth); that produces a BCR of 3.2..

98. At paragraph 42 of his closing Mr Parker was keen to refer to the MHCLG Appraisal Guide advice on testing low sensitivities but omitted to refer to the other end of the range. If it is right to look at the low end of the range it must be right to also look at the other end of the range. Any reasonable submission would not have ignored that point.

99. Those sensitivity tests demonstrate how robust the analysis is. In order to depart from medium value for money (the indicative BCR is 1.8:1¹¹⁵) unrealistic assumptions would have to be made.

100. There is no good reason to reject the analysis set out in the business case.

The Alternative(s) advanced by objectors

Introduction

101. Objectors seek to argue that harm to the Green Belt, to the countryside, and to nature conservation would not be justified if there was a realistic and

¹¹⁴ CD29-60 page 538 paragraph C21

¹¹⁵ OBC core scenario

deliverable alternative which did not cause such harm or which caused a lesser degree of harm.

102. To be a true alternative a proposal must meet the scheme aims and objectives. If those aims and objectives are not met, the scheme put forward cannot be considered to be a true alternative.
103. Furthermore any alternative must be realistic and deliverable.
104. As Mr Johnstone agreed¹¹⁶ a scheme to alter an existing highway will only be deliverable if it is acceptable to the highway authority. In determining acceptability the highway authority will apply its published policy. In this case the published policy is set out in the CCC General Principles for Development¹¹⁷.
- 104.1. Mr Johnstone accepted that the guidance should be the starting point for any scheme design¹¹⁸.
- 104.2. Mr Johnstone accepted that the relevant part of the A1303 is a strategic link to which the guidance in paragraph 2.3(i) of the CCC General Principles document applies, and therefore DMRB applies.
105. It is clear that the standards against which any on road proposals on the A1303 are to be judged are those set out in DMRB.

The CPPF/Coton Parish Council Alternative ("the CPPF Alternative")

106. The objectors have coalesced around the CPPF Alternative.
107. We will go on to consider the detail but the short answer to the CPPF Alternative is as follows.
108. By making an assumption that the scheme should be confined within the constraints set by the 'environmentalist'¹¹⁹ CPPF acknowledge and accept that a scheme which did not fit within those constraints would have

¹¹⁶ Johnstone XX

¹¹⁷ CD7-36

¹¹⁸ Johnstone XX

¹¹⁹ Johnstone XX

unacceptable environmental consequences. It is abundantly clear that a scheme which meets the relevant safety and other standards cannot be accommodated within those constraints. As a result it is clear that an on-road alternative of the type promoted by CPPF cannot be delivered. To be safe an on-road scheme has to breach CPPF's environmental constraints. As a result Mr Woodfield's assessment of the environmental effects of the CPPF alternative¹²⁰ are of little assistance- it is a product of the constraints he set. A scheme falling within the constraints set by him cannot be delivered.

109. To the extent that it may be suggested that some other alternative could be developed (not bound by those constraints) - such a scheme has not been developed, is not before the inquiry, and falls into the 'vague or inchoate' category.

Evolution of the Scheme

110. CPPF commissioned Mr Leigh to devise an alternative on road scheme. Mr Leigh's work started with his February 2021 report¹²¹ which was placed before those carrying out the audit.

110.1. At that stage the on-road solution was put forward as an interim solution (to buy time¹²²) while the details of longer-term infrastructure were worked out¹²³.

110.2. The longer-term infrastructure referred to in 2021 included CAM. In February 2021 the CAM proposals included a route between Cambourne and Cambridge¹²⁴.

110.3. The report of the auditor noted that the fact that an in-highway scheme may provide an interim solution "... did not invalidate the

¹²⁰ Mr Woodfield's conclusion is at his PoE 4.5.1

¹²¹ CD7.10

¹²² CD7.10 page 21

¹²³ CD7.10 page 2

¹²⁴ CD7.38 page 12

assumptions and constraints for the preferred option as a long-term solution to meet the growth in travel demand along the corridor.”¹²⁵

110.4. It is important to note that a scheme which was initially promoted as an interim solution is now promoted by CPPF as a longer term solution. That gives an immediate indication of how unsuitable the CPPF proposal is.

110.5. It is also important to note the point made by the auditor that the Applicant’s preferred option (now the order scheme) is promoted as a longer-term solution to meet the growth in travel demand. Mr Leigh’s proposed solution (even if deliverable) would not meet that demand.

111. In September 2024, after various iterations, Mr Leigh proposed an inbound central bus lane¹²⁶. It is not surprising that the central bus lane solution is no longer promoted by CPPF-

111.1. It is unsafe for all the reasons explained by WSP¹²⁷.

111.2. CPPF’s own witness, Mr Johnstone, agrees that it is unsafe¹²⁸

112. In April 2025 a further version of the CPPF scheme was put forward¹²⁹. In devising that scheme Mr Leigh relied upon lane widths taken from an Active Travel England document. That guidance does not apply to roads such as Madingley Road¹³⁰, and Mr Johnstone did not recommend its use.

113. The WSP report commissioned by the Applicant was available in July 2025. That report was not limited to criticisms of Mr Leigh’s scheme- it included an alternative concept design¹³¹. The approach taken in preparing this report demonstrates, once again, that the Applicant has examined suggestions made by objectors with care. Such suggestions have not been

¹²⁵ CD8-27 page 75

¹²⁶ CD67-09 page 3

¹²⁷ CD9-31 paragraphs 3.3.43 and 3.4.6

¹²⁸ Johnstone XX

¹²⁹ CD23-18-2

¹³⁰ CD9-31 4.3.2 and 4.3.4 on pages 54 and 55

¹³¹ CD9-31 paragraph 3.5.1

dismissed out of hand- the Applicant has gone further and has investigated whether, with changes, suggestions made by objectors might be able to be delivered. It is quite wrong to say that the Applicant has devoted little energy to examining how constraints can be overcome (as submitted by Mr Parker at his paragraph 75)- to the contrary every effort has been made to see whether difficulties can be overcome. Despite that effort, WSP concluded that an on-road inbound bus lane option could not be delivered.

114. CPPF's final scheme is that set out in the August 2025 report appended to Mr Leigh's proof of evidence.
115. The history we have set out is not merely of passing interest. It shows that CPPF have persisted in promoting what was devised as an interim solution (to buy time) as a longer term solution, and that despite the various iterations it is a scheme which does not comply with the relevant standards.

The August 2025 Scheme

116. Mr Johnstone explained how the August 2025 CPPF scheme was devised. The constraints were set by the 'environmentalist' (Mr Woodfield) and Civilistix were instructed to design a scheme which abided by those constraints.
117. The scheme was not designed to meet standards. The standards were only considered once the constraints had been set.
118. As a consequence the resulting lane widths are too narrow, and important features such as an appropriate hard standing between the bus lane and the active travel path are omitted.
119. In arriving at their design, CPPF did not produce their own cross-sections. The CPPF scheme is based upon 2-D drawings which do not take account of levels, cross-fall etc. The only cross-sections available are those produced by Mr Lonergan¹³².

¹³² Lonergan Rebuttal Appendices CD26-01-APP-W8-5 Appendix D page 37

120. Based upon the Civilistix drawings¹³³ and his cross-sections Mr Lonergan has identified multiple departures¹³⁴.
121. When the CPPF scheme is tested against the standards set by the highway authority Mr Lonergan identifies significant 'departures' or failures to meet the appropriate standards¹³⁵. Mr Johnstone said he had no reason to doubt that analysis¹³⁶.
122. One way in which CPPF seek to overcome those departures is by arguing that a lower speed can be specified. That approach is not likely to be acceptable given the characteristics of the road, and even if implemented, major departures would remain. Amongst those major departures are:
- 122.1. Non-provision of 1m hard strips.
- 122.2. Sub-standard lane widths (eastbound and westbound). (reduction from 3.65¹³⁷m to 3.25m)
- 122.3. Sub-standard verge widths.
- 122.4. Sub-standard footway width.
- 122.5. Inadequate stopping sight distances.
123. In addition Mr Johnstone says that the level of the road would have to be lowered, in particular, in the vicinity of Madingley Wood- that issue has not been considered by CPPF in any detail.
124. Even a scheme based upon CPPF's unrealistic assumptions (and with the multiple departures identified) will have an adverse impact on the significance of the American Military Cemetery registered park and garden – that much is accepted by Mr Littlewood when he says that the CPPF proposal will cause less than substantial harm to the significance of

¹³³ Johnstone Ap.F CD26-10-W2

¹³⁴ Lonergan Rebuttal Appendix 1 Appendix C pdf page 34 CD26-01-APP-W8-5

¹³⁵ Lonergan Rebuttal Appendix 1 Appendix C pdf page 34 CD26-01-APP-W8-5

¹³⁶ Johnstone XX

¹³⁷ Not the 3.6m referred to by Mr Parker in his oral addition to paragraph 78 of his closing. See CD9-31 Fig 3-5 on page 3may

the designated heritage asset. Mr Littlewood assesses the level of harm as 'low' (in oral evidence he changed his position from that stated in his proof¹³⁸).

125. Mr Littlewood's analysis is based upon the assumption that the scheme does not require any land covered by the RPG designation. That is an inappropriate assumption even based on the CPPF position. The RPG extends to the road and includes the grassed semi-circular area at the entrance¹³⁹. Even on CPPF's unrealistic assumptions part of that grassed area will be lost¹⁴⁰. As far as can be gleaned from the map, that area is part of the land given to the US Government¹⁴¹ and which is subject to the agreement made between the British and American governments (being an international treaty). That point stands whether or not that land is considered to form part of the highway. Even if the area taken were found not to be part of the RPG it is plain that it forms an important part of its setting – it is at the entrance to the cemetery to which the eye is drawn.
126. If account is taken of the need to provide adequate lane widths, hard strips etc, and of the extent of the land required to build up verges etc.. it is clear that it is not possible to add a bus lane to the existing carriageway without intruding on the land covered by the treaty (either the pink land or the yellow land) and without causing a material degree of harm to the RPG itself, and its setting, and to the setting of the listed memorial and attached walls, steps and pool surround.
127. Mr Littlewood's suggestion that the heritage value of the listed memorial and attached walls, steps and pool surround is on the north side of the wall¹⁴² demonstrates how little understanding of heritage significance he has. The fact that the wall acts as a boundary does not prevent

¹³⁸ Littlewood PoE 7.5 'very low'

¹³⁹ Wilson Appendices page 9 CD26-01-APP-W2-2

¹⁴⁰ Woodfield Appendices Fig DW5 page 69 CD26-10-W4-1 - grassed area and tree shown as habitat lost. That point stands even if that area falls within the highway – as shown on the maps at CD29-89

¹⁴¹ CD1-06-16 map at page 11. The fact that the semi-circular grass area is shown in a different position on that map does not affect the conclusion that the whole area up to the road was given to the USA to be used by the American Battle Monuments Commission

¹⁴² Littlewood Xed by inspectors

development outside the boundary from affecting significance through development within the setting. Furthermore, in this case the CPPF Alternative will pass by the opening in the built structures at the point where the listed building opens up to invite the public in – the entrance.

128. Furthermore the solution for the M11 overbridge set out in the Civilistix drawings is not supported by CPPF's own witness. Mr Johnstone said he would not deliver a scheme on the basis set out in cross section H-H¹⁴³ and that in his view such a scheme was undeliverable. Mr Johnstone went further than that, he said that such a scheme would be unsafe¹⁴⁴. In coming to that judgment he agrees with Atkins in their report – they said that such a design would lead to a higher risk of accidents (and greater congestion)¹⁴⁵. As Mr Johnstone said, everyone (with the requisite expertise) who has considered the CPPF proposals for the M11 overbridge considers them to be unsafe¹⁴⁶.
129. Mr Johnstone's suggested solution is to provide an additional bridge. However such a bridge does not form part of the CPPF scheme. Furthermore the impact of such a bridge, and the feasibility of its construction, has not been assessed. The approaches have not been considered, the extent of land required to be acquired, and any environmental impact have not been assessed¹⁴⁷.
130. In their closing submission, CPPF entirely ignored the evidence of Mr Johnstone that their own scheme was unsafe. They seek to gloss over their inability to traverse the M11 safely and rely now on two bad points. The first is Mr Leigh's completely unsubstantiated assertion that adjustments to signals and off-slip would resolve the point.¹⁴⁸ This has no evidential basis and is the epitome of a vague or inchoate scheme. The second is the Atkins report.¹⁴⁹ However, as already explained, rather than supporting CPPF's position, the Atkins report actually corroborates Mr Johnstone's

¹⁴³ Lonergan Rebuttal Appendix 1 Appendix D pdf page 40 CD26-01-APP-W8-5

¹⁴⁴ Johnstone XX

¹⁴⁵ CD9-36 page 16

¹⁴⁶ Johnstone XX

¹⁴⁷ Johnstone XX

¹⁴⁸ PDF p. 28 at [80].

¹⁴⁹ PDF p. 28 at [80].

view on the absence of a safe option which does not involve an entirely new bridge or very extensive widening of the existing bridge. These cannot now be plucked out of context by CPPF: any fair reading of the Atkins report reveals the preliminary nature of the work and the many unresolved issues which it identified, not least the absence of any agreement or meaningful discussion with National Highways.

131. Even on CPPF's own evidence, their scheme is incapable of being delivered. That is sufficient to conclude that the CPPF alternative is not realistic or deliverable.

132. In addition, on the evidence:

132.1. You have no evidence on the cost of the CPPF scheme:

132.1.1. The figure of £37.7m at page 7 of Mr Leigh's Appendix A comes from Table 18 of CD1-20-08 – low cost Option B. Low Cost Option B relates to part of the route (that part east of the Madingley Mulch roundabout together with the Scotland Farm park and ride¹⁵⁰).

132.1.2. The £37.7m figure omits works west of the Madingley Mulch roundabout.

132.1.3. The cost of a new bridge over the M11 as described by Mr Johnstone has not been assessed.

132.1.4. The figure included in Mr Leigh's Appendix cannot, and should not be relied upon.

132.2. You cannot assess the extent of the harm to the Madingley Wood SSSI and the American Military Cemetery as:

132.2.1. A scheme which complies with applicable standards (with appropriate lane widths) has not been assessed.

¹⁵⁰ CD1-20-08 at paragraph 4.2

132.2.2. The construction effects of creating a new road by reducing levels (as recommended by Mr Johnstone) have not been assessed.

132.3. You cannot be sure how or whether, the M11 overbridge issue can be addressed.

133. For all those reasons, contrary to the submissions made by Mr Parker in closing,¹⁵¹ on the evidence the CPPF Alternative:

133.1. will not meet the objectives of the scheme;

133.2. is plainly not feasible in engineering terms;

133.3. is on their own evidence unsafe;

133.4. lacks robust assessment of ecological impacts for the true nature of works that would be needed, both to deliver Mr Johnstone's new bridge over the M11 and to "lower" the entirety of the road;

133.5. would – as is now accepted on their own evidence – cause harm to the significance of the designated heritage assets at the American Military Cemetery;

133.6. cannot deliver compliance with the development plan as it is clearly undeliverable;

133.7. has an unknown cost;

133.8. will inevitably take longer than the Busway by at least five years.

134. The fact that some moderate Green Belt harm might be avoided or lessened is of very little relevance given the fact the scheme is unsafe and undeliverable.

135. CPPF sought to argue that the acknowledged need for an active travel route between Cambourne and Cambridge could be met by relying on the Comberton Greenway proposals. However those proposals do not include

¹⁵¹ At [5]

a route from Cambourne to Cambridge – the proposed route does not even go to Hardwick¹⁵².

136. The only rational conclusion to come to is that the CPPF scheme as promoted is not capable of being delivered.

137. A hypothetical scenario was put to Mr Sensecall in cross-examination. The assumptions which Mr Sensecall was asked to make were:

137.1. That the CPPF Alternative was deliverable within a similar timescale.

137.2. The CPPF scheme was feasible and safe.

137.3. The CPPF scheme would deliver equivalent transport benefits.

138. That hypothetical scenario is so unrealistic as to make any assessment based upon it utterly meaningless.

138.1. An alternative scheme, whether that proposed by CPPF or some other alternative could only begin to be considered once a decision has been made on this application. If post decision on the order application, a decision were to be taken that an alternative scheme is to be advanced a consultation process would follow. Once the consultation process was complete a decision on a preferred route and scheme would have to be taken. Requisite consents would have to be obtained including from National Highways. At the absolute minimum a compulsory acquisition process would have to be followed in order to provide a new bridge over the M11. It is wholly implausible to suggest that the CPPF Alternative could be delivered within a similar timescale to the order scheme.

138.2. For the reasons given by Mr Lonergan the CPPF scheme is neither feasible nor safe.

¹⁵² CD29-15 page 2

138.3. The transport benefits of an on-road scheme were considered as part of the option appraisal process. An on-road scheme does not provide equivalent transport benefits¹⁵³.

139. In the alternative, if you rejected that submission that the CPPF Alternative is incapable of being delivered, you cannot be satisfied that the CPPF scheme (put forward as an interim solution), even if capable of being delivered, would meet the travel demands associated with the long term growth aspirations. Those growth aspirations are based upon placing a cap on vehicular trips (the trip budget approach) which relies upon the delivery of the CtoC scheme. You can be certain that the CPPF Alternative would not provide the long term infrastructure which Mr Kelly¹⁵⁴ told you is required to deliver the paradigm shift in travel behaviour. So, even if (contrary to our submissions) you find that the CPPF scheme is deliverable, it is not a true alternative as it will not meet the need.

Re-alignment of the off-road busway at or near Coton

140. Mr Littlewood (for CPPF) put forward an argument that the busway should follow a curved alignment west of Cambridge Road¹⁵⁵.
141. That suggestion has not been supported by any detailed analysis to either establish that it is feasible or that it would in fact improve farming viability. It falls into the vague or inchoate category.
142. Some objectors have suggested that the Busway should have been realigned to avoid the original Bramley Apple trees. A realignment of the route is considered in ESA1¹⁵⁶.
143. We consider that option later in these submissions (when considering impact on Coton Orchard).

¹⁵³ CD 1-20-08 page 85 – Table 25 see the monetised benefits for low cost options a and b compared with those for the Do s

¹⁵⁴ Kelly XiC

¹⁵⁵ Drawing at Littlewood PoE page 4 CD26-10-W1-1

¹⁵⁶ CD1-10-6 section 2.4

144. The assessment demonstrates that the alternative would result in wider environmental impacts, as well as being inferior on operational and safety grounds.¹⁵⁷ In addition this alternative is not supported by the landowners¹⁵⁸.
145. It follows that this alternative cannot be given any weight, if it is even a relevant consideration at all.

Rifle Range Track

146. Some (such as the Gough Way Residents Association¹⁵⁹) have suggested that a route along Adams Road is to be preferred over the proposed section of route along the Rifle Range track.
147. Both the Rifle Road Track and Adams Road options were fully appraised through the preparation of the Option Appraisal Reports (“OAR”) between 2018 and 2019, with further consideration before the Outline Business Case was report to the GCP’s Executive Board in 2021.
148. As the second ES Addendum demonstrates¹⁶⁰, the output of the appraisals in the OAR is that the Rifle Range Track is the better option, once the now abandoned Cambridge Autonomous Metro is discounted. It follows that the Adams Road option does not provide a proper basis for objecting to the Busway as now proposed. Further, even if (contrary to the Applicant’s case) Adams Road were considered to be a potentially preferable option, when making a judgment account would have to be taken of all relevant factors including delay. Once those factors are taken into account it is clear that Adams Road cannot properly be considered to be a preferable or equally advantageous means of securing the scheme objectives.

¹⁵⁷ CD 1.10.06 at [2.4] on PDF pp. 15 – 16.

¹⁵⁸ CD 1-10.06 at [2.4.3] on PDF p. 15

¹⁵⁹ CD23-05-obj-175 at paragraph 2

¹⁶⁰ CD1-10-07 section 5

The Mayor of Cambridgeshire and Peterborough

149. As we have already noted, the Mayor accepts that if the growth which is planned for Cambourne and Bourn Airfield is to go ahead, there is a need for a public transport scheme to serve it.
150. When asked what alternatives, other than the CPPF scheme, are put forward, he said that there were a range of others and went on to say that light rail should be examined. When asked¹⁶¹ what was the alternative he put forward he said that “we are devising a strategy”. He provided no detail of that strategy, or any alternative route.
151. This could not have been more clearly demonstrated than in the Mayor’s Closing Submissions. It was asserted that the Busway “may be incompatible with a future policy “if the policy is to build a light rail network”.¹⁶²
152. The Mayor put forward no deliverable alternative. His suggestions that a strategy was yet to be developed and that light rail may be an option falls squarely into the category of the vague and inchoate to which no or almost no weight can be given.

Conclusion on Alternatives

153. Given the acknowledged and pressing need to provide a scheme to provide reliable public transport between Cambourne and Cambridge and given the fact that the CtoC scheme would meet that need, in order for a suggested alternative to have a material bearing on the decision making process in this case it would have to:
- 153.1. Meet the identified need;
- 153.2. Be capable of being delivered;
- 153.3. Have significant advantages when compared to the order scheme such as lower cost, or lesser environmental impact; and

¹⁶¹ Bristow XX

¹⁶² PDF p. 4, final paragraph.

153.4. Not lead to undue delay

154. Almost all the objectors have relied on the CPPF Alternative. It is as plain as it possibly could be that the CPPF scheme is undeliverable. By seeking to avoid unacceptable environmental impacts CPPF have limited the width of the proposed road + bus lane. In doing so they have left insufficient width in which to provide a safe scheme. That, by itself, would be sufficient to reject the CPPF Alternative. However, when the CPPF inbound bus lane comes to the part of the network which causes the significant constraint, the existing M11 overbridge, the buses would come to a grinding halt. The CPPF's own witness says that the scheme they advanced is unsafe.
155. Even if, contrary to the evidence, a view were to be taken that the CPPF scheme is capable of being delivered it would not meet the identified need- it was devised as an interim solution. Such a stop gap cannot be relied upon to support the local plan strategy.
156. There is no realistic and deliverable alternative scheme. We invite you to so find.

V. MATTER 4 - EFFECT OF THE IMPLEMENTATION, OPERATION AND MAINTENANCE OF THE BUSWAY

157. This matter is wide ranging. All of the relevant matters are assessed in the ES (together with the addendums) and the other application documents and the Applicant's proofs of evidence.
158. In order to structure our submissions we have adopted the sub-headings set out in the Statement of Matters, but have addressed these in a different order.¹⁶³

¹⁶³ CD25-01

Ecology

159. The issue of ecology is emotive. This is true both generally and even more acutely in this case.
160. Despite this emotion, there is, in fact, very limited evidential dispute about the technical assessment of impacts on the relevant habitats and species. The dispute is confined to veteran trees and, to a much lesser degree, the Coton Path Hedgerow County Wildlife Site (“CWS”). Otherwise, there is essentially agreement on the technical assessments.
161. Veteran trees and biodiversity net gain (one of the other few issues on which there is substantive technical dispute) are addressed separately below.

The Eversden and Wimpole Special Area of Conservation

162. It is necessary for the Secretary of State to undertake an appropriate assessment of the impact of the Busway on the Eversden and Wimpole Special Area of Conservation (“**the SAC**”).
163. A shadow appropriate assessment has been prepared.¹⁶⁴ In addition, extensive evidence on the issue of barbastelle bats has been presented by Ms Reason.
164. Drawing on all of this evidence, the correct conclusion is that the Busway will not adversely affect the integrity of the SAC for the purposes of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“**the Habitats Regulations**”).
165. Natural England has reached precisely this conclusion following very extensive engagement with the Applicant’s team, including the review of additional surveys and assessments undertaken at Natural England’s request.^{165,166}

¹⁶⁴ CD 1-11.05 – TR5.11.

¹⁶⁵ CD 29-07-0 – Natural England expressly confirm no adverse effects on integrity of the SAC.

¹⁶⁶ See Ms Reason’s account of the engagement at [3.1.1] – [3.1.8] of her POE on PDF pp. 8 – 9 (same internal).

166. A competent authority is entitled, and can be expected, to give significant weight to the advice of an “expert national agency” with relevant expertise in the sphere of nature conservation, such as Natural England.¹⁶⁷ The competent authority may lawfully disagree with, and depart from, such advice; but if it does, it must have cogent reasons for doing so.¹⁶⁸
167. In this case, significant weight should be given to the view of Natural England (all the more so given the extensive and intensive interrogation of the Applicant’s evidence). There is no cogent reason for departing from that advice.
168. Indeed, no party to this inquiry has even attempted to identify such a reason to depart from Natural England’s advice.
169. Mr Woodfield’s position in his written evidence was ambiguous (given Natural England had not withdrawn its objection at the time of its preparation). However, he confirmed in cross-examination that he did not seek to contradict Natural England’s judgment and, in fact, he considered it “unlikely” that there would be any adverse effect on the integrity of the SAC from the Busway.
170. Despite this, CPPF pursued a narrow argument that the hop overs would not be effective for species other than barbastelle bats. This was a bad argument because the Applicant’s (unchallenged) surveys demonstrate a low risk of collision for these other species even without mitigation.¹⁶⁹ Further, Natural England raised no concern on this point (after having considered this very issue in light of the Applicant’s Technical Note 2); and the Applicant has provided detailed evidence explaining the effectiveness of the proposed hopovers.¹⁷⁰ This position is unchanged by the late evidence relied on by CPPF. The point now made by CPPF appears to be

¹⁶⁷ *R. (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983; [2022] PTSR 1952 at [9(4)] per Sir Keith Lindblom SPT. CD29-107

¹⁶⁸ *R. (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983; [2022] PTSR 1952 at [9(4)] per Sir Keith Lindblom SPT. CD29-107

¹⁶⁹ Reason Appendices, Technical Note 2 at Table 1 on PDF p. 158 (see rows “MYSOP” and “BLE”).

¹⁷⁰ See Technical Note 4 – appended to Ms Reason’s RPOE at PDF p. 12.

wider and to include barbastelle bats.¹⁷¹ However, it is still a bad point. The Applicant has provided a full response.¹⁷²

171. For these reasons, there will be no adverse effect on the integrity of the SAC as a result of the Busway and the impacts of the Busway on the SAC will be acceptable having regard to relevant national and local planning policy.¹⁷³

Madingley Wood SSSI

172. The Busway will not have any impact on the Madingley Wood SSSI.¹⁷⁴ This conclusion is not disputed in any of the evidence presented to the inquiry.

Coton Orchard CWS

173. In the ES the Applicant assessed a significant residual effect at a county scale on the Coton Orchard CWS.¹⁷⁵ This conclusion is not disputed in any of the evidence presented to the inquiry; to the contrary, Mr Woodfield positively agreed with this conclusion.¹⁷⁶
174. Despite this, Mr Woodfield and CPPF spent a great deal of inquiry time on the extent to which Coton Orchard should be classified as a priority habitat. Importantly, this dispute does not go to the assessment of impact in the ES; rather, it goes to a much narrower (and, ultimately, incorrect) argument about BNG. BNG is considered separately below, but the remaining submissions here deal with the classification question.
175. The JNCC provides an authoritative definition of the traditional orchard priority habitat:

‘Traditional orchards are defined, for priority habitat purposes, as groups of fruit and nut trees planted on

¹⁷¹ CD 29-102

¹⁷² CD 29-103

¹⁷³ In particular: CD 8.01 NPPF paragraph 187(a) and (d); NPPF paragraph 193(b); NPPF paragraph 195; CD 6.01 CLP Policy 69; CD 6.02 SCLP Policy NH/5.

¹⁷⁴ CD 1-11.05 – TR5.1 at [6.2.7] on PDF p. 54.

¹⁷⁵ CD 1-11.05 – TR5 at Table TR5-11-1 on PDF p. 89.

¹⁷⁶ Woodfield POE at [5.2.3] on PDF p. 26 (internal p. 22).

vigorous rootstocks at low densities in permanent grassland, and managed in a low intensity way. Cobnut plants are also included.¹⁷⁷

176. As to this definition:

176.1. All of the component parts of the definition must be satisfied in order for the orchard to qualify as a traditional orchard. This is the straightforward and ordinary reading of the definition.

176.2. When considering this definition and its application, it is the habitat structure which is of crucial importance, not its management, as Mr Whitby explained. The supporting description makes this point plainly: 'Habitat structure rather than vegetation type, typography or soils, is the defining feature of the habitat'.¹⁷⁸ This is also logical as, using Mr Whitby's example, an intensive orchard (or other non-traditional orchard habitat) could be managed in a low intensity way, but this would not mean that the habitat which was structurally unchanged could become a traditional orchard within the above definition.

176.3. This is particularly apt in this case. Coton Orchard is a former intensive orchard which is approaching its end of life. The orchard might now be managed in a low intensity manner (indeed, some parts display no management at all) but its habitat structure is still that of an intensive orchard.

176.4. The Applicant has assessed 0.42ha of the orchard (within the scheme boundary) as being a priority habitat.¹⁷⁹ As Mr Whitby explained, this is a precautionary and fair assessment, particularly as some of the included parts were, at best, borderline, for example in terms of density.

176.5. The remainder of the orchard was properly excluded given it failed to meet the definition, particularly having regard to: (1) the density

¹⁷⁷ Woodfield Appendix DW5, PDF p. 111.

¹⁷⁸ Woodfield Appendix DW5, PDF p. 110.

¹⁷⁹ CD 1-11.05 TR 5.1 at [5.3.19] on PDF p. 31.

which is much greater than defined 150 trees/ha (every 8m); (2) the areas which are not occupied by fruit trees (hedges, scrub etc); and (3) the great number of trees which are not planted on vigorous rootstock. The correctness of the Applicant's approach in contrast to Mr Woodfield's is exemplified by photograph 1 in Mr Ellis' Rebuttal Proof of Evidence: the trees on the extreme left are non-fruit hedgerow trees; the trees on the left hand side are too densely planted and are not on vigorous rootstock (given they are small but not young trees); and there is an obvious gap between those trees and the priority habitat on the right hand side.

176.6. Mr Woodfield candidly explained in cross-examination that he had "not had sufficient time to determine one way or the other" as to how each component of the orchard should be categorised. But in any event, there was a clear methodological flaw in his approach. Mr Woodfield's assessment was based on a strict dichotomy: the orchard was either intensive orchard or traditional orchard. No such dichotomy is present in the JNCC's guidance. Moreover, there is no logic in such an approach: conceptually, it is entirely possible to have some orchard-type habitat which does not fit the definition of traditional orchard and is not otherwise referred to as an intensive orchard. WSP properly recognised this as 'other orchard' in the ES. Contrary to Mr Woodfield's assessment, it is not a case of having to make a "best fit" judgment against only two categories. In any event, even if this was the approach, the best fit is as an intensive orchard, given the habitat structure within Coton Orchard, as Mr Whitby explained in cross-examination.

177. It follows that the categorisation of priority habitat within the ES was correct. However, we reiterate, even if it was not correct, this would only be material to the assessment of BNG, not the impacts on the Coton Orchard as a habitat.

Other county/city wildlife sites

178. The Busway would not have a significant effect on any of the other county or city wildlife sites, namely Coton Path Hedgerow CWS, Bin Brook CiWS and Scrubland east of the M11 CiWS.
179. There was no dispute on the assessment of the latter two CiWS, and nor could there be given Mr Woodfield had not even visited these two sites.¹⁸⁰
180. Mr Woodfield did dispute the assessment of effect on the Coton Path Hedgerow CWS, but his assessment was not robust. In particular:
- 180.1. Mr Woodfield considered the unmitigated impact. This is not the correct approach and departs from the methodology in the ES which considers the residual effect, consistently with regulation 11(1)(c) of The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 which expressly requires mitigation measures to be identified in the ES. Given this statutory direction, it is perverse and inconsistent with the statutory scheme to assess significance against the unmitigated effect.
- 180.2. Mr Woodfield based his assessment of significance on a 1% loss threshold. This is inconsistent with the methodology in the ES and he was unable to identify a robust basis for such an approach, whether in best practice guidance or otherwise. The one example of this threshold that Mr Woodfield did identify in cross-examination was materially different to the present case (given it concerned bird strikes in a wind farm) and was of no application to a case such as the present.
- 180.3. In any event, such a threshold is a blunt tool. The proper basis – as set out in the ES – was to consider whether there would be a loss of any plant species for which the CWS was designated. There would be no such loss in this case.¹⁸¹

¹⁸⁰ Woodfield POE at [5.2.10] on PDF p. 29 (internal p. 25).

¹⁸¹ CD 1-11.05 – TR 5.1 at [6.2.12] on PDF p. 56.

181. Accordingly, the assessment in the ES should be preferred.

Protected and notable species

182. There would be no significant effects on protected and notable species, except in respect of construction impacts on terrestrial invertebrates.¹⁸² As to terrestrial invertebrates, the significant effects would only be at a local scale and only in the short – medium term during construction.¹⁸³ There would be no long term significant effects and no significant effects during operation.¹⁸⁴

Conclusion

183. Having regard to the assessment of impacts in the ES and in the Applicant's evidence, the ecological effects are acceptable when assessed against relevant local and national policy.¹⁸⁵

Trees

184. At the heart of this issue is just three trees: T6, T7 and T9, being the three veteran trees that are centrally located within the order limits.¹⁸⁶ In the context of the scheme as a whole – particularly having regard to the land area which it traverses – this is remarkably limited.

185. The Busway will not result in the loss or deterioration of any of these three trees or the other three veteran trees which are more peripherally located within the order limits (T5, T9 and T10) or the other veteran trees outside of the order limits.¹⁸⁷

¹⁸² Ellis POE at [1.1.97] – [1.1.141].

¹⁸³ Ellis POE at [1.1.120] on PDF p. 18 (internal p. 16).

¹⁸⁴ Ellis POE at [1.1.120] on PDF p. 18 (internal p. 16).

¹⁸⁵ In particular: CD8.01 NPPF paragraph 187(a) and (d); NPPF paragraph 193(a) and (b); CD 6.01 CLP Policies 69 and 70; CD 6.02 SCLP Policies NH/4 and NH/5.

¹⁸⁶ Allder POE at Image 4 on PDF p. 10 (same internal).

¹⁸⁷ Allder POE at Image 4 on PDF p. 10 (same internal). And conclusions at p. 21 under (c). Note: the Applicant has presented its case on the basis of Mr Allder's assessment of which trees are veteran trees (namely T2 – T13 – see [2.6] on p. 7). Thus, it is not necessary to get into the issue of how the competing definitions are to be applied to these trees. This, in and of itself, is a precautionary approach by the Applicant, given the obvious scope for experts to reach a different conclusion on the categorisation of the relevant trees.

186. In any event, even if there was the loss or deterioration of any of the six veteran trees within the order limits, nevertheless a suitable compensation strategy exists and has been secured, and there are wholly exceptional reasons in this case.

Route selection

187. The potential impacts on T5 – T10 were given express consideration during the route selection process, as documented in the second addendum to the ES (“ESA 2”).¹⁸⁸ A minor northward shift was assessed so as to avoid the veteran trees (although this would have resulted in a more central route through the orchard).¹⁸⁹
188. Both CPPF and Ms Gazeley were consulted on this option.¹⁹⁰ Neither party supported the northward shift.¹⁹¹ CPPF identified numerous concerns with this option.¹⁹²
189. The Applicant took these views into account and concluded that (1) the northern option would not provide any environmental advantage over the proposed route given the new environmental effects, in particular landscape effects, which it entailed;¹⁹³ and (2) the northern option was also inferior on operational and safety grounds (especially having regard to accessibility, safety, severance, land take and earthworks).¹⁹⁴
190. Having regard to these matters, as well as the wider submissions on alternatives above, it follows that a robust route selection process has been undertaken and it has not been possible to avoid the interface with the veteran trees in the orchard.

¹⁸⁸ CD 1-10.06 at [2.4.1] – [2.4.7] on PDF pp. 15 – 16.

¹⁸⁹ CD 1-10.06 at [2.4.1] on PDF p. 15.

¹⁹⁰ CD 1-10.06 at [2.4.2] on PDF p. 15.

¹⁹¹ CD 1-10.06 at [2.4.3] on PDF p. 15.

¹⁹² CD 1-10.06 at [2.4.3] on PDF p. 15.

¹⁹³ CD 1-10.06 at [2.4.4] on PDF p. 15.

¹⁹⁴ CD 1-10.06 at [2.4.5] on PDF p. 15.

T6, T7 and T9

191. There will be no loss or deterioration to T6, T7 and T9 because they will be translocated. This is Mr Allder's expert judgment, based on close interaction with translocation specialists Ruskins who are experienced in moving fruit trees and have provided an outline methodology which Mr Allder has incorporated into his translocation methodology.¹⁹⁵
192. Importantly, the inquiry has not received any other expert arboricultural evidence (let alone any other contrary expert arboricultural evidence). Mr Woodfield made no reference to this issue in his written evidence and his throwaway line in cross-examination goes nowhere given he has no relevant arboricultural qualification, as he confirmed.
193. Ms Gazeley unsuccessfully challenged Mr Allder's evidence. Before considering her concerns individually, it is important to note that (1) she is not an arboricultural expert and did not present expert evidence;¹⁹⁶ and (2) her evidence was not credible given her claimed reliance on claimed written sources which simply did not exist .
194. This later point bears greater exposition. In the critical part of her POE where Ms Gazeley addressed the efficacy of translocation, she claimed that 'the science is unequivocal' and that translocation would result in loss of the veteran trees.¹⁹⁷ Ms Gazeley sought to bolster this argument with two references (including direct quotation): the first to a research paper and the second to best practice guidance. However, this was demonstrably false.¹⁹⁸ The research paper does not exist. The best practice guidance does not contain the words quoted. Both points were put to Ms Gazeley in cross-examination and she accepted both were inaccurate and did not exist.
195. Whatever the reason for this state of affairs (and it seems that an AI hallucination is the most likely), the end result is that her evidence lacks

¹⁹⁵ Allder POE at [6.1] – [6.12] on PDF p. 16, and [10.1] on PDF p. 21.

¹⁹⁶ As she confirmed in XX.

¹⁹⁷ Gazeley POE on PDF p. 13, top paragraph.

¹⁹⁸ Allder RPOE at PDF pp. 4 – 5.

any credibility and cannot be afforded any weight – either on this issue or generally.¹⁹⁹

196. Further and in any event, Mr Allder explained in cross-examination why each of her concerns was unfounded. In particular:

196.1. Mr Allder's evidence is not "based on a single case study" as alleged; rather it is based on his experience and his interactions with Ruskins, specialist translocation experts who have moved hundreds of fruit trees.

196.2. Whether or not the black mulberry in the case study is a veteran does not change the point that it is clearly a mature tree and of a similar age and size to the apple trees in question. As such, it is an appropriate and informative case study.

196.3. The fact that Ruskins did not visit the site is of no consequence given (1) Mr Allder's own visit and tree survey; (2) Mr Allder's discussions with Ruskins; (3) the fact that he was able to provide Ruskins with all the information that they required; and (4) the fact that Mr Allder appeared at this inquiry, was tested on his evidence, and answered all of the questions put to him from his expert knowledge.

197. Ms Gazeley's reliance on the emails with Mr Newman at Civic Trees does not undermine Mr Allder's evidence.²⁰⁰ In particular:

197.1. Mr Newman did not appear and could not be tested on his views. It is also unclear what (if any) expert qualifications he holds. The weight to be afforded to the emails must be reduced as a result.

197.2. Despite the Applicant's direct and specific request for Ms Gazeley to provide the full series of emails with Mr Newman, Ms Gazeley declined to provide this information (instead only providing two non-continuous emails without any context). There was no good

¹⁹⁹ Especially given she has failed to include an appropriate declaration about her use of AI (which she accepted in cross-examination) and has failed to identify which part(s) of her POE were written by AI

²⁰⁰ CD 29-64 at PDF p 2 ff.

reason for her not to do so. This has two effects. First, it undermines still further her credibility. Secondly, it significantly reduces the weight to be afforded to the emails still further.

197.3. In this latter regard, it appears from the emails that Mr Newman considered only 'the Coton Orchard website'.²⁰¹ Critically, there is no evidence that Mr Newman considered the ES or any of Mr Allder's evidence. This is a critical omission in the views expressed by Mr Newman and yet another reason to reduce the weight to be afforded to the emails. Mr Newman also did not inspect the trees himself, again in contrast to Mr Allder.

197.4. In any event, there are important differences between Mr Newman's approach and the relocation methodology presented by Mr Allder, in particular: Mr Allder has included an additional pruning event to alleviate impact;²⁰² Mr Allder has allowed more time for the translocation;²⁰³ Mr Allder has included mulching and additional ground treatment/preparation;²⁰⁴ and Mr Allder has included an extended period for the guy ropes and a much longer monitoring and maintenance period.²⁰⁵ In all these respects Mr Allder's approach is more precautionary (as Ms Gazeley accepted in cross-examination) and, as such, it is readily understandable why he reaches a different view to Mr Newman.

198. For all these reasons and, in particular the absence of any contrary expert evidence, Mr Allder's evidence should be preferred and the correct conclusion is that there will be no loss or deterioration to T6, T7 and T9.

T5, T9 and T10

199. T5, T9 and T10 will be retained in situ. There will be no loss or deterioration to these trees, consistently with Mr Allder's evidence.²⁰⁶ In

²⁰¹ CD 29-64, PDF p. 2, third paragraph.

²⁰² Allder POE at [6.5] on PDF p. 16.

²⁰³ Allder POE at [6.5] on PDF p. 16.

²⁰⁴ Allder POE at [6.3] – [6.4] on PDF p. 16.

²⁰⁵ Allder POE at [6.11] – [6.12] on PDF p. 16.

²⁰⁶ Allder POE at [10.1] on PDF p. 21 (see (c)).

this regard Mr Allder has provided detailed evidence of the mitigation measures which will secure this outcome, including a draft Arboricultural Method Statement (the final form of which will be secured by condition).²⁰⁷ There has been no effective challenge to this evidence by any objectors.

Timing of relocation

200. CPPF cross-examined Mr Allder on a narrow point about the timing of the translocation. There is nothing in this line of questions. The Order is likely to be made in 2026; the first root prune will be in the autumn of 2026 and the trees will be translocated at the same time as the third root prune in Autumn 2028, after which the busway can be completed. This timing – between Autumn 2026 and Autumn 2028 – is consistent with a two year build period. The only real “delay” is in the period between making the Order and Autumn 2026, but this period will be taken up waiting for the challenge period to expire in any event. Further, these timings do not make the mitigation “undeliverable” as Ms Gazeley alleged in closing.²⁰⁸

Compensation strategy

201. For the reasons set out above, there will be no loss or deterioration of veteran trees and thus no need to provide a suitable compensation strategy. However, the Applicant has addressed this issue on a without prejudice basis, in the event that there is an adverse conclusion on the prior issue of loss and deterioration.
202. The Applicant has provided a compensation strategy.²⁰⁹ This strategy provides compensation on a worst case basis, i.e. assuming loss or deterioration to all six trees within the order limits (T5 – T10).²¹⁰ A final version of this strategy is secured by condition (Condition 10) and all of the measures can be implemented by the Applicant alone (although the Applicant remains open to working with Coton Orchard on additional

²⁰⁷ Allder POE at [4.2] on PDF p. 10, [4.5] on PDF p. 12, [5.3] on PDF p. 13, [5.6] on PDF p. 14, and his Appendix 6 (at PDF p. 16). Draft condition 10 CD29-96

²⁰⁸ PDF p. 13.

²⁰⁹ CD 1-11.14.03 TR 14.2.

²¹⁰ See in particular, PDF p. 8, table column 3 (referring to 2024 Regs – i.e. all six trees – see earlier explanation at [1.1.7])

measures). Mr Allder has explained why this compensation strategy is suitable for the purposes of the NPPF.²¹¹

Wholly exceptional reasons

203. The Applicant has also addressed the issue of wholly exceptional reasons on a without prejudice basis. The wholly exceptional reasons are addressed below in the planning balance.

Conclusion

204. It follows that the interface of the Busway with the relevant veteran trees is in accordance with paragraph 193(c) of the NPPF, as well as relevant development plan policy.²¹²
205. The impact on other (non-veteran) trees is also acceptable when assessed against the relevant planning policies and has not been the subject of any particular challenge.²¹³
206. T5 – T10 within the orchard are the subject of a tree preservation order (“**the TPO**”). Taking the TPO at face value (and not inquiring further into why it was made contrary to the advice of the local planning authority’s officers), this is not a reason for considering the Busway to be unacceptable. The TPO only protects the amenity value of the relevant trees. That amenity value will be unharmed (given three of the trees remain in situ and the other three are translocated) and in any event is compensated for by the additional tree planting. Further and importantly, the removal of trees protected by a TPO in order to facilitate development under a deemed grant of planning permission is permissible pursuant to regulation 14(1)(a)(vii) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
207. For these reasons, the impact of the Busway on trees is acceptable.

²¹¹ Allder POE at [9.1] – [9.5] on PDF p. 20 (same internal) and [10.1] on PDF p. 21 (same internal).

²¹² CD 6.01 CLP Policy 71; CD 6.02 SCLP Policy NH/7

²¹³ CD 8.01 NPPF paragraph 193; CD 6.01 CLP Policy 71; CD 6.02 SCLP Policy NH/7

Biodiversity Net Gain

208. The Busway will deliver a biodiversity net gain (“**BNG**”) of at least 10%. The Busway aspires to an even greater gain, but even at 10% the Busway is acceptable and delivers a benefit which should be afforded significant weight in favour of the Busway.

Statutory and policy framework

209. The grant of planning permission for the Busway will not be subject to the statutory condition in paragraph 13(2) of Schedule 7A to the TCPA 1990. The reason for this is that the relevant provisions of the Environment Act 2021 (which inserted Schedule 7A into the TCPA 1990) have not been brought into force for cases such as the present where planning permission is deemed to be granted pursuant to section 90 TCPA 1990: see the transitional provisions in regulation 2 of the Environment Act 2021 (Commencement No.8 and Transitional Provisions) Regulations 2024.²¹⁴
210. Nevertheless, the Applicant is committed to achieving no less than 10% BNG. This is in line with the Greater Cambridge Shared Planning Biodiversity SPD.²¹⁵ BNG at 10% would also satisfy paragraph 187(d) of the NPPF (which required only a net gain, not a particular level of gain).

Provision of BNG by the Busway

211. Condition 15²¹⁶ will secure at least 10% BNG, consistently with the Applicant’s initial BNG assessment.²¹⁷
212. The only challenge to this assessment was from Mr Woodfield. Mr Woodfield alleged that the initial BNG assessment is incorrect on two grounds.
213. Mr Woodfield’s first ground was that individual trees within Coton Orchard had been omitted incorrectly. Whilst those trees were omitted,

²¹⁴ CD 5.23 at PDF p. 2.

²¹⁵ CD 7-12 at [5.5.21] on PDF p. 46.

²¹⁶ CD29-96

²¹⁷ CD 1-11.05 – TR 5.07.

this is of no material consequence. The trees were omitted as a result of the assessment's timing and transitioning between different iterations of the BNG metric, as Mr Whitby explained. Earlier versions of the metric did not include the recording of such trees. In any event the trees will be inputted into the BNG metric for approval under Condition 15.

214. Mr Whitby's explanation is adequate and readily understood. Mr Parker incorrectly asserted in cross-examination of Mr Whitby that there had been a failure in the updating validity surveys.²¹⁸ This is not the case. As is clear from those surveys, their scope was to identify whether there had been any significant changes in habitat which could affect the validity of the survey data in line with the CIEEM advice note.²¹⁹ The validity surveys did not purport to (and thus did not fail to) update the initial BNG metric. Accordingly, the criticism in cross-examination is without foundation.
215. Mr Woodfield's second ground was that the habitat within Coton Orchard had been incorrectly categorised. This criticism is incorrect for the reasons already explained.
216. In any event, even if these criticisms were correct, they are of no consequence for the following reasons.
217. First, the initial BNG metric is only provisional. A revised BNG metric must be submitted for approval by the local planning authorities under Condition 15 following the detailed design of the Busway. This mechanism ensures that the final BNG metric accurately reflects the detailed design of the Busway and is appropriately scrutinised. Any omissions – e.g. the trees in Coton Orchard – will be accounted for in this final metric.
218. Secondly, on Mr Woodfield's approach (which is not accepted), the end result is a need to find 51.71 habitat units offsite.²²⁰ If necessary, this can and will be done by GCP. More particularly:

²¹⁸ By reference to CD 1.11-05 TR5.07 at [3.1.3] on PDF p. 5.

²¹⁹ CD 1-11.05 TR16 at [1.3.3] on PDF p. 6.

²²⁰ Woodfield POE at [5.3.4] on PDF p. 31 (internal p. 27).

218.1. Lower Valley Farm is a very large offsite habitat bank on land owned by the County Council. This site is up and running, is available to the GCP now and offers 1,000 biodiversity units.²²¹ This is more than sufficient units, even on Mr Woodfield's pessimistic assessment of requiring 50 units and even on the (incorrect) basis of 910 habitat units being available, as put to Mr Whitby in cross-examination.²²²

218.2. As Mr Whitby explained, Lower Valley Farm has the ability to accommodate all the required habitat and hedgerow units, with the exception of water course units. As to water course units, the GCP has made provision for units as part of the new Sheep's Green scheme on a water course controlled by the City Council.²²³ Contrary to CPPF's closing at paragraph 70, the evidence demonstrating the use of Sheep's Green is squarely before the inquiry.

218.3. The GCP has confirmed that Lower Valley Farm and Sheep's Green will be utilised for GCP schemes first and, only if at least 20% BNG has been attained, will units be released to other schemes.²²⁴ Accordingly, there is no risk of these units being "used up" on other projects.

218.4. It follows that more than sufficient offsite biodiversity units are available. The absence of any legal agreements is not a cause for concern as GCP will utilise land controlled by the County or City Councils, in accordance with its now established approach.

219. Thirdly, it is important to note that Mr Woodfield's approach is not correct and none of his claimed "obstacles" are well founded. Mr Woodfield's arguments around watercourse units fail as a result of Sheep's Green. As to the other matters:

²²¹ Explained by Mr Whitby but also confirmed in CD 29-93-1 at [4.7] on PDF p. 4.

²²² Cross-examination of Mr Whitby omitted to include or consider hedgerow units. See Whitby RX.

²²³ CD 29-93-1 at [4.13] – [4.14] on PDF pp. 5 – 6 and at [6.3] on PDF p. 8.

²²⁴ CD 29-93-1 at [6.7] on PDF p. 8, second sentence.

219.1. The calculations undertaken by Mr Woodfield only assess a “snapshot” of the Busway, namely the off-road component around Coton.²²⁵ This is not a complete assessment of the Busway. Critically, important components of on-site compensation (e.g. at Scotland Farm) were omitted.²²⁶ Without the inclusion of such compensation a fair and objective overall view of the Busway cannot be reached.

219.2. Mr Woodfield’s arguments about the use of new habitats by bats were also in error. The starting point is that (contrary to the later commentary by Mr Parker) Ms Reason did not conclude that any habitat compensation was necessary. Her POE was clear: ‘Even in the absence of mitigation, sufficient existing and accessible habitat is available within and beyond the Scheme to maintain the favourable conservation status of the bat population given the small extent of habitat loss’.²²⁷ In any event, as Mr Whitby explained, Ms Reason’s analysis demonstrates that the Busway will result in an on-site uplift in barbastelle bat foraging habitat (from 25 to 37 hectares), thus ensuring there will be no adverse effect on the species.²²⁸ There is no difficulty relying on this planting for both the BNG calculation and bat foraging habitat as there is no requirement for an EPS licence in this case.

219.3. In any event, as Mr Whitby explained in cross-examination, there are a number of additional methodological difficulties with Mr Woodfield’s approach. Trees had been wrongly categorised. Further, the extrapolation undertaken by Mr Woodfield was incorrect. Overall, Mr Woodfield’s approach incorrectly inflated the habitat units required.

220. Fourthly, even if the required biodiversity units could not be found offsite (e.g. at Lower Valley Farm), it will still be possible for GCP to deliver BNG in accordance with Condition 15 by purchasing biodiversity credits. This

²²⁵ Woodfield POE at [5.3.2] on PDF p. 30 (internal page 26).

²²⁶ CD 1-17 at PDF p. 44, describing the landscaping.

²²⁷ Reason POE at [7.4.1] on PDF p. 23 (same internal).

²²⁸ Reason POE Apx. At PDF p. 43. Also Whitby XiC.

is now an established part of the BNG framework. Such biodiversity credits can and will be obtained if required. The only “obstacle” claimed by CPPF was the cost of such credits. However, this is not, in fact, an obstacle because even CPPF’s worst case figure of £1 million (as put in cross-examination of Mr Whitby) is a small percentage of the Busway’s construction cost contingency (and not the whole scheme contingency).²²⁹

Conclusion

221. For these reasons, the Busway will deliver a BNG of at least 10%. The Busway aspires to an even greater gain, but even at 10% the Busway is acceptable and delivers a benefit which should be afforded significant weight in favour of the Busway and which accords with relevant local and national policy.²³⁰

Carbon

222. The Busway will have a beneficial net carbon impact. The Busway will generate a carbon saving of 7,055 tCO₂e.²³¹ This calculation is based on the latest F-Series traffic model and uses recent data from the May 2025 TAG data book. Limited positive weight in favour of the Busway is to be afforded to this benefit.²³²

Criticisms by CPPF

223. CPPF sought to challenge this conclusion through Professor Hirst’s evidence. Two issues were raised: first, the manner in which the data for appraisal years beyond 2050 had been extrapolated; and secondly, the date of the TAG data book used in the original assessment within the ES.
224. Neither criticism stands up to scrutiny. On the first issue Professor Hirst’s approach is directly contrary to the Secretary of State’s recent Local

²²⁹ CD 1-21.03 at Table 3-1 on PDF p. 7.

²³⁰ CD 8.01 NPPF paragraphs 187(a) and 193(a); CD 6.02 SCLP Policy NH/4 and the CD 7-12 the Greater Cambridge Biodiversity SPD.

²³¹ Saunders POE Apx PDF p. 19, Table 1, column 4. Even on the more recent alternative methodology there is still a benefit – see CD 29-63 at Table 3, PDF p. 13, final column.

²³² CD 29-62, PDF p. 15, final row.

Transport Quantifiable Carbon Guidance (“the QCG”) without good reason.²³³ On the second issue, the criticism fails to consider the ES fairly, but in any event it is a matter of form not substance and it is a point that goes nowhere: Mr Saunders has presented an up to date assessment using the May 2025 TAG data book, about which no criticism is now made.

225. Before considering each issue, it is important to note that Professor Hirst’s evidence was not expert evidence from a professional witness; rather her evidence was given in support of her personal view in objecting to the Busway. Professor Hirst rightly apologised for including an expert’s professional declaration.²³⁴ The misleading impression must be corrected. Professor Hirst’s evidence must not be considered as impartial expert evidence.

Issue 1 – Extrapolation of data for appraisal years beyond 2050

226. The applicable guidance for the calculation of carbon impacts in this case is the section on ‘Scheme level simple demand forecasting’ in the QCG.²³⁵ This is very recent and up to date guidance published by the Secretary of State in August 2025.
227. As the QCG explains: this method involves extracting link data from a traffic model for two scenarios (with and without the Busway), applying calculations to estimate carbon emissions, interpolating and extrapolating this over the assessment period and calculating the difference between the two scenarios.²³⁶ That difference in this case is a carbon saving of 7,055 tCO₂e.²³⁷
228. The QCG gives very clear guidance on the approach beyond the year 2050. It states (our emphasis):

‘Data for appraisal beyond 2050 can be held constant up to the end of the assessment period (extrapolated horizontally). This is illustrated in Figure 7-2.

²³³ CD 8-41.

²³⁴ Hirst XX.

²³⁵ CD 8-41 at PDF pp. 76 – 79.

²³⁶ CD 8-41 at PDF p. 77, Table 7-13, second row, second column.

²³⁷ Saunders POE Apx. PDF p. 19, Table 1, column 4.

Alternatively, the annual change between the final two modelled years could be applied beyond the final modelled year if considered appropriate.²³⁸

229. The default option is horizontal extrapolation where the data for appraisal beyond 2050 is held constant up to the end of the assessment period: see the first sentence in the quoted paragraph above. This is the approach adopted by Mr Saunders. This is the correct approach.
230. The QCG gives an alternative approach: see the second sentence in the paragraph quoted above, starting ‘Alternatively’. However, Mr Saunders’ assessment was, rightly, not based on this approach.
231. This alternative approach was only included in the latest version of the QCG promulgated in August 2025, i.e. after Mr Saunders’ assessment. There can be no tenable criticism for not applying guidance which had not been published.
232. In any event, the alternative approach should only be adopted when appropriate. This is a matter for expert judgment for the assessor. Mr Saunders has explained, rightly, that this approach is not appropriate.
233. Extrapolation under this alternative approach would imply electric vehicle uptake exceeding 100% before the end of the assessment period which (to put it mildly) is not possible.²³⁹ This is compounded by the fact that the difference between the last two modelled years is only due to different TAG parameters being applied, rather than any change in forecast, and thus it would not accurately reflect future trends.²⁴⁰
234. Ultimately, Mr Saunders has applied the QCG correctly, even having regard to guidance which was not published at the time of the Applicant’s assessment.
235. Professor Hirst did not suggest that an approach should be based on electric vehicle uptake exceeding 100% before the end of the assessment

²³⁸ CD 8-41 at [7.46] on PDF p. 79.

²³⁹ CD 29-61 at [65] on PDF p. 11.

²⁴⁰ CD 29-61 at [66] on PDF p. 11.

period. It follows that her evidence does not support the alternative approach in the QCG. Instead, Professor Hirst promoted her own, alternative methodology. This approach was not in accordance with the QCG.

236. Professor Hirst's approach was based on the section of the QCG concerned with the estimation of 'current and future emissions at an area-wide level without intervention'.²⁴¹ The assessment of the Busway is not such an estimation. The Busway requires a project specific and site specific assessment with intervention. An area wide assessment without intervention is of no assistance. This is confirmed expressly in the QCG which directs Chapter 3 of the QCG (on which Professor Hirst relied) to the strategic planning stage (e.g. Local Transport Plans); and instead directs Chapter 7 of the QCG (on which Mr Saunders relied) to scheme development.²⁴² Again, Mr Saunders, not Professor Hirst, applied the QCG correctly.
237. Re-examination on this point was obviously incorrect as well. Figure 5-2 of the QCG expressly states that for 'the assessment of preferred option(s)' a quantitative carbon assessment using the guidance in Chapters 6 – 8 should be used, i.e. including the relevant section in Chapter 7 applied by the Applicant. Professor Hirst relied on parts of the QCG outside of these chapters and not relevant to a quantitative carbon assessment.
238. There were three further defects in Professor Hirst's approach:
- 238.1. First, Professor Hirst's general point about using DfT's common analytical scenarios ("CAS") data – as well as the part of the QCG that she relied on in support – is in direct conflict with the appropriate and specific guidance on the assessment of a scheme such as a busway which instructs that the TAG data book is used.²⁴³ There are good reasons for this, in particular the fact that the CAS is a presentation of many different scenarios of varying probability.

²⁴¹ See Professor Hirst's Note at [11], relying on the QCG CD 8-41 at [3.25] on PDF p. 23. Note the heading on PDF p. 20.

²⁴² CD 8-41 at PDF p. 13, bullet points 1 and 2.

²⁴³ CD 8-41 at [7.41] and [7.46], especially the latter, on PDF p. 78.

238.2. Secondly, Professor Hirst erroneously relied on the 2030 ban on the sale of combustion vehicles as a factor supporting the use of CAS. This was in error because the TAG data book also takes this into account.²⁴⁴ There is no distinction as claimed.

238.3. Thirdly, Professor Hirst's approach relies not only on the use of CAS data but its application in a straight line until 100% EV car use (at a point she did not identify accurately) and then horizontal extrapolation thereafter. There is no support for this approach in the QCG. To the contrary, it is an approach which is in direct conflict with the example in the QCG.²⁴⁵

239. Professor Hirst's divergence from the QCG was implicitly recognised in re-examination when she was asked whether there were good reasons to depart from the QCG. This argument is hopeless. More particularly:

239.1. The QCG was promulgated by the Secretary of State very recently, in August 2025. Accordingly, whilst it is, in principle, possible to depart from guidance of any age, nevertheless, as a matter of logic the reasons for departing from recent guidance will need to be particularly strong. This is all the more the case here given the absence of any material change in circumstances since August 2025.

239.2. There is no good reason in this case. It is asserted by Professor Hirst that the Applicant's approach is unrealistic, but such a simplistic answer is to misunderstand the nature of carbon assessment modelling. Rather, as Mr Saunders explained in cross-examination: "Modelling that far into the future cannot be realistic – [the models] might be completely accurate but I just don't know."²⁴⁶ So, whether or not a forecast is "realistic" cannot be a good reason to abandon the QCG because difficulties with realism are inherent in all such modelling exercises. What is important is about using the most

²⁴⁴ CD 8-42 at A1.3.9, see Note 2.

²⁴⁵ CD 8-41 at Figure 7-2 on PDF p. 79.

²⁴⁶ Mr Parker consistently failed to recognise this important context to Mr Saunders subsequent answer about whether the modelling was "realistic". This undermines the basis of the questions put to Professor Hirst.

appropriate forecast and, in this regard, the QCG should be followed as it is recent guidance from the Secretary of State, formulated with the benefit of expert advice and, critically, directed precisely to the task at hand.

239.3. Professor Hirst may not like the Secretary of State's methodology or may consider it has deficiencies, but she has not identified an alternative methodology from an appropriate source. In these circumstances, the methodology in the QCG, as used by the Applicant, represents 'current knowledge and methods of assessment' for the purposes of rule 11(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. Accordingly, by using that methodology, the Applicant has provided information which satisfies the legal requirements on the ES under that rule. This was accepted by Professor Hirst in XX. CPPF's submission in closing at paragraph 45 goes behind that concession and, even if it were right, goes nowhere as it is a criticism of the ES which ignores the totality of the environmental information, including the updated information presented by Mr Saunders at the inquiry.

240. For all these reasons, the Applicant's approach is to be preferred. Accordingly, the Busway will have a beneficial net carbon impact. The Busway will generate a carbon saving of 7,055 tCO₂e.²⁴⁷

Issue 2 – Date of the TAG data book

241. CPPF took up a great deal of time at the inquiry on the question of whether or not the correct TAG data book had been used in the ES. This is a line of argument which goes nowhere and is wrong in any event.

242. First, Mr Saunders has presented an updated assessment in the appendices to his Proof of Evidence.²⁴⁸ It is agreed that this assessment utilises the up

²⁴⁷ Saunders POE Appendices PDF p. 19, Table 1, column 4.

²⁴⁸ Saunders POE Appendices, PDF p. 19, Table 1, fourth column headed 'updated assessment using TAG 2025'

to date TAG data book, namely May 2025.²⁴⁹ Accordingly, even if there was any error in the ES (which is not accepted, for the reasons below), it is entirely immaterial as a corrected assessment is before the inquiry and the Applicant's position (including these submissions) is based on that updated assessment. Notably, the overall conclusion – a minor beneficial effect – is unchanged.

243. Secondly, even if the November 2022 TAG data book was used (as Professor Hirst asserts), it would have made no material difference to the calculation in the ES.²⁵⁰ Again, the conclusion of a minor beneficial effect would have been reached.

244. Professor Hirst's response on this point was to assert that the November 2022 TAG data book should have been used with the E Series Traffic Model. This position is unsustainable. Although the initial carbon assessment in the ES did use the E series, if an updating process had been undertaken (as Professor Hirst contends should have occurred), that updating process would not have artificially constrained itself only to one component of the carbon assessment; rather it would have also utilised the F Series Traffic Model, consistently with the other later assessments within the ES.²⁵¹ (Indeed, in respect of Mr Saunders' evidence, Professor Hirst described the use of the F Series Traffic model as "acceptable".²⁵²) On this basis, there would have been no material change.²⁵³ CPPF's closing submissions on this point at paragraph 49 adopt the unrealistic position that only a partial update would have been done.

245. Thirdly and in any event, the approach in the ES was correct.

246. As to the facts:

²⁴⁹ XX of Professor Hirst.

²⁵⁰ CD 29-63 at [34] on PDF p. 7.

²⁵¹ See CD 1-25.01 at [5.2.1] on PDF p. 31 – The TA in the ES was based on the F series model.

²⁵² XX of Professor Hirst.

²⁵³ CD 29-63 at [34] on PDF p. 7. Also Saunders POE Apx. C at Table 1 on PDF p. 19, third column headed 'Updated assessment using TAG [November] 2022].

246.1. The chronology of events is set out in the Applicant's Note.²⁵⁴ CPPF does not dispute this chronology.²⁵⁵

246.2. Mr Saunders explained in cross-examination that when reviewing the ES during its production, "if something has come to pass and it makes a fundamental difference then you'd take a view [on updating]" and that "you'd take a view as to how material it was for the assessment". In respect of the carbon assessment in the ES, Mr Saunders explained: "[WSP] used the TAG data book that was right at the time, changes came to pass and [they] took the view that nothing was material".

246.3. These matters were further explained in WSP's Note.²⁵⁶ In particular, WSP explained that: updating to use the November 2022 TAG data book 'was not a proportionate approach in the circumstances';²⁵⁷ that 'traffic modelling derived user emissions were not updated on the basis of proportionality';²⁵⁸ and that it is not best practice to utilise the Forthcoming Changes version in advance of the actual updates to the TAG data book.²⁵⁹

247. Four matters are noteworthy:

247.1. First, as Professor Hirst is not an expert in the assessment of project level carbon emissions and as she was not giving impartial expert evidence, she is in no position to challenge WSP's explanation of best practice in this area.

247.2. Secondly, contrary to Mr Parker's interruptions in the cross-examination of Professor Hirst, it is apparent from these facts that both Mr Saunders and WSP provided an explanation of the approach taken, including their view, at the time, that updating to use the November 2022 TAG data book was not proportionate.

²⁵⁴ CD 29-63 at [28] on PDF pp. 5 – 6.

²⁵⁵ XX of Professor Hirst.

²⁵⁶ CD 29-63.

²⁵⁷ CD 29-63 at [8] on PDF p. 2.

²⁵⁸ CD29-63 at [33] on PDF p. 7.

²⁵⁹ CD 29-63 at [32] on PDF p. 7.

247.3. Thirdly, it is apparent from the partial update that was undertaken by WSP (in respect of the modal shift assessment²⁶⁰) that WSP was considering whether to update (and, if necessary carrying out such an update) during the preparation of the ES. This is consistent with the judgments that they have explained: this consistency illustrates why these are not ex-post-facto justifications.

247.4. Fourthly and in any event, even if (1) Mr Saunders or WSP had not provided any explanation; and/or (2) WSP failed to review the carbon assessment during the preparation of the ES (neither of which are correct assertions), nevertheless, it would still remain open to the Applicant to explain now why an update to the ES was not proportionate because what matters is the assessment of the evidence now. This is a further example of why Mr Parker's interruptions in cross-examination were incorrect.

248. As to proportionality, the approach to be adopted is set out in the Secretary of State's Transport Analysis Guidance on 'The Proportionate Update Process' ("**the PUP Guidance**").²⁶¹

249. The PUP Guidance explains the following key principles:

249.1. The TAG Orderly Release Process (i.e. the publishing of "forthcoming changes") provides advance notice of changes to TAG.²⁶² The reason for this process is to give more certainty of timetable for changes and to allow scheme promoters and sponsors to plan the work required to implement the changes.²⁶³ Importantly, this process is not in place to require forthcoming changes to be adopted.²⁶⁴ The PUP Guidance is clear: an update should be made "if it is appropriate to do so", not automatically. CPPF's closing submission ignore the inherent judgment in this approach.²⁶⁵

²⁶⁰ CD 29-63 at [44] - [49] on PDF pp. 8 - 9.

²⁶¹ CD 29-63 at PDF p. 30 ff.

²⁶² CD 29-63 at [1.2.3] on PDF p. 32.

²⁶³ CD 29-63 at [1.2.3] on PDF p. 32.

²⁶⁴ Accepted in XX of Professor Hirst.

²⁶⁵ At [47]

249.2. The decision as to whether an assessment should be updated as a result of TAG data book changes is a decision for the project's promoter, based on the principle of proportionality.²⁶⁶ A scheme specific assessment is required.²⁶⁷

250. The Applicant's approach as explained by Mr Saunders and WSP was consistent with these overarching principles.

251. Further, the PUP Guidance indicates that it is reasonable to presume that the case for not adopting the latest evidence would be stronger if certain matters can be shown.²⁶⁸ Three of these matters are clearly demonstrated in this case. More particularly:

251.1. First, the changes to the TAG data book were not material to the decision at hand. As already explained, even if the ES had been updated, the outcome would have been the same: a minor beneficial effect.

251.2. Secondly, the risk of successful legal challenge was low. It is untenable to suggest that the wrong choice of TAG data book would have given rise to any legal risk. Any challenge could only have been by way of a claim for judicial review. No challenge was feasible on this point before the inquiry, given the inquiry provided an obvious alternative remedy. Equally, no challenge is feasible now, as the ES was updated in the evidence at the inquiry.

251.3. Thirdly, there is no – or at worst, only a very low – risk of damage to the reputation of the analysis because (1) the reasons for not updating are easily understood; and (2) it is a matter that has no material effect.

252. It follows that WSP was correct not to update the carbon assessment in the ES and no proper criticism of this decision can be sustained now.

²⁶⁶ CD 29-63 at [1.3.1] on PDF p. 32.

²⁶⁷ CD 29-63 at [1.3.2] on PDF p. 32.

²⁶⁸ CD 29-63 at [1.3.4] on PDF p. 32.

Net emission is not unacceptable in any event

253. Even if the Busway is a net emitter, contrary to the Applicant's evidence and the submissions above, it does not follow that the Busway is unacceptable for two reasons.
254. First, the QCG indicates that a net emitting scheme can be acceptable if the scheme is a 'strategic fit' with 'the outcomes identified as necessary to decarbonise local transport'.²⁶⁹ The Busway is such a scheme because it is an excellent strategic fit with relevant local transport policy,²⁷⁰ and that policy is itself focussed on decarbonisation.²⁷¹
255. Secondly, it is established national policy in the National Networks National Policy Statement ("**the NNNPS**") that the approval of schemes with residual carbon emissions 'is allowable and can be consistent with meeting net zero' where those emissions would not have a material impact on the ability of the Government to achieve its statutory carbon budgets.²⁷² The NNNPS is a material consideration in this case.²⁷³ Mr Littlewood rightly accepted in cross-examination that the worst case carbon emissions in this case would not have a material impact on the ability of the Government to discharge its statutory duties.²⁷⁴ Accordingly, the policy in the NNNPS is complied with by the Busway, even in the worst case (and taking Professor Hirst's evidence at its highest).
256. CPPF's closing submissions tellingly ignore the NNPS entirely.²⁷⁵ They do so because it provides the real world answer and aligns planning decision making to what is realistic. To take a stark example, if a new transport

²⁶⁹ CD 8-41 at [8.24] on PDF p. 57.

²⁷⁰ As explained by Mr Baker in his POE and as Mr Littlewood accepted in XX.

²⁷¹ CD 6-09 at PDF p. 6 (see penultimate item in ticked list), p. 7 (see final bullet point) and p. 9 (first two paragraphs under heading 'Reduce Environmental Impacts').

²⁷² CD8-09 at [5.42] on PDF p. 61.

²⁷³ CD 8-09 at [1.9] on PDF p. 6, expressly referring to TWA 1992 applications. See also the NPPF at [5]. The materiality in this case is particularly apparent because the NNNPS makes specific provision in respect of roads and buses as a form of public transport: see CD 8-09 at [2.7] on PDF p. 10.

²⁷⁴ The worst case emissions are 31,754 tCO₂e (being 0.0016% of the 4th Carbon Budget) – CD 1-11.06 PDF p. 17.

²⁷⁵ See Closing at [53].

scheme requires to be constructed using embodied carbon (e.g. concrete) and it is assumed that the scheme will be used by EVs, it will always be a net emitter based upon the formulaic approach. The policy recognises that such schemes, which may be highly beneficial, should not be rejected out of hand. A balanced approach has to be taken.

Conclusion

257. For the reasons explained above, the Busway will have a beneficial net carbon impact. This is a benefit of the Busway to which limited weight should be afforded in the planning balance. All relevant development plan and national policies are complied with by the Busway.²⁷⁶

Heritage

258. When considering any impact on the significance of heritage assets you will have to consider whether the duties imposed by section 66(1)²⁷⁷ and section 72(1)²⁷⁸ of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“P(LBCA)A 1990”) are engaged.
259. Section 72(1) P(LBCA)A 1990 applies to the exercise of any functions under the planning acts. Those functions include a decision to make a direction under section 90(2A) of the TCPA 1990,²⁷⁹ that planning permission be deemed to be granted. Part of the route of the proposed busway lies within the West Cambridge Conservation Area. When considering whether to make a direction that planning permission be deemed to be granted for that part of the busway which lies within a conservation area, the decision maker is required to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
260. The position in relation to the duty imposed by section 66(1) P(LBCA)A 1990 is less clear. The duty applies when considering whether to grant planning permission. For the purposes of the P(LBCA)A 1990, except

²⁷⁶ CD8.01 NPPF paragraphs 164 – 166; CD6.01 CLP Policy 29; CD6.02 SCLP Policies CC/1 and CC/3.

²⁷⁷ CD5-28 page 89

²⁷⁸ CD5-28 page 93

²⁷⁹ CD5-08 page 187

insofar as the context otherwise requires, the term 'planning permission' has the same meaning as in the principal Act,²⁸⁰ being the TCPA 1990.²⁸¹ 'Planning Permission' means 'permission under Part III or section 293A [but does not include permission in principle'.²⁸² It is our submission that a direction that planning permission be deemed to be granted is not a planning permission under Part III of the TCPA 1990, as the effect of the direction is to dispense with the requirement for planning permission.²⁸³ However, the planning policy set out in the NPPF would still be a material consideration and should be applied. NPPF paragraph 212 provides that great weight should be given to a designated heritage asset's conservation.

261. Generally a decision maker who works through the relevant paragraphs in the NPPF will have complied with the duty imposed by section 66(1) P(LBCA)A 1990.²⁸⁴ We request that you should work through the relevant paragraphs in the NPPF. If you follow that request you will have taken account of, and applied the policy, and (if it applies) you will have complied with the requirements of section 66(1) of the P(LBCA)A 1990.
262. The ES, together with ESA2 and Mr Wilson's evidence, presents a complete assessment of the Busway's impacts on the relevant heritage assets. Although the inquiry has heard much discussion about the impacts of the CPPF Alternative on the American Military Cemetery there has been no substantive challenge to the Applicant's assessment of the heritage impacts of the Busway itself.
263. Without prejudice to the full assessments presented by Mr Wilson, we focus here on the American Military Cemetery and Clare Hall, given they were specifically identified in the Statement of Matters and in the Inspector's main considerations.

²⁸⁰ Section 91(2) P(LBCA)A 1990, CD5-28 page 121

²⁸¹ Section 91(1) P(LBCA)A 1990, CD5-28 page 121

²⁸² Section 336(1) TCPA 1990 CD5-08 page 584

²⁸³ See *R (Samuel Smith Old Brewery) v. Secretary of State* [2012] EWHC 46 (Admin) at paragraph 79

²⁸⁴ CD29-87 - *Jones v. Mordue* [2015] EWCA Civ 1243 at paragraph 28.

American Military Cemetery

264. The American Cemetery is a Grade 1 Registered Park and Garden. The asset is of national and international importance, and as such it is an asset of very high heritage significance.²⁸⁵ The Memorial building within the Cemetery is separately listed at Grade II*. Mr Wilson has comprehensively described the significance of these assets and the contribution that setting makes to their significance without any dispute.²⁸⁶
265. The Busway would not harm either the Registered Park and Garden or the listed building. This is the obviously correct conclusion having regard to the separation distances, the intervening vegetation and buildings, and the topographical change.

Clare Hall

266. Clare Hall is a Grade II* listed building. Mr Wilson has explained the significance of the building, including the contribution that its setting makes to its significance, in considerable detail.²⁸⁷
267. Applying the NPPF, the Busway would result in less than substantial harm toward the lower end of the spectrum of less than substantial harm.²⁸⁸ This harm is only as a result of change within the listed building's setting. There will be no direct effect on the fabric of the asset itself.
268. This assessment was agreed by Historic England in its first representation.²⁸⁹ In its second representation Historic England did not depart from its earlier representation but sought clarity on the interface of the Busway and Clare Hall along Rifle Range. This matter appears to have been noted in response to objections. There is no cause for concern as Mr Wilson has explained.²⁹⁰ The cross section for Sheet 17 is accurate as it

²⁸⁵ Wilson POE at [5.10.10] on PDF p. 47 (same internal).

²⁸⁶ Wilson POE at [5.10.10] – [5.10.16] on PDF pp. 47 – 48 (same internal).

²⁸⁷ Wilson POE at [4.2.1] – [4.5.13] on PDF p. 16 – 30 (same internal).

²⁸⁸ Wilson POE at [4.7.24] on PDF p. 35 (same internal).

²⁸⁹ CD 2-REP-08.1 – see PDF p. 1, final paragraph, and PDF p. 2, first paragraph.

²⁹⁰ Wilson POE at [6.4.1] – [6.4.19] on PDF pp. 69 – 72 (same internal).

shows the Busway adjacent to the Anthony Low Building.²⁹¹ The Busway will not affect the physical fabric of the canal (drainage conduit), including both the original part that is outside of the order limits and the later part that is inside the order limits.²⁹² With this clarification, there are no matters of concern in Historic England's second representation. Historic England's agreement with the Applicant's assessment is unchanged.

Heritage balance

269. Mr Wilson has identified those assets²⁹³ which will be harmed by the Busway. Applying the NPPF, all of these adverse impacts would be categorised as less than substantial harm at the low end of the spectrum of less than substantial harm. This harm must be balanced against the public benefits of the Busway whilst giving great weight to the conservation of designated heritage assets.²⁹⁴ Those benefits are explained further below. Undertaking the balancing exercise, the correct conclusion is that the benefits outweigh the harm, as Mr Sensecall explained. That remains the conclusion even if the view is taken that the extent of less than substantial harm to Clare Hall is greater than assessed by Mr Wilson.

Landscape

270. A comprehensive landscape and visual impact assessment ("LVIA") has been undertaken in accordance with best practice guidance (GLVIA 3) and following consultation with relevant stakeholders.²⁹⁵ No party has raised methodological concerns, although some objectors have contested the conclusions within the LVIA.

²⁹¹ Wilson RPOE at [2.1.10] on PDF p. 5 (same internal) and Wilson POE at [6.1.2] on PDF p. 70 (same internal).

²⁹² Wilson POE at [6.4.10] on PDF p. 71.

²⁹³ Wilson PoE: Elmside 5.6.3 lower end LTS harm. 48, Grange Road 5.7.3 lower end LTS harm. West Cambridge CA 5.8.4, lower end LTS harm. Coton CA 5.12.5 well below the middle of the range LTS harm. Schlumberger Gould Research Centre 5.13.6 towards the bottom of the range of LTS harm. Former entrance lodges to Childerley Hall (non-designated) 5.14.5 – towards the bottom end of the range. 5A and 5B Herschel Road (non-designated) 6.3.12 – minor.

²⁹⁴ NPPF paragraphs 212 and 215.

²⁹⁵ CD 1-11.08.01. See also the explanation of engagement in Mr Carolan's POE at [3.1.1] – [3.1.4] on PDF pp. 4 – 5 (same internal).

271. The LVIA concludes that:

271.1. No significant effects on landscape character are predicted at Year 15.²⁹⁶

271.2. A significant effect is only expected for one out of the 37 visual receptors assessed in the LVIA (R19 – users of PROW 55/2).²⁹⁷ This is a local effect to a short route (approximately 700m of the PROW).²⁹⁸

271.3. These effects have been mitigated so far as possible, both during the construction of the Busway (in particular through the CoCP and the LEMP) and during its operation through the design of the Busway and its landscaping.²⁹⁹

272. These are robust and correct conclusions. Mr Littlewood raised a handful of disagreements with the LVIA, but none of these matters were correct and they did not withstand cross-examination.

272.1. Mr Littlewood confirmed that he was not a landscape architect and that he did not challenge the methodology of the LVIA, which he accepted was consistent with GLVIA 3.

272.2. Mr Littlewood objected to the sensitivity ascribed to the landscape around Coton. However, he accepted in cross-examination that the low value ascribed to this landscape was consistent with the methodology in the LVIA and was the correct application of that methodology.³⁰⁰

272.3. Mr Littlewood criticised the use of LCAs as a landscape receptor because of the physical extent of those areas and, he alleged, the consequential diminution in magnitude of effect. However, when taken to the actual methodology on magnitude used in the LVIA he

²⁹⁶ Carolan POE at [4.4.11] on PDF p. 8 (same internal).

²⁹⁷ Carolan POE at [4.4.11] on PDF p. 8 (same internal).

²⁹⁸ Carolan POE at [4.4.11] on PDF p. 8 (same internal).

²⁹⁹ Carolan POE at [4.3.1] – [4.39] on PDF pp. 6 – 7 (same internal).

³⁰⁰ See CD 1-11.08.02 at Table TR8.1-2-1 on PDF p. 7.

accepted that it was applicable to areas of any size.³⁰¹ Accordingly, this was another erroneous objection.

272.4. Finally, Mr Littlewood's judgment was obviously erroneous, as demonstrated by cross-examination, on the views from Red Meadow Hill.³⁰² This is an identified view in the LVIA. Mr Littlewood alleged that the busway 'would appear very obvious and discordant in the landscape' from this view.³⁰³ This was not an opinion based on a transparent methodology, in conflict with GLVIA3, as he accepted.³⁰⁴ Further, when challenged on this view by reference to the photomontages,³⁰⁵ Mr Littlewood said that a viewer would be unable to see the road and he accepted that his judgment in the POE was wrong.

273. It follows that the technical assessment in the LVIA is robust and correct. On this basis the Busway's landscape and visual impacts are acceptable and accord with both local and national planning policy.³⁰⁶

Green Belt

274. The Busway is inappropriate development in the Green Belt. However, its impacts on the openness of the Green Belt and the purposes of including land within the Green Belt (including the Cambridge specific Green Belt purposes) is moderate at worst, even on a "parcel by parcel" assessment (and much reduced when considered against the Green Belt as a whole, as is orthodox). Very special circumstances ("VSC") have been demonstrated because the harm to the Green Belt and other harm arising from the Busway is clearly outweighed by other considerations. Accordingly, there is compliance with both local and national policy on this issue.

³⁰¹ CD 1-11.08.02 at Table TR8.1-3-1 on PDF p. 13. See for example the bullet points in "high" which are not dependent on geographical extent.

³⁰² Littlewood POE at [7.22] on PDF p. 20 (internal p. 19).

³⁰³ Littlewood POE at [7.22] on PDF p. 20 (internal p. 19).

³⁰⁴ See CD 18-22 at PDF p. 62.

³⁰⁵ CD 1-11.08-04 PDF p. 14.

³⁰⁶ CD8.01 NPPF paragraphs 131, 136 and 153; CD 6.01 CLP policies 8, 34, 55, 56, 57 and 59 CD 6.02 SCLP Policies SC/9, HQ/1, HQ/2, NH/2, NH/13 and CC/6.

Inappropriate development in the Green Belt

275. The Applicant accepts that the Busway is inappropriate development in the Green Belt. The Busway is local transport infrastructure which can demonstrate a requirement for a Green Belt location for the purposes of paragraph 154(h)(iii) of the NPPF. However, there would be some harm to the openness of the Green Belt and the purposes of including land within the Green Belt. As such, it is not an exception falling within paragraph 154 NPPF.

Harm to Green Belt openness and purposes of including land within

276. The Applicant's Green Belt Assessment ("GBA") has adopted a "parcel by parcel" approach to its assessment, utilising seven subareas. This is a precautionary approach which overestimates harm to the Green Belt given the issue of openness is the openness of the Green Belt, rather than the site itself.³⁰⁷
277. Even on this precautionary basis, the worst case effects are moderate levels of harm, confined to two parcels: the first including the Travel Hub and the second on the outskirts of the City.³⁰⁸
278. This assessment was not meaningfully contested by objectors. Notably, Mr Littlewood positively agreed with the assessment of harm in the GBA on the issue of Green Belt purposes.³⁰⁹ As to his wider assessment of harm to the Green Belt, this was obviously flawed, as demonstrated in cross-examination because it was based on an earlier Green Belt Assessment undertaken by LUC which considered residential development, not development akin to a busway.³¹⁰

³⁰⁷ CD 29-106 - *Euro Garages Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1753 (Admin); [2019] PTSR 526 at [21].

³⁰⁸ CD 1-18 at Table 8-1 on PDF pp. 55 – 56.

³⁰⁹ Littlewood POE at [6.6] on PDF p. 16 (internal p. 15), confirmed in XX.

³¹⁰ See, for example, Littlewood POE at PDF p. 13 (internal p. 12).

Strategic Green Belt considerations

279. Contrary to the view of many objectors, the Busway will actually assist in protecting the Green Belt by supporting the local planning authorities' strategic approach.
280. The existing and emerging local plans seek to protect the Green Belt by allocating land for development, in particular residential development, almost exclusively outside of the Green Belt and largely beyond the Green Belt, in particular in Cambourne.³¹¹ However, in order for this strategy to succeed, people must be able to move between their homes beyond the Green Belt in Cambourne to their places of work in the City. The Busway directly facilitates that movement in a sustainable manner, directly supports the local planning authorities' strategic approach and thus protects the Green Belt.
281. Objectors also raised concerns about the Busway causing inappropriate development within the Green Belt. Such concerns are not well founded, as demonstrated in cross-examination of Mr Littlewood. Any future development in the Green Belt – for example in and around Coton – would be the subject of a separate development management process. This decision making of the local planning authority is an intervening stage and means that there is no direct relationship between the Busway and future inappropriate development in the Green Belt. To the contrary, if development is facilitated beyond the Green Belt by the Busway, such that a sufficient supply of land can come forward to meet the area's needs, then it is likely to be easier for the local planning authorities to resist development within the Green Belt.

Very Special Circumstances

282. The VSC balance is addressed below as part of the overall planning balance. For the reasons explained there, the harm to the Green Belt from the Busway as well as the other harms arising from the Busway are clearly outweighed by the benefits of the Busway, taken as a whole. As such, VSC

³¹¹ Kelly XiC. Also CD 6.02 at PDF pp. 21 and 43 at [2.45] – [2.48].

have been established and there is compliance with local and national planning policy.³¹²

283. Without prejudice to the full planning balance exercise, it is important to note here that there is no alternative which avoids the Green Belt. The CPPF alternative does not avoid the Green Belt. Any public transport scheme to connect Cambourne and Cambridge in an efficient way needs to traverse the Green Belt. The fact that such public transport improvements are encouraged – and in fact required – by both adopted and emerging development plan policies, illustrates precisely why this issue is not a showstopper and why, unsurprisingly, the VSC balance lies in favour of the Busway: the delivery of the Busway through this part of the Green Belt directly serves an important strategic objective of planning policy.

Flooding

284. There was no meaningful dispute on this issue following Clare Hall's withdrawal.
285. The Busway will not give rise to any significant flood risk effects.³¹³ The adverse effects will be negligible.³¹⁴ The Busway complies with both local and national planning policy, in particular the sequential test (if it applies) and the exception test.
286. The majority of the Busway is located within Flood Zone 1, but a small area in the eastern extent is located within Flood Zone 3.³¹⁵
287. The FRA identified potential impacts to flood risk in three areas: smaller watercourse crossings; increased surface water runoff; and the Bin Brook crossing.³¹⁶

³¹² CD 8.01 NPPF paragraph 153; CD 6.01 CLP Policy 4; CD 6.02 Policy S/4.

³¹³ CD 1-11.13.02 – FRA – at [5.6.1] – [5.6.3] on PDF pp. 39 – 40. Also Southon POE at [3.5.1] on PDF p. 13 (same internal). And also CD 1-11.13.01 at [5.1.5] on PDF p. 22.

³¹⁴ CD 1-11.13.02 – FRA – at [5.6.1] on PDF p. 39.

³¹⁵ CD 1-11.13.02 – FRA – at [1.1.3] on PDF p. 6.

³¹⁶ CD 1-11.13.02 – FRA – at [5.1.1] on PDF p. 35.

288. The effects on smaller watercourse crossings and surface water runoff are not controversial. Assessment has shown that the crossings of smaller watercourses will not result in any increased flood risk;³¹⁷ and assessment has shown that there will be no increase in surface water flood risk to the surrounding areas or the Busway itself.³¹⁸
289. In this latter regard, Mr Southon also explained why Mr Sadler's concerns about land drainage (which are principally a concern about impacts on existing land drains) will not give rise to any increased flood risk. This is consistent with the assessment in the ES which concludes that there will be a neutral effect on land drains.³¹⁹ In practical terms, it is also important to note the swales and drainage features which will be installed on both sides of the Busway as it traverses the Sadlers' land.³²⁰
290. Turning to the Bin Brook, the Applicant has undertaken extensive modelling of the potential effects. This modelling has been extensively interrogated and reviewed by the Environment Agency ("**the EA**") over more than two years.³²¹ The end result of that process is that the EA has withdrawn its objection and concluded that the model is appropriate for the assessment of the Busway and is sufficiently robust to support the FRA in meeting the NPPF requirements on flood risk.³²²
291. Based on this modelling and the FRA, the evidence presented by Mr Southon has demonstrated that:
- 291.1. The Busway will result in only very minor increases in the extent of flooding, with all of those increases contained within the order limits.³²³ The EA agrees with this conclusion.³²⁴

³¹⁷ CD 1-11.13.02 – FRA – at [5.3.1] – [5.3.2] on PDF pp. 37 – 38.

³¹⁸ CD 1-11.13.02 – FRA – at [5.4.2] on PDF p. 39.

³¹⁹ CD 1-11.13.01 at PDF p. 21, penultimate row on that page, final paragraph, within Table TR13-5-2.

³²⁰ CD 1-16.04 at Sheet 11.

³²¹ Southon POE at [3.2.7] – [3.2.18] on PDF pp. 5 – 7 (same internal).

³²² CD 25-17 on PDF p. 2, fourth and sixth paragraphs.

³²³ Southon POE at [3.3.2] and Figure 1 on PDF pp. 8 – 9.

³²⁴ CD 25-17 on PDF p. 2, third paragraph.

291.2. The Busway will result in minimal changes in flood depth. There will be a minimal increase in flood depth in channel (being only a 0.8% increase).³²⁵ There will be a similar pattern of out of bank maximum modelled water level.³²⁶ These increases are within the order limits.³²⁷ Outside of the order limits there will be minimal reductions in flood depth (in areas that are already inundated).³²⁸ The EA agrees with this conclusion.³²⁹

291.3. On this basis, the Busway will not increase flood risk elsewhere and will be safe for its lifetime. The EA agrees with these conclusions.³³⁰

292. The advice from the EA should be given significant weight and followed unless there is a cogent reason not to do so.³³¹ There is no such reason in this case, and none have been suggested by any remaining objector. Accordingly, this application should be determined on the basis of the conclusions set out in the Applicant's evidence.

293. Turning to the sequential test, recent changes to the PPG mean that the sequential test does not need to be applied because the Applicant has demonstrated (and the EA has agreed) that the Busway will be safe for its lifetime and will not increase flood risk elsewhere.³³²

294. In any event, even if the sequential test does apply, it is passed because there is no sequentially preferable alternative at the eastern end of the Busway. As Mr Southern explained in his examination in chief (by reference to flood mapping in his Rebuttal Proof of Evidence)³³³ the alternative route along Adams Road would pass through areas at the same risk of flooding both on the corner of Adams Road and Grange Road

³²⁵ Southon POE at [3.3.5] on PDF p. 11 (same internal).

³²⁶ Southon POE at [3.3.6] on PDF p. 12 (same internal).

³²⁷ Southon POE at [3.3.6] on PDF p. 12 (same internal).

³²⁸ Southon POE at [3.3.7] on PDF p. 12 (same internal).

³²⁹ CD 25-17 on PDF p. 2, second, third and sixth paragraphs.

³³⁰ CD 25-17 on PDF p. 2, final paragraph.

³³¹ *R. (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983; [2022] PTSR 1952 at [9(4)] per Sir Keith Lindblom SPT.

³³² CD 29-62 at [5.33] on PDF p. 12.

³³³ At PDF pp. 10 – 11.

(when travelling east) and also further to the west, immediately to the south of Charles Babbage Road.

295. Finally, the exception test is satisfied by the Busway.

295.1. As explained further below, the Busway would provide wider sustainability benefits to the community that outweigh the flood risk, in particular improved public transport options through the bus services on the Busway, improved travel by sustainable modes, both through the buses on the Busway and by foot and cycle on the maintenance track, and as a result of the modal shift which the Busway will deliver.

295.2. The Busway will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, as already explained and as agreed by the EA.

296. For these reasons the effect of the Busway on flood risk will be acceptable and in accordance with both local and national planning policy.³³⁴

Noise

297. There was no meaningful dispute on this issue following Clare Hall's withdrawal.

298. Through the ES and Mr Lewis' evidence, the Applicant has presented a robust and precautionary assessment which concludes:

298.1. There may be significant effects during construction at three locations (the travel hub, the retaining walls south of the A428 (north of St Neots Road) and the Bin Brook bridge).³³⁵ However, this is a worst case scenario with multiple levels of in built precaution, in particular: (1) the baseline monitoring was conducted in areas considered 'representative of the lowest sound levels that

³³⁴ CD 8.01 NPPF paragraphs 173 – 175 and 178 – 179; CD 6.01 CLP Policy 32; CD 6.02 Policies CC/4, CC/7, CC/8, CC/9; and CD 7-14 Cambridgeshire Flood and Water SPD.

³³⁵ T. Lewis POE at [3.6.4] on PDF p. 9 (internal p. 7).

would occur’;³³⁶ and (2) the construction assessment assumed unrealistically prolonged and intense periods of activity.³³⁷ Moreover, mitigation will be secured through the CoCP and the LEMP.³³⁸

298.2. All operational effects will be below both LOAEL and SOAEL, such that there are no adverse effects at all for the purposes of paragraph 198 of the NPPF.³³⁹ This outcome is secured by condition 34.

299. On this basis, the noise effects are acceptable having regard to local and national planning policy.³⁴⁰

Air quality

300. The Busway will not give rise to any significant effects during construction (dust, PM2.5, PM10.5 and NO2) or during operation (NO2, PM2.5 and PM10.5).³⁴¹

301. Although the construction impacts will be adverse, the ES concludes that the effects will be negligible, short-medium term, temporary and not significant, even on a cumulative basis.³⁴²

302. Operational effects will be mixed, with both beneficial and harmful effects, but, overall, will be beneficial.³⁴³ Three times as many receptors will experience a decrease in concentrations of NO2, PM 2.5 and PM 10.5 as would experience an increase when comparing scenarios with and without the Busway.³⁴⁴ This overall beneficial effect is as a direct consequence of the Busway (in particular as a result of modal shift) and is not as a result

³³⁶ T. Lewis POE at [3.5.2] on PDF p. 8 (internal p. 6).

³³⁷ T. Lewis POE at [3.6.5] on PDF p. 9 (internal p. 7); further explained by Mr Lewis in his XiC.

³³⁸ T. Lewis POE at [5.4] on PDF p. 24 (internal p. 22).

³³⁹ T. Lewis POE at [3.6.18] at PDF p. 11 (internal p. 9).

³⁴⁰ CD 8.01 NPPF paragraphs 187 and 198; CD 15.07 Noise Policy Statement for England; CD 6.01 CLP Policy 35; CD 6.02 SCLP Policy SC/10.

³⁴¹ Saunders POE at [6.2.8] on PDF p. 26 (same internal).

³⁴² DC 1-11.02 TR2 at [5.1.26] on PDF p. 27 and [5.3.11] on PDF p. 30.

³⁴³ Saunders POE at [6.2.8] – [6.2.9] on PDF p. 26 (same internal).

³⁴⁴ Saunders POE at [6.2.8] on PDF p. 26 (same internal). CD 1-11.02 – TR 2 at [6.1.4].

of other, unrelated, changes in fleet composition etc.³⁴⁵ This is a benefit of the Busway.

303. Although Mr and Mrs Burford have raised specific concerns about their property (which are addressed further below), those concerns do not change this overall picture and are not based on any technical evidence which contradicts the ES.
304. Overall, the Busway will deliver an air quality benefit to which substantial weight should be afforded. The air quality effects are acceptable having regard to local and national planning policy.³⁴⁶

Local Residents, Pedestrians, Cyclists and Motorists

305. Generally, the Busway will deliver benefits to local residents, pedestrians, cyclists and motorists through the transport benefits, as well as wider benefits which will be delivered. We deal with these benefits comprehensively below under the planning balance.
306. Some objectors have raised specific concerns about impacts on pedestrians and motorists in and around Coton. These concerns are not well founded, as was demonstrated in cross-examination of CBAG. More particularly:

306.1. **Footpath 55/2.** The Applicant has surveyed the footpath in a robust manner.³⁴⁷ This survey shows very low levels of usage in June (so the summer when walking is most attractive, but still term time). Most of this use was on a weekend. Assessed objectively, it is not “well used” and there will be no impact on school children if any use the route, particularly having regard to the provision of an at grade junction³⁴⁸ and the future ROGS safety process.³⁴⁹

³⁴⁵ CD 1-11.02 – TR 2 at [6.1.4] on PDF p. 31. Note the assessment is a do nothing versus so something comparison in the same modelled year (2041), thus isolating the effect of the Busway – read [6.1.4] with [3.2.5] on PDF p. 15.

³⁴⁶ CD 8.01 NPPF paragraphs 198 - 199; CD 6.01 CLP Policy 36; CD 6.02 SCLP Policy SC/12.

³⁴⁷ Saunders POE, Apx 7.

³⁴⁸ CD 1-16.04 – Sheet 12

³⁴⁹ Lonergan POE at [5.9.4] on PDF p. 18 (internal p. 15).

306.2. **Access onto Madingley Road.** The study area for the TA included all roads within Coton, including the junction of Cambridge Road and Madingley Road.³⁵⁰ The TA did not identify any unacceptable adverse effect on this junction (or any of the junctions within Coton) when modelling the future year with the Busway. Concerns about antisocial parking are unrealistic given (1) stops in major residential locations near Coton, such as Cambourne, Bourn Airfield and Hardwick which will mean that local residents can access the Busway more easily than by driving to Coton; and (2) the park and ride facility with ample car parking.

307. We turn now to deal with objectors who have raised specific objections based on amenity and/or impacts to their properties which are not addressed elsewhere.

Mr and Mrs Burford

308. Mr and Mrs Burford raised a specific concern about the impact of dust and emissions to air on Mrs Burford's health. The evidence before the inquiry does not support this concern.

309. The principal risk is during the construction stage. As to that, the Applicant has undertaken a specific dust risk assessment which considers all human receptors within 350 metres of the order limits.³⁵¹ The Burfords' property falls entirely within this assessment area.³⁵² Accordingly, they have been considered as receptors in the risk assessment.³⁵³

310. In addition, a modelled assessment of emissions to air has been undertaken. Three receptor locations were close to the Burfords' property.³⁵⁴

³⁵⁰ CD 1-25.01 at PDF p. 18.

³⁵¹ CD 1-11.02 at [3.16] on PDF p. 13 and see plan at Appendix L at PDF p. 106.

³⁵² Saunders RX

³⁵³ Saunders RX

³⁵⁴ 12, 13 and 100 – see CD 1-11.02 at PDF p. 108.

311. Neither of these assessments identified any significant effects. The dust risk assessment identified only a low risk to human health and the modelled assessment of emissions identified only a negligible impact.³⁵⁵
312. In addition, Mr Saunders explained that a comprehensive package of mitigation measures, including a future specific risk assessment for the Burfords' property, had been secured. In particular:
- 312.1. Condition 8 requires submission and approval of the Code of Construction Practice which must substantially accord with the draft Code of Construction Practice. This secures all of the mitigation measures considered in the ES.
- 312.2. In addition, Condition 9 requires submission and approval of the Local Environmental Management Plan, including sections 4 to 13 of the Code of Construction Practice. These sections include monitoring by qualified environmental management staff, both in respect of soil stripping specifically and air quality more generally.³⁵⁶
- 312.3. Further, if the local planning authorities consider it necessary, Condition 3 provides control over the location of the haul road (see part II and V(b)) such that the location to the south of the order land (and thus more than 100 metres from the Burford's property) can be secured.
313. The Burfords have relied on the Equality Act 2010 ("EA 2010") in their representations.
314. The Applicant does not concede that the provisions of the EA 2010 apply to the decision-maker in this case (i.e. in the decision to make an order under section 1 TWA 1992 and to issue a direction under section 90(2A) TCPA 1990) or to the Applicant as promoter (and distinct from the Applicant as operator).³⁵⁷ The Applicant also reserves its position as to

³⁵⁵ CD 1-11.02 at Table TR2.5.3 on PDF p. 26 and at [5.1.26] on PDF p. 27.

³⁵⁶ CD 1-26 at [4.4.1] on PDF p. 22 and [5.23.1] on PDF p. 27,

³⁵⁷ The issue of a certificate under section 19 of the 1981 Act is separate to the Burford's concerns.

whether Mrs Burford falls within section 6 EA 2010. However, these submissions assume that the duties in section 20 EA 2010 on which the Burfords rely do apply and that Mrs Burford does fall within section 6 EA 2010.

315. The duty to make reasonable adjustments comprises of three requirements (set out in section 20(3), (4) and (5) EA 2010). A decision to make the order and to issue a direction granting planning permission would comply with all three components for the following reasons.
316. First, as to section 20(3) EA 2010,³⁵⁸ there is no provision, criterion or practice which puts Mrs Burford at a substantial disadvantage in relation to the Busway in comparison with a person who is not disabled. As explained in the Applicant's evidence and set out above, there would be no unacceptable adverse impacts for any human receptors, including Mrs Burford, as a result of the Busway.
317. Secondly, as to section 20(4) EA 2010, Mrs Burford's concern is about dust/emissions, not any physical feature for the purposes of this provision, and as such there is compliance with this duty.
318. Thirdly, as to section 20(5) EA 2010, Mrs Burford's concern is not about the (non) provision of auxiliary aids and as such there is compliance with this duty.
319. It follows that even if a duty to make reasonable adjustments arose, that duty has been complied with in this case.

Gough Way Residents

320. The Gough Way Residents were specifically concerned about flooding to their properties. However, as explained above (and as Mrs Fry accepted in cross-examination after being shown the relevant documents), the Busway will not increase flood risk for Gough Way residents.

³⁵⁸ The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

Mr Baker

321. Mr Baker is also a Gough Way resident. Unlike Mrs Fry, he maintained his objection, notwithstanding the Applicant's evidence and the views of the EA. He was unable to articulate a robust basis for maintaining this objection and he was unable to provide a cogent reason for departing from the advice of the EA. Accordingly, his evidence does not undermine the acceptability of the Busway in terms of flood risk.

Ash Croft Vets

322. Ash Croft Vets object³⁵⁹ to the proposals to remove a layby near their premises at 169, St Neots Road.
323. The Applicant considered this objection and proposed a solution which would allow a layby to be provided to facilitate deliveries.³⁶⁰
324. When he gave evidence Mr Tomovic said that the provision of the layby and the other measures set out in the letter³⁶¹ would overcome his objections.
325. The solution proposed by the Applicant can be delivered without making changes to the order.³⁶²

EWR

326. The effect on land safeguarded for EWR is identified in the Secretary of State's Statement of Matters. Given that EWR Limited now propose a mined tunnel at Cambourne³⁶³ (and thereby avoiding any risk of conflict with CtoC), and have withdrawn their objection³⁶⁴ such impact is no longer a matter of concern. EWR Limited are strong supporters of the principle of

³⁵⁹ CD2-obj-01

³⁶⁰ CD29-69

³⁶¹ CD29-69

³⁶² See section 1 of NOTE ON ASH CROFT VETERINARY PRACTICE, REMOVAL OF NATIONAL HIGHWAYS PLOTS, WORK NO.1 AND IMPLICATIONS FOR THE ORDER AND APPLICATION DOCUMENTS - to be found in the Programme Section of the Inquiry website

³⁶³ CD29-109 Paragraph 4.10.2

³⁶⁴ CD28-07

the CtoC project and see it as being aligned with the objectives of EWR.³⁶⁵ It is clear from EWR Limited's position and from the emerging local plan that the order scheme and EWR can be seen as complementary projects. The order scheme will have no adverse impact on EWR.

Other Issues

327. We deal finally with two discrete other issues.

The Environmental Statement

328. The lawfulness of the environmental statement was questioned at an early stage. It has not been pursued by any party since Clare Hall's withdrawal. In any event it is unsustainable: the ES, coupled with the three addendums, presents a legally adequate basis on which to appraise the Busway. The evidence of the Applicant's witnesses is also relevant environmental information which can be taken into account.

The Water Framework Directive

329. In response to the Inspectors' written question on the Water Framework Directive ("**the WFD**")³⁶⁶ the Applicant's position is that the Secretary of State can be satisfied now that there is (and will be) compliance with the WFD.

330. At the outset it is important to note that:

330.1. The WFD has been transposed into domestic law by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 ("**the WFD Regulations**").

330.2. Under the WFD Regulations the making of an order under section 1 TWA 1992 and the making of a direction under section 90(2A) TCPA 1990 by the Secretary of State are not "relevant functions" for the purposes of the WFD Regulations.³⁶⁷ It follows that the duty in

³⁶⁵ CD28-07 page 1

³⁶⁶ CD25-26

³⁶⁷ See the definition of "relevant functions" in regulation 2, cross referring to Schedule 2.

regulation 3 of the WFD Regulations to exercise relevant functions so as to secure compliance with the requirements of the WFD is not engaged.

330.3. There is a separate duty on the Secretary of State in regulation 33 of the WFD Regulations to exercise her functions so far as affecting a river basin district, by having regard to the river basin management plan and any supplementary plan that relates to the district.

330.4. Given this, there is no duty under the WFD which requires the Secretary of State when making the decisions at issue in this case, to ensure compliance with article 4 of the WFD, i.e. the duty to prevent deterioration of the status of all bodies of surface water.

330.5. The Applicant reserves its position as to whether article 4 of the WFD has effect following Brexit. However, the following submissions assume that it does have effect, such that the Secretary of State should comply with article 4 of the WFD. That includes a requirement to ensure no adverse deterioration on surface water bodies.

331. A scoping and screening exercise has been undertaken.³⁶⁸ That exercise concluded that two surface water bodies had the potential to be affected by the Busway (the Bin Brook surface water body and the Old West River surface water body).³⁶⁹ Those potential effects were discussed with the EA.³⁷⁰ The EA and the Applicant agreed (1) that these risks can be designed out during the detail design; and (2) that the EA would require compliance with the WFD (so as to ensure that these risks had been designed out) through the Flood Risk Activity Permit (“FRAP”) application which will be required for the works near to these two surface water bodies.³⁷¹ This agreement is secured in two ways.

³⁶⁸ CD 1-11.13.03.

³⁶⁹ CD 1-11.13.03 at [4.1.1] on PDF p. 24.

³⁷⁰ CD 29-77 at Table 2.1.1 on PDF p. 5 – see entry for 11 April 2023.

³⁷¹ CD 1-11.13.03 at [4.1.1] on PDF p. 24.

332. First, the detailed design will subject to approval under conditions 19 and 20. The Applicant is also content with a new condition, as proposed by the Inspectors to ensure that the detailed design provides compliance with the WFD³⁷².
333. Secondly, the FRAP application process is a separate statutory process under the Environmental Permitting (England and Wales) Regulations 2016 ("**the Permitting Regulations**"). The Permitting Regulations are a separate statutory scheme to which the *Gateshead* line of authorities applies.³⁷³
334. The *Gateshead* line of authorities establishes that:
- 334.1. planning decision-makers are entitled to have regard to regulation outside of the planning system;
- 334.2. that there is no requirement to duplicate such controls which are often the responsibility of expert bodies/regulators; and
- 334.3. the decision-maker should generally assume these regulatory processes will operate effectively.³⁷⁴
335. These principles are of particular importance for large scale infrastructure which is subject to environmental impact assessment, like the Busway, because planning permission for these schemes will be granted (and can lawfully be granted) at a stage where the detailed design has not been completed.³⁷⁵ In such a case the decision-maker can leave over the detailed design, within approved parameters, to be addressed by a separate regulatory process.³⁷⁶

³⁷² Suggested condition at page 6 of the inspectors' comments on the draft conditions- to be found under the Programme section of the inquiry website

³⁷³ CD 29-98 – *Gateshead Metropolitan Borough Council v Secretary of State for the Environment* [1995] Env. L.R. 37. See in particular pages 49-50

³⁷⁴ CD 29-99 – *R. (Associated Petroleum Terminals (Inningham) Limited) v Secretary of State for Transport* [2025] EWHC 1992 (Admin) at [48].

³⁷⁵ CD 29-99 – *R. (Associated Petroleum Terminals (Inningham) Limited) v Secretary of State for Transport* [2025] EWHC 1992 (Admin) at [49].

³⁷⁶ CD 29-99 – *R. (Associated Petroleum Terminals (Inningham) Limited) v Secretary of State for Transport* [2025] EWHC 1992 (Admin) at [49].

336. Applied to this case:

336.1. The Secretary of State is entitled to have regard to the FRAP application under the Permitting regulations as a statutory regulatory regime outside of the planning system;

336.2. The Secretary of State does not need to duplicate the control under that separate regime.

336.3. The Secretary of State should assume that the Permitting Regulations and the EA will operate effectively, consistently with the agreement that has already been reached with the Applicant.

337. In these circumstances, the Secretary of State can be satisfied that there will be compliance with the WFD and, specifically, that there will be no adverse deterioration in either of the Bin Brook surface water body or the Old West River surface water body.

Conclusion on Matter 4

338. For the reasons that we have set out, the Applicant submits that the effects of the implementation, operation and maintenance of the Busway are acceptable. We describe further below the particular benefits that the Busway will deliver for users and local residents.

VI. MATTER 5 - EFFECT ON STATUTORY UNDERTAKERS, STATUTORY UTILITIES AND OTHER UTILITY PROVIDERS

339. The Busway will not have an adverse effect on statutory undertakers, statutory utilities or other utility providers, or their ability to carry out their undertakings effectively, safely and in compliance with any statutory or contractual obligations. Protective provisions have been incorporated into the Draft Order where necessary.³⁷⁷ There is no objection from such undertakers and there is no substantive dispute under this matter.

³⁷⁷ See Schedule 12

VII. MATTER 6 – COMPULSORY PURCHASE

340. The Proposed Order contains powers of compulsory purchase to ensure that the Busway can be delivered and operated. These powers relate to both the temporary and permanent acquisition of land and rights over land along a corridor within defined limits.

The Draft Order³⁷⁸

341. If the order is made, Article 23 will confer powers of compulsory acquisition.
342. It is to be noted that the powers of compulsory acquisition would not apply to all the land on which scheduled works are proposed. For example, as referred to by the inspectors, Work No.1 (plot 1-002) is listed in Schedule 6 and shown on the Works and Land Plans³⁷⁹ as “Land subject to all order powers except for compulsory acquisition”. The reason that plot 1-002 is so shown (as land to which powers of compulsory acquisition do not apply) is that the Applicant has confidence that it can obtain title to the land as it is the subject to a covenant in a planning obligation which would require the land to be transferred to the Applicant³⁸⁰.
343. In order for the scheme to operate and to benefit from the powers conferred by Article 37 (and to benefit from other provisions such as the statutory defence to actions for nuisance – Article 51) land must be part of the ‘authorised guided busway’ as defined in Article 2(1). To fall within that definition the guided busway has to be authorised by the order as part of scheduled work. In order to ensure that the proposed bus service can be provided, that part of the busway on plot 1-002 should, like other parts of the busway, benefit from the authorisation and powers contained in the order. In addition, in order to benefit from the deemed planning

³⁷⁸ A note headed “THE CAMBOURNE TO CAMBRIDGE ORDER NOTE ON ASH CROFT VETERINARY PRACTICE, REMOVAL OF NATIONAL HIGHWAYS PLOTS, WORK NO.1 AND IMPLICATIONS FOR THE ORDER AND APPLICATION DOCUMENTS” can be found in the programme section of the inquiry website

³⁷⁹ CD1-12-01 Sheet 1

³⁸⁰ CD4-08 pdf page 80 – Broadway Bus Link, Schedule 4 Part C, paragraph 1.2

development must be proposed in the order³⁸¹. If Work 1 were to be excluded it would not be subject to the proposed conditions. For those reasons Work No.1 should be included in the order.

Extent of the Land to be Acquired

344. As explained by Mr Lonergan the limits of deviation shown on the works and land plans allows sufficient space to construct the Busway itself, together with other essential components, such as the travel hub, maintenance track, public transport stops, bridges and ancillary works necessary for mitigation. There was no substantive challenge to Mr Lonergan's evidence on this issue.
345. This is not a case where a series of landowners have sought to challenge the precise extent of the land to be taken. The main matter in dispute is whether there is a compelling case in the public interest for the order scheme, and in particular the route proposed.
346. The inspectors raised the issue of whether the whole of plot 16-179 is required. As Mr Southon explained that area is required as it provides flood storage capacity- there will be a very small increase in the extent³⁸² of the area liable to flooding and a small increase in depth on part that area³⁸³. Acquisition of that land is necessary in order to ensure that such flood storage capacity continues to be available, under the Applicant's control and safe from adverse land use or management changes. This is a proportionate and important response in an area with a history of flooding.

The Emergency and Maintenance Access Track

347. Objectors have also questioned whether the emergency and maintenance access track can properly be considered as a matter ancillary to the construction or operation of the busway. This raises two separate issues:

³⁸¹ As it would fall outside the ambit of section 90(2A) TCPA 1990 CD5-08

³⁸² CD1-11-13-2 Plate TR13.1-5-1 on page 36

³⁸³ CD1-11-13-2 Plate TR13.1-5-2 on page 37

- 347.1. Issue (1) - Does the inclusion of the emergency and maintenance access track fall within the ambit of section 1(1) of the TWA 1992³⁸⁴.
- 347.2. Issue (2) - Is there a compelling case in the public interest for compulsory acquisition of the land required to provide the busway running surface and the emergency and maintenance access track.
348. **Issue (1)** does not fall naturally within Matter 6. We address it here as a matter of convenience.
349. Section 1(1) TWA 1992 empowers the Secretary of State to make an order relating to or matters ancillary to the construction or operation of a transport system. In this case the transport system is a system using a mode of guided transport prescribed by Article 2 of the Transport and Works (Guided Transport Modes) Order 1992 as amended ("the Guided Modes Order")³⁸⁵.
350. The modes that would be authorised by the order if made are those prescribed in Article 2 (g), (h), (i) or (j) of the Guided Modes Order³⁸⁶. It is envisaged that sensor guidance will be used but the order leaves open the possibility of the busway being track-based with side guidance, or track-based with sensor guidance.
351. There is no dispute that a track based system (with side guidance) requires an emergency and maintenance access track, as provided on the system currently in operation.
352. As the order makes provision for track based guidance, and as it is accepted that an emergency and maintenance access track is required for such a system, there is in fact no issue on this point.
353. If that submission is not accepted, you will have to consider whether an emergency and maintenance access track is ancillary to a proposal for a sensor based busway.

³⁸⁴ CD5-09 page 1

³⁸⁵ CD5-15 page 2

³⁸⁶ See the definition of 'guided busway' in Article 2(1) of the draft order CD1-02d

354. In their statement of case CPPF/Coton PC argue that an emergency and maintenance access track is not necessary³⁸⁷. As was to be expected Mr Littlewood took the same approach³⁸⁸. At paragraph 54 of his closing Mr Parker asks a similar question, is the track required.
355. CPPF have not addressed the right question. The question is not whether the track is necessary, or whether there is a requirement for it, but whether it is ancillary.
356. In any event, as Mr Lonergan's evidence demonstrated³⁸⁹, the emergency and maintenance access track is in fact, both ancillary and necessary.
357. There can be no doubt that a track able to accommodate maintenance and emergency vehicles is ancillary to the provision of a busway. Those vehicles support the provision of the bus service.
358. The need (as agreed by CPPF and others) is for a reliable public transport service. Without the emergency and maintenance access track a reliable service cannot be provided as maintenance and emergency vehicles would have to use the same running surface as the buses. Therefore the emergency and maintenance access track is also necessary.
359. **Issue (2):** If you accept those submissions (and find that the emergency and maintenance access track is ancillary to the provision of a busway) you will have to consider whether there is a compelling case in the public interest to justify compulsory acquisition of land to provide the busway and ancillary track. At that stage in the process you can consider all the benefits which will be derived from the busway and track including the active travel provision (for which CPPF says there is a need³⁹⁰).

³⁸⁷ CPPF Statement of Case paragraph 7 CD23-18-1 at page 3

³⁸⁸ Littlewood XX

³⁸⁹ Lonergan PoE 5.14.6–5.14.9 (CD26-01-APP-W3-3 at page 21) – four main reasons are set out. In XX Mr Littlewood said he did not doubt reasons 1-3. Lonergan XiC emphasised the need for a maintenance and emergency access track to ensure service reliability

³⁹⁰ Littlewood PoE 7.28 CD26-10-W1-1

The Compelling Case in the Public Interest

360. Given the widespread acceptance of the scheme objectives and of the need to provide a reliable public transport service between Cambourne and Cambridge, it is clear that there is a compelling case in the public interest that a public transport scheme be provided.
361. There is little or no dispute that the order scheme would meet the scheme objectives and would meet the agreed need.
362. The issue in dispute is whether the need could also be met by an alternative scheme. For the reasons we have already given there is no deliverable alternative scheme. On that basis it is clear that there is a compelling case in the public interest for the scheme including the emergency and maintenance access track.
363. If, contrary, to our submissions, you were to find that there was an alternative route, you would have to consider and apply the principles that apply to compulsory purchase orders. Even if the view was taken that the alternative would serve equally well to achieve the desired purpose, it would still be necessary to consider other matters including delay³⁹¹. If it were held that there was an alternative which served the purpose equally well, there would still be a compelling case in the public interest to make this order, given the delay that would occur if the order were not made and the whole processing of route selection were to start again. According to Mr Freeman the delay may be as long as 10 years. Even if the delay were to be limited to 5 years it would still be unacceptable given the pressing need to support the local plan strategy.

³⁹¹ *de Rothschild v. Secretary of State for Transport* (1989) 57 P & CR 330 at page 341: CD5-40

The Remaining Objections from Statutory Objectors

364. The statutory objectors are identified in the list provided by The Applicant in response to the inspectors' request³⁹². The remaining statutory objectors who are pursuing their objections before the inquiry are:

364.1. Houston Crest Properties Ltd and Coton Orchard Ltd

364.2. J and WR Sadler

364.3. CPPF

364.4. PX Land Limited.

365. Other statutory objectors have not appeared at the inquiry:

365.1. Anglian Water

365.2. Services:

365.3. Christine Spearing, Hugh K Spearing, Holly K Deane ("the Spearing Family")

365.4. Martin Jenkins, Jocelyn Poulton, Penny Heath and Carolyn Cumming ("the Jenkins Family")

Houston Crest Ltd and Coton Orchard Ltd

366. Ms Gazeley appeared on behalf of Houston Crest Ltd and Coton Orchard Ltd- she objects to the scheme, and in particular the route through Coton Orchard.

367. If you accept the submissions we have made there is a compelling case in the public interest in order to secure land in Coton Orchard to provide the busway.

368. In response to the particular points made in relation to the impact on fruit cultivation and management of the orchard, it is clear that, with the

³⁹² CD25-25

provision of a crossing point, vehicles that are of a size to be used in an orchard, will be able to cross.

J and WR Sadler

369. The extent of engagement is recorded in the log which is included in Mr Franklin's Rebuttal Appendices³⁹³. It is accepted that the initial engagement log³⁹⁴ was not accurate and that no draft heads of terms were sent in 2023³⁹⁵.
370. In 2022 and 2023 CBRE (for the Applicant) engaged with Bidwells (as agent for the Sadler family). The discussions included consideration of sale of the busway land by private treaty³⁹⁶. Discussions continued in 2024 but ceased once Mr and Mrs Sadler submitted their objection³⁹⁷.
371. Despite Mr Sadler's focus on this point, the inaccuracy does not undermine the central point that there was prolonged engagement and that it cannot be said that there was a failure to follow the guidance on taking reasonable steps to purchase by agreement with landowners ³⁹⁸.
372. Mr Rob Sadler appeared on behalf of J and WR Sadler. In support of his objection, in addition to his general objection to the scheme, he raised two specific concerns
- 372.1. Impact on the family burial site.
- 372.2. Provision of crossing points.
373. Mr Franklin explained the steps taken to ascertain the position of the family burial site. Members of the Sadler family provided What3Words

³⁹³ CD26-01-APP-W7-5 - Appendix A pages 4-17

³⁹⁴ Franklin Appendices page 42

³⁹⁵ Franklin XiC

³⁹⁶ CD26-01-APP-W7-5 page 361 - email from Henry Church of CBRE to Samuel Nobbs of Bidwells 5th May 2023

³⁹⁷ CD2-obj-102

³⁹⁸

locations on two different occasions and with two different references³⁹⁹. On 26th July 2024 a surveyor attended to the site to identify the location.

374. The route proposed avoids the two What3Words locations⁴⁰⁰. The surveyed location is at the 'toe' of the proposed embankment. Mr Franklin said that embankment could be designed to avoid the location and appropriate treatment provided⁴⁰¹. On the basis of that evidence it is clear that the burial site will be avoided and appropriate respect shown.

375. The proposed site plans⁴⁰² show that crossing points will be provided. The issue in dispute turns on the width of the proposed crossing points. Mr Franklin's evidence was that the proposal was for 20 feet wide crossings. If crossings of that width were to be provided most vehicles would be able to cross. However the header on a combine harvester would have to be removed in order to cross the busway. In that respect the crossing manoeuvre would be no different to when a combine harvester enters the highway from a field gate. On that basis you should conclude that the crossing point provision is adequate and that the appropriate remedy for any adverse impact on farming practices (if established) lies in the application of the compensation code.

376. It is regrettable that the engagement log was inaccurate. Mr Franklin apologised for the inaccuracies. However the inaccuracies in the log has no material impact on the decisions to be made:

376.1. Reasonable steps were taken to attempt acquisition.

376.2. Mr Sadler said in evidence that he was no longer open to an agreement. It is Mr Sadler who has closed off the path of acquisition by agreement.

376.3. The concerns relating to crossings and the burial site have been addressed in evidence.

³⁹⁹ CD26-01-APP-W7-2 at page 33 -minutes of meeting 27th January 2020, and CD26-01-APP-W7-2 page 37 – email from Rob Sadler 14th May 2024

⁴⁰⁰ CD26-01-APP-W7-2 page 40

⁴⁰¹ Franklin XiC

⁴⁰² CD1-16-04 sheets 11 and 12

376.4. There is a compelling case in the public interest to acquire the Sadler land for this linear scheme.

CPPF

377. As we said when considering alternatives Mr Littlewood put forward an argument that the busway should follow a curved alignment west of Cambridge Road⁴⁰³.

378. The purported purpose of adopting a curved alignment is to improve farming viability. Mr Franklin does not consider it would do so.

379. The appropriate remedy for any adverse impact on farming practices (if established) lies in the application of the compensation code.

380. There is no reason to modify the order to introduce such a curve.

381. If the position is that CPPF wish to use the land as a nature reserve, there is no evidence to indicate that they cannot do so⁴⁰⁴.

PX Land Limited

382. Mr Peck appeared on behalf of PX Land Limited⁴⁰⁵ (the owner of the proposed Scotland Farm park and ride site). In his evidence he said⁴⁰⁶:

382.1. He supports the scheme overall.

382.2. He is prepared to grant a lease for the park and ride scheme.

382.3. On drainage, there is a dispute about the remedy for impact on drainage arising from surveys carried out on behalf of the applicant. He agreed that the mechanism for resolving that dispute is the dispute resolution clause in the agreement between the parties. It is not a matter for this inquiry to resolve.

⁴⁰³ Drawing at Littlewood PoE page 4 CD26-10-W1-1

⁴⁰⁴ CPPF closing paragraph 59

⁴⁰⁵ PX Land Limited Statement of Case CD23-14 OBJ 252

⁴⁰⁶ Peck XX

382.4. Subject to appropriate negotiation and appropriate payment he does not object to the provision of an electric vehicle charging point/s on the park and ride site.

383. The issues raised by Mr Peck go to compensation, or to the agreement relating to access for site surveys- they are not matters for this inquiry.

The Spearing Family⁴⁰⁷

384. Among the points taken by the Spearing Family are:

384.1. The land will be bisected.

384.2. Provision is not made for access to the remaining parcels.

384.3. Compensation is inadequate.

385. Severance, and the wider compensation issues, are matters covered by the compensation code.

386. As Mr Franklin explained⁴⁰⁸ provision has been made for access to the remaining parcels of land; that ground of objection is not made out.

The Jenkins Family⁴⁰⁹

387. The Jenkins family do not object in principle to the scheme. They question the extent of the land to be taken close to Childerley Lodge but do not identify the extent of any land which they say is not required.

388. The extent of the land required is explained in the Applicant's Statement of Case⁴¹⁰; there are a number of significant constraints including the A428, private residences, a junction with St Neots Road, and variations in ground level, as a result sufficient land is required in order to overcome these constraints.

⁴⁰⁷ CD2-obj-67

⁴⁰⁸ Franklin XiC, Proposed Site Plans Sheet 9- access off the busway east of Basin 9, and access off Long Road

⁴⁰⁹ CD2-obj-68

⁴¹⁰ CD23-01 paragraph 14.6.2

389. The Jenkins family say that they do not own plots 4-014A and 4-014B⁴¹¹. The Jenkins family have been included in the entries for these plots as they have interests under a transfer⁴¹².

Anglian Water Services⁴¹³

390. Anglian Water Services Limited (“AWS”) state that they have no objection in principle to the detail provided by the Applicant in relation to alignment, layout or other design details, but wish to engage in order to protect below ground infrastructure connected with the existing Madingley Service Reservoir and the future pipelines connected with the Fens Reservoir and Graffham to Rede scheme. In order to further discussions AWS have submitted a ‘holding objection’.
391. As noted in CD25-25 discussions between the Applicant and AWS are in progress and a collaboration agreement is being worked on. It is to be hoped that those discussions will allow AWS to withdraw their objection⁴¹⁴. The latest update confirms this expectation⁴¹⁵. The submissions that follow will not be necessary if the objection is withdrawn.
392. Part 5 of Schedule 12 to the draft order makes provision for the protection of AWS, and Part 6 of Schedule 12 includes protective provision for South Staffordshire Water (who own Cambridge Water). Those protective provisions make provision which will protect AWS’ interests- as a result the order scheme will have no adverse impact on AWS’ interests.

Land to be Acquired when the objection has been withdrawn

393. An issue was raised as to whether there was a compelling case in the public interest to authorise compulsory acquisition of land of those who had withdrawn objections and agreed to sell land.

⁴¹¹ CD1-13 Book of Reference page 32, the Jenkins interests are listed as being “in respect of a Transfer dated 31 March 2005”

⁴¹² CD23-01 paragraph 14.6.6 – the justification for the inclusion of these interests is set out in the Statement of Case

⁴¹³ CD2 obj 271

⁴¹⁴ CD23-01 paragraph 14.27.2

⁴¹⁵ CD29-110 pdf page 2

394. Taking Clare Hall as an example of such an objector. Clare Hall have interests in six plots⁴¹⁶. None of those interests are in the freehold- they are listed as tenants or occupiers or as having the benefit of an easement. In order to deliver the scheme it is necessary to acquire a sufficient interest in each and every plot. Omitting an interest such as an easement could prevent delivery of the scheme. It is clear that it is necessary to acquire the six plots. If those plots are to be acquired all those with an interest must be listed in the book of reference. There can be no doubt that there is a compelling case in the public interest to acquire all those plots.

Conclusion

395. In respect of those cases where agreement cannot be reached, we submit that compulsory purchase is justified. In particular:

395.1. There is a compelling case in the public interest, having regard to the identified need for the Busway, the benefits of delivering the busway and absence of a viable or preferable deliverable alternative route.

395.2. Although there may be an interference with some landowner/occupier human rights, given the nature of the land being acquired (principally farm land), this interference is with rights protected under Article 1, Protocol 1⁴¹⁷. That interference is lawful and proportionate, having regard to the relatively small amount of land taken, the steps taken by GCP to mitigate that land take and the countervailing need and benefits of the Busway.

395.3. There are no impediments to the delivery of the Busway once compulsory acquisition has occurred. GCP are demonstrably committed to the Busway and the required funding has been secured.

⁴¹⁶ CD1-13 Book of Reference plots 16-164a, 16-164b, 16-178, 16-179, 17-180, 17-181

⁴¹⁷ As set out at Part II of Schedule 1 to the Human Rights Act 1998 CD5-11 page 28

395.4. In all the circumstances, there is a compelling case in favour of the scheme and compulsory acquisition is necessary to deliver the Busway.

VIII. SECTION 19 ACQUISITION OF LAND ACT 1981

396. The order limits include two plots (14-153 and 14-154) ("**the Open Space Plots**") which are considered to be open space for the purposes of section 19 of the Acquisition of Land Act 1981 ("**the 1981 Act**").

397. Accordingly, the Applicant applies for a certificate under section 19(1)(a) of the 1981 Act in respect of the proposed exchange land (plots 14-144b and 14-144c) ("**the Replacement Open Space Land**") so that the special parliamentary procedure will not apply to the Order.

398. The provision of Article 36 of the draft order ensures that the exchange land will be laid out as open space and made available. The details of the layout will be secured under proposed condition 27⁴¹⁸.

399. Before turning to the objections it is important to note the advice given in the MHCLG Guidance on the Compulsory Purchase Process⁴¹⁹ -the land offered in exchange may not offer the same advantages; the advantages offered may be sufficient to provide an overall equality of advantage.

400. There have been three objectors to this application: CPPF, Dr Sutton and Dr Green. However, importantly, Dr Green declined to answer any questions on his objection to the application. Much reduced weight should be afforded to his objection as a result. In any event, to the extent that Dr Green's objection raised relevant matters, these were repeated by the other objectors and are addressed below in any event.

401. The Replacement Open Space Land is assessed in the open space assessment.⁴²⁰ This assessment focuses on the quantitative and qualitative

⁴¹⁸ CD29-96

⁴¹⁹ CD8-28 paragraph 259.3

⁴²⁰ CD1-22 Appendix 10, pdf page 180

criteria in section 19(1)(a) of the 1981 Act. We structure our submissions below accordingly. The other technical aspects of section 19(1)(a) are adequately addressed (without any dispute) in Article 36 of the draft order.

The quantitative test

402. The Open Space Plots measure 1,004 sqm.⁴²¹ The Replacement Open Space Land measures 1,006 sqm⁴²² and is marginally greater in size.⁴²³
403. There can be no doubt that the proposed area of open space meets the quantitative criteria. This is not disputed by any objector.

The qualitative test

404. The Applicant assessed the quality of the Open Space Plots using the City Council's Open Spaces and Recreation Strategy.⁴²⁴ That assessment concluded that the quality of the Open Space Plots was generally poor, with identified issues such as areas which were covered in scrub such as to be unusable for recreation; a poor standard of access which was not inclusive for all; evidence of litter; a low level of use;⁴²⁵ no management measures for dog fouling; and limited passive surveillance.⁴²⁶ Notably, Dr Sutton corroborated the concerns about usability (given the present vegetation) and the presence of litter in cross-examination.
405. Following this a site selection process was undertaken, involving both a long list of nine sites and a shortlist of three sites.⁴²⁷ In respect of the three shortlisted sites, a further qualitative assessment was undertaken using the City Council's Open Spaces and Recreation Strategy.⁴²⁸ The best performing site was chosen (referred to as "Open Space Site C").⁴²⁹ A series

⁴²¹ CD 1-22 at Table 4-5 on PDF p. 209.

⁴²² CD1-22 page 233

⁴²³ CD 1-22 at [5.8.7] on PDF p. 221.

⁴²⁴ CD 1-22 at Appendix D on PDF p. 246 and Appendix E (reassessment) on PDF p. 249.

⁴²⁵ Distinct from how well used or not the footpath is which is a separate issue.

⁴²⁶ CD 1-22 on PDF pp. 246 – 247, final column.

⁴²⁷ CD 1-22 on PDF pp. 216 – 218.

⁴²⁸ CD 1-22 at [5.6.3] – [5.6.9] on PDF pp. 218 – 219.

⁴²⁹ CD 1-22 at [5.6.11] on PDF p. 219 and [5.8.4] on PDF p. 220.

of qualitative enhancements were also identified.⁴³⁰ The particular advantage of Open Space Site C compared to the other shortlisted sites was its accessibility: the site's location close to the Busway and maintenance track allows for easy pedestrian, cyclist and equestrian access and ensures interconnection, via the maintenance track, with the surrounding footpath and bridleway network.⁴³¹

406. As far as quality is concerned, the replacement open space will form part of a wider area which will be the subject of enhancement and improvement.⁴³² Access to that area can be obtained from both sides of the M11 via the bridleway and maintenance track.

407. It is plain that the exchange land provides an overall equality of advantage. In particular:

407.1. Given its location adjacent to and accessible from the maintenance track it is at least as equally advantageous in terms of accessibility. There will also be qualitative improvements in the quality of the access path, rendering the Replacement Open Space Land to be more accessible to all.

407.2. The Replacement Open Space Land will benefit from at least as good, if not better, natural surveillance from the adjacent maintenance track.

407.3. The Replacement Open Space Land will be laid out in a manner more conducive to public recreation, for example omitting the impenetrable scrub currently found in the Open Space Plots.

407.4. The Replacement Open Space Land will be located further from the M11. There will be no greater adverse noise impacts on users; to the contrary, the greater separation distance is likely to result in a qualitative improvement.

⁴³⁰ CD 1-22 at [5.8.8] – [5.8.10] on PDF p. 221. Also CD1-22 Appendix 10, Appendix H (pdf page 258) indicative layout.

⁴³¹ CD 1-22 at [5.6.16] and [5.6.18] on PDF p. 219.

⁴³² CD1-22 Appendix 10, Appendix H (pdf page 258) indicative layout

408. It follows that the qualitative criteria is also met.

Objections

409. All of the objections related to the quality of the Replacement Open Space Land.

410. Following cross-examination of Dr Sutton she accepted that each component part of her objection had been overcome. More particularly:

410.1. **Access.** Dr Sutton had not considered the plans which demonstrate the accessibility of the Replacement Open Space Land from the maintenance track. Having considered the plans, she accepted that the Replacement Open Space Land would be equally accessible.

410.2. **Footpath.** Dr Sutton explained in cross-examination that her concern was about transiting north to south on the footpath. This is not a concern about the use of the land as open space; rather it is a separate and distinct concern about the public right of way, which does not go to the qualitative criteria under section 19 of the 1981 Act.⁴³³ In any event, she accepted that her concern was overcome when shown the proposed diversion of the footpath.

410.3. **Biodiversity.** Dr Sutton rightly accepted in cross-examination that her concern about biodiversity was an ecological issue, not a concern about the quality of the open space and its use. In any event, as already explained, appropriate landscaping and enhancement measures have been identified to ensure equality.

411. In respect of CPPF, the substance of the objection cannot be maintained following cross-examination given Mr Littlewood accepted (1) the surveillance to be provided by the maintenance track; (2) the access to be provided from the maintenance track; and (3) the benefit of being further from the M11. It is notable that the case for CPPF in closing has now

⁴³³ The question of access is distinct from this concern about movement patterns.

morphed into one that depends on the maintenance track being excluded.⁴³⁴ This is the wrong premise, as we have already explained.

412. It follows that none of the objections can be maintained following cross-examination and in light of the Applicant's evidence.
413. For completeness, there is nothing in Mr Littlewood's suggested alternative replacement land (a point raised by the Inspectors but not put in cross-examination by Mr Parker). Part of the land is already used by the public and so it would not be appropriate for it to be used as exchange land⁴³⁵. This land was not offered by CPPF at a formative stage of the scheme.⁴³⁶ It cannot form a reasonable basis for objection now. In any event, it was a parcel that was substantively assessed and rejected through the long listing process,⁴³⁷ and it does not change the fact that the Replacement Open Space Land meets the statutory criteria.

Conclusion

414. For these reasons, the Applicant submits that all of the criteria in section 19(1)(a) of the 1981 Act are met and a certificate should be granted accordingly.
415. In addition, although planning policy is a separate consideration to the application of section 19 of the 1981 Act, there is also compliance with the relevant policies. More particularly:
- 415.1. Given the Replacement Open Space Land is (at least) equal in terms of quantity and quality, and is in a suitable location, there is compliance with paragraph 104(b) of the NPPF.
- 415.2. For the same reasons, there is compliance with Policy SC/8(a) of the South Cambridgeshire Local Plan (noting, of course, that the open space to be lost is within the City Council's area).

⁴³⁴ At [83].

⁴³⁵ As advised at paragraph 259.3 of the MHCLG Guidance – CD8-28 pdf page 145

⁴³⁶ Lewis RPOE at [5.5.12] on PDF p. 17 (same internal).

⁴³⁷ CD 1-22 at PDF p. 252 – see the bottom part of Site G and Site F.

415.3. Again for the same reasons there is compliance with Policy 67 of the Cambridge Local Plan. In particular, as Mr Sensecall explained in re-examination, there is no conflict with the “short walk” provision because the Replacement Open Space Land will be more accessible (especially having regard to the quality and inclusivity of the access from the maintenance track), thus falling within the exception in paragraph 7.48 of the supporting text.⁴³⁸

416. It follows that the impact of the Busway on public open space is acceptable.

IX. THE OVERALL BALANCE

417. Our submissions on the overall balance go to the question of whether the TWA Order should be made and to whether a direction should be made that planning permission be deemed to be granted.

418. We begin this section by referring to the evidence of Mr Sensecall – he gave clear evidence on how the balance should be struck. He took a transparent and structured approach by identifying and attributing weight to benefits and to harm. Based upon sound and coherent reasoning, his evidence was that the benefits outweighed any harm.

419. It is telling that when cross-examined (on behalf of CPPF/Coton PC) on the balance Mr Sensecall was not asked about the balancing exercise he conducted. To use a term so beloved of some advocates, his evidence on that issue was not challenged. Instead he was asked about an entirely hypothetical exercise.

420. Your task is to consider the balance of benefits and harms in relation to the order scheme – that is the question Mr Sensecall considered. The answer to that question is abundantly clear – the benefits far outweigh the harm. Indeed the local plan and emerging local plan strategy are built upon, and are dependent upon, the order scheme.

⁴³⁸ CD 6.01 at PDF p. 205.

Policy Framework

421. We have already addressed you at some length on both the adopted and emerging local plans. The Busway is in accordance with this policy framework.
422. The Busway is aligned with the strategic policies because it unlocks permitted and planned development in existing and emerging allocations.
423. The Busway also complies with the suite of environmental and development management policies, demonstrating the acceptability of its impacts.
424. The Cambridgeshire and Peterborough Minerals and Waste Local Plan ("the MWLP") forms part of the development plan. For completeness we make the following brief submissions.
- 424.1. This was not an issue advanced by objectors at the inquiry. However, Mr Sensecall was asked about the MWLP by the inspector.
- 424.2. This issue was considered and addressed in the Planning Statement.⁴³⁹
- 424.3. Two minerals safeguarding areas lie within the order limits.⁴⁴⁰ As a result, Policy 5 of the MWLP is engaged.
- 424.4. The development proposed does not fall within one of the exceptions listed in paragraphs (a) to (h) of policy 5.

⁴³⁹ CD1.15 section 6.3.5-6.3.10

⁴⁴⁰ Planning Statement paragraphs 6.3.6 and 6.3.7 CD1-15 page 67
6.3.6

...

□ the eastern end of the Scheme (between Bin Brook and Grange Road) overlies part of a large Sand and Gravel MSA within the wider Cambridge area; and
6.3.7.

the area to the north of Coton and west of the M11 which forms part of the offline route parallel to the A1303 intersects a large Chalk MSA which extends across the wider Cambridge area

- 424.5. Policy 5 is complied with as the criterion set out in paragraph (l) is met. The nature of the development makes prior extraction unfeasible, and there is an overriding need for the development⁴⁴¹.
425. On this basis, the proper conclusion is that the Busway complies with the adopted development plan, read as a whole. The Busway also complies with the emerging development plan, read as a whole.
426. Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply either to the decision to make the order under section 1 TWA 1992 or to the decision to issue a direction under section 90(2A) TCPA 1990.⁴⁴² This is because neither decision is 'a determination to be made under the planning Acts' for the purposes of section 38(6).⁴⁴³
427. Nevertheless, the conclusion that the Busway accords with the development plan as a whole is still critical because it engaged paragraph 11(c) of the NPPF and the policy (as opposed to statutory) presumption that it contains. The Busway is a development proposal that accords with an up to date development plan and therefore it should be approved without delay.
428. In addition, the Busway aligns with the national ambitions set out in the Case for Cambridge and reaffirmed by the Minister in recent correspondence. The growth of Cambridge is a national priority. The Busway will directly assist in unlocking that growth. The Busway will directly assist in meeting this national priority. This is a critical factor. The amplitude of the Busway's benefits are at a local, regional and national scale. By comparison, the adverse effects are generally at a local or, in the worst case, county level. This disparity is important and tells in favour of the Busway in the planning balance.

⁴⁴¹ Planning Statement paragraph 6.3.10 CD1-15 page 68

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⁴⁴³ R. (Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Energy and Climate Change [2012] EWHC 46 (Admin) at [79].

429. We turn now to consider the harms and benefits of the Busway. We do so using the same scale and attribution of weighting as Mr Sensecall presented.

Harm

430. **Impacts on Coton Orchard.** Significant weight should be afforded to this factor. The ES identified a significant environmental effect at a county scale as a result of the impacts on the orchard. There will be no loss of or deterioration to veteran trees, but, nevertheless, there will be some adverse ecological impacts. The Applicant has followed the mitigation hierarchy in respect of these impacts.
431. **Other biodiversity impacts.** Limited weight should be afforded to this factor. Outside of Coton Orchard there are no significant environmental effects and, on examination, the vast majority of other biodiversity effects are of a very limited extent.
432. **Landscape effects.** This encompasses both temporary and permanent effects:
- 432.1. Significant weight should be afforded to the temporary effects arising from the construction of the Busway. There are four areas of particular concern where significant effects will be observed,⁴⁴⁴ but these will be for (at worst) a two year period and, in reality, a substantially lesser period.
- 432.2. Limited weight should be afforded to the permanent effects arising from the ongoing presence and operation of the Busway. Much of the scheme crosses transport-influenced terrain. There are no significant permanent landscape effects. There is only a single significant permanent visual effect. Effective mitigation has been provided and will take effect over time, thus reducing impacts further.

⁴⁴⁴ Residents on Scotland Road, Whitwell Way, and Herschel Road, as well as for footpath users near Coton and the M11.

433. **Noise and vibration effects.** This only encompasses temporary construction effects. There will be no permanent adverse effects. The temporary effects will be significant in three locations.⁴⁴⁵ Significant weight should be afforded to these temporary effects.
434. **Loss of agricultural land.** Limited weight should be afforded to this factor. 39ha of Best and Most Versatile (“**BMV**”) agricultural land will be lost, but the dispersed nature of this loss does not render it a strategic loss, especially in the context of the continued availability of BMV land and the mitigation secured by the Busway.

Benefits

435. **Unlocking housing growth.** Substantial weight should be afforded to this benefit. The Busway will unlock already permitted development, in particular at Bourn Airfield and Cambourne West, as well as future growth in the emerging plan. This is not only a local benefit but also a key part of delivering the nationally important growth for Cambridge: the Cambridge phenomenon is built on being able to supply housing to those working in Cambridge. A net land value uplift of £222M, (£184m after taking account of transport external costs) (in 2010 prices⁴⁴⁶) is attributable to the scheme, reflecting its catalytic role in enabling strategic development.
436. **Unlocking employment growth.** Substantial weight should be afforded to this benefit. The Busway will improve labour market access in Cambridge, and directly facilitate the expansion of West Cambridge as a major employment area by providing direct, reliable and attractive public transport links to Cambourne, the closest area of major housing growth.
437. **Support for the adopted and emerging spatial strategy.** Substantial weight should be afforded to this benefit. The Busway is an essential building block of sustainable placemaking and future-proofed connectivity in an area undergoing rapid change

⁴⁴⁵ At Childerley Gate, Scotland Road and Bin Brook.

⁴⁴⁶ CD9-32 Table 3 on page 3, CD1-21-02 Table 4-17 pdf page 26

438. **Transport.** Substantial weight should be afforded to this benefit. The Busway will result in quicker and more reliable journey times,. This will facilitate a modal shift and help to address the congestion within and around the City which threatens to choke further growth and which is a recognised threat to the national objective of growing Cambridge. Two specific benefits need to be recognised and given weight individually. First, significant weight should be given to the Scotland Farm travel hub. Secondly, significant weight should be given to the active travel path. Both of these interventions are central components in delivering the necessary modal shift.
439. **Air quality improvements.** There will be an overall improvement in air quality as a result of the Busway. Substantial weight should be afforded to this benefit.
440. **Carbon.** The Busway will deliver a (net) reduction in carbon emissions. Limited weight should be afforded to this benefit.
441. **Biodiversity Net Gain.** At least 10% BNG will be delivered in circumstances where there is no applicable statutory target. Given the nature-depleted nature of the region, this is a benefit to which significant weight should be afforded.

Objectors – specific points

442. No objector has presented a robust planning balance exercise.

CPPF

443. Mr Littlewood’s exercise was reliant on the CPPF alternative, but no weight can be afforded to that alternative as it is unsafe and undeliverable, as already explained. Further, no weight can be afforded to any “variation” or “refinement” of the CPPF alternative. Such a scheme has not been worked up and there is no identified solution for the deliverability constraints, in particular the need to traverse the M11. Mr Leigh attempted to backfill different solutions but these were off the cuff and unsupported by technical evidence. No weight can be given to such

vague and inchoate proposals. In these circumstances, CPPF's planning balance exercise never gets off the ground.

444. Even if you were to consider that the technical deficiencies in the CPPF Alternative could be overcome and that the ecological and heritage impacts of the CPPF Alternative were acceptable and that the delay required to deliver the CPPF Alternative could be ignored, the Secretary of State would have to then consider the impacts on the UK's international treaty obligations. Even if a scheme could be confined to the current highway boundary (in the location assumed by CPPF), there remains – at the very least – a substantial risk that the works will intrude into the pink land in breach of the treaty.
445. In any realistic scenario, a deliverable scheme could not be confined to the current highway boundary and therefore it is almost inevitable that the Treaty obligation will be breached. We cannot see how the Secretary of State could realistically countenance such a scenario.

The Mayor of Cambridgeshire and Peterborough

446. The Combined Authority has made a franchising scheme⁴⁴⁷.
447. The Mayor has said that he is not in favour of the CtoC scheme. However, mindful of the provisions in the CA authority constitution (in relation to avoiding pre-determination⁴⁴⁸), he was careful to say that he has not yet determined his position on whether he would franchise a route on the proposed busway. As he said, if the busway was authorised and constructed, and subject to considering impacts on other services, he is not going to dig his heels in and reject it⁴⁴⁹. The closing submissions made on his behalf do not reflect his clear evidence on that matter: he was clear in his oral evidence that he simply could not make a decision now and that he would not reject using the Busway out of hand. Yet in his closing submissions, you are asked to speculate about what “may be incompatible”, or what may be “plausible” or what “may also exist”.

⁴⁴⁷ CD29-31-1

⁴⁴⁸ CD9-57 paragraph 6.1.1(vi) on page 40

⁴⁴⁹ Bristow XX

You and the Secretary of State should base your decision on his clear and realistic position in oral evidence, not the hypotheticals posed in submissions made on his behalf.

448. On the basis of the Mayor's evidence the conclusion to reach is that as and when the busway is open for traffic, a decision will have to be made as to whether bus routes using the busway will be franchised. Such a decision will be made on its merits.

449. It became apparent through both the Mayor's oral evidence and his written submissions that, whatever his ambitions for a new policy may be, he is yet to properly understand or grapple with how those ambitions will, realistically, deliver the growth that the Government has stated is a national priority and which he, himself, supports.

The Balance

450. As we have indicated, there are a number of separate balancing exercises required by local and national policy. We deal with them in turn.

Heritage balance

451. The Busway will result in less than substantial harm to a number of designated heritage assets. That harm will be at the lower end of the spectrum of less than substantial harm. Great weight should be given to this harm. However, this harm is outweighed by the public benefits identified above. Accordingly, the heritage balance lies in favour of the Busway.

Irreplaceable habitats

452. Without prejudice to the Applicant's case that the Busway will not result in the loss or deterioration of any veteran trees, it is necessary to consider whether there are wholly exceptional reasons for that loss within paragraph 193(c) of the NPPF.⁴⁵⁰ Footnote 70 clarifies that examples of such wholly exceptional reasons include orders under the TWA 1992 where the

⁴⁵⁰ A suitable compensation strategy has been provided, as explained above.

public benefit would clearly outweigh the loss or deterioration of the habitat. The Busway falls squarely within that example: the benefits of the Busway identified above are of a markedly greater magnitude and number when weighed against the worst case position of six veteran trees being lost. The public benefits clearly outweigh even that worst case harm. Accordingly, if they are required, wholly exceptional reasons exist.

The VSC balance and the overall planning balance

453. We deal now with the VSC balance for the purposes of paragraph 153 of the NPPF. Given its breadth, it stands as a proxy for the overall planning balance.
454. There is, at worst, moderate harm to the Green Belt by reason of inappropriateness and as a result of the impact on the purposes of including land in the Green Belt. There are other harms which we have listed above. These are generally of a low magnitude. The worst harm is a county level effect arising from the impact on Coton Orchard.
455. Set against this harm is a range of public benefits. We repeat: the benefits of the busway are of a markedly greater magnitude and number than the identified harms. The benefits are at a local, regional and national level. The Busway will directly facilitate an identified national priority. By contrast, the harms are confined to a local level. Overall, the benefits clearly outweigh the harm. The VSC balance is passed and the overall planning balance weighs in favour of the Busway.
456. This conclusion is put beyond any doubt when the consequences of not making the order are considered.
457. If the order is not made in the hope that something better may come along, quite apart from the severely detrimental impact on investor confidence, that will lead to further delay in meeting the acknowledged need, and undermine the local plan strategy. Even on Mr Leigh's evidence⁴⁵¹ the delay is likely to be at least 5 years for the works on the A1303 – 3 years until a decision is made and 2 years to carry out the roadworks. That

⁴⁵¹ Leigh XX

period takes no account of the time it will take to secure approval for and build a new bridge over the M11.

458. On any rational footing there can be no doubt the benefits far outweigh any harm.
459. Given the fact that the extant and emerging local plan strategy is built upon the CtoC scheme, and given the fragility of investor confidence, it would be nothing short of disastrous if the order were not made.

X. CONCLUSION

460. There is very strong national and local support for the delivery of the Busway. This reflects the demonstrable need for improved infrastructure to help unleash Cambridge's economic potential and to allow the local plan strategy to be fulfilled. The Busway meets that need and delivers a package of very substantial benefits.
461. There is no viable or deliverable alternative which is capable of meeting that need.
462. As is inevitable when public transport infrastructure is to be provided, the scheme will result in some negative effects but those impacts are far outweighed by the scheme benefits.
463. As Mr Freeman said⁴⁵², if the order is not made, you will be 'shooting Cambridge and the Government in the foot'. With all the difficulties facing this country now is not the time to inflict such a wound.
464. As Mr Freeman also said, if you do make the order, there will be no regrets. It might also be said, if the order is not made, there will be regrets aplenty.
465. The government has a mission to secure and foster growth. Cambridge has been identified as key contributor to that mission. The scheme is a prime example of an infrastructure led growth initiative in that key location- it

⁴⁵² Freeman XiC

would be wholly contrary to the very core of the Government's mission to decline to make the order.

466. For these reasons, we submit that the Draft Order should be made, a direction be made that planning permission be deemed to be granted and a section 19 open space certificate issued.

**NEIL CAMERON K.C.
MATTHEW HENDERSON**

**Landmark Chambers,
180 Fleet Street,
London EC4A 2HG**

21st November 2025