

## Norwich to Tilbury DCO

### Compulsory Acquisition Hearing 2 – Day 2

#### Oral Submissions on behalf of Northumbrian Water Limited

interested party no. is [REDACTED]

[REDACTED]

#### *Speaker Notes (Oral Version)*

##### 1. **Introduction and Representational Status**

- 1.1. Good morning;
- 1.2. My name is [REDACTED], from Ward Hadaway LLP, the law firm appointed by Northumbrian Water Limited to appear on their behalf in relation to this matter.
- 1.3. NWL, which also operates under the trading name Essex and Suffolk Water is :
  - 1.3.1. a statutory undertaker;
  - 1.3.2. a landowner affected by the Order; and
  - 1.3.3. a Statutory Party for the purposes of the 2015 Regulations.

##### 2. **NWL's Undertaking and Affected Interests**

- 2.1. They are the appointed water undertaker for parts of Essex and Suffolk.
- 2.2. The Project affects a number of operational water assets; and several parcels of land in NWL's freehold ownership within the Order limits.
- 2.3. Those interests are currently proposed to be subject to: compulsory acquisition of rights; and powers of temporary use.

##### 3. **Absence of Agreed Protections and Serious Detriment**

- 3.1. At present, no protective provisions or side agreements have been concluded between NWL and the Applicant.
- 3.2. And in those circumstances, NWL cannot confirm that the compulsory acquisition of land, or the acquisition of rights over land, would not cause serious detriment to the carrying on of its statutory undertaking.
- 3.3. The Examining Authority will be aware that compulsory acquisition in those circumstances would be contrary to the provisions of sections 127 and 138 of the Planning Act 2008 and we would ask that it is noted that the standard protections for undertakers in Part 1 of Schedule 16 of the draft DCO submitted at Deadline 3 (Document Reference REP3 004) are not accepted by NWL.

##### 4. **Little Waltham Pumping Station – Affected Land**

- 4.1. NWL's principal concern today relates to Little Waltham Pumping Station, a business critical operational asset.

- 4.2. The Land Plans Section F Rev B (Exam Library ref AS 010) show powers of temporary use affecting land at and adjoining the pumping station.
- 4.3. The affected parcels in NWL's freehold ownership are identified in the Book of Reference Rev B (Exam Library ref AS 019) as:
  - 4.3.1. F 3/91
  - 4.3.2. F 3/93 and,
  - 4.3.3. F 3/96.

## 5. **Critical Nature of The Asset**

- 5.1. In terms of the critical nature of the asset, Little Waltham Pumping Station is essential to NWL's supply operations.
- 5.2. NWL is strongly opposed to any compulsory powers, whether permanent or temporary, which could:
  - 5.2.1. interfere with access to the site;
  - 5.2.2. restrict operational flexibility; or
  - 5.2.3. otherwise impede the safe and continuous operation of the pumping station.
- 5.3. The Applicant has indicated that the temporary powers were sought to enable a temporary water supply connection to a construction compound but NWL has made clear that the pumping station already serves significant existing supply demands; and without detailed and agreed technical analysis, NWL cannot support any proposal that relies upon a connection from this asset.
- 5.4. Importantly, in this context, temporary use powers are not low risk and can present operational and safety concerns equivalent to permanent interference.
- 5.5. It will be worthy for the Examiner to note that Little Waltham supplies around 1300 properties with mains water, and without the pumps on, NWL would struggle to supply all properties, and those that may still receive some supply would only do so at a greatly diminished water pressure

## 6. **Relief Sought**

- 6.1. Given the risk of serious detriment, the relief sought by NWL is limited and targeted.
- 6.2. NWL requests the:
- 6.3. reclassification of parcels F 3/91, F 3/93 and F 3/96 as Class 8 land in the Book of Reference and land plans; with the effect that they are not subject to compulsory acquisition or powers of temporary use.

## 7. **Ongoing Discussions and Timing**

- 7.1. Discussions are ongoing between Ward Hadaway and the Applicant's solicitors regarding:

- 7.1.1. a side agreement; and
- 7.1.2. bespoke protective provisions for NWL.
- 7.2. The protections currently under discussion would, if formally agreed, offer appropriate safeguards for Little Waltham and prevent operational interference.
- 7.3. However, it is important to note that an impasse has been reached between NWL and the Applicant on another scheme which is intended to form the basis on which the protections are to be documented as part of this scheme. That impasse relates to the Applicant's proposed requirement for NWL to contribute to the costs of providing alternative apparatus necessary for NWL to exercise its statutory functions.
- 7.4. NWL is concerned that the cost contribution mechanism proposed by the Applicant, in substance, has a similar effect to the cost sharing regime provided for under sections 85–91 of the New Roads and Street Works Act 1991 and in NWL's view, this would effectively introduce cost sharing through the DCO process, notwithstanding that the Applicant has not sought to invoke those statutory provisions expressly through the Order.

## 8. **Interaction with Other Schemes**

- 8.1. Finally, NWL is assessing the interaction between this Project and:
  - 8.2. its own internal upgrade works; and
  - 8.3. other proposed NSIPs affecting its network.
- 8.4. NWL therefore reserves its position pending completion of those assessments.

Those are my submission that I hope assist

### Follow ups

NG agrees engagement with NWL that negotiations have been positive and close to reaching agreement in terms of both the statement of common grounds and any sort of side and protective provision agreements within the DCO.

NG understands that there is a largely negotiated legal agreement which deals with Little Waltham pumping station, while the document is not yet in place they understand the principles are substantially agreed and can be put in place in due course. NG stated land within the pumping station boundary is not required and can be put into class 8 but will confirm what plots that relates to in writing.

NG acknowledge NWL have included drafting around standing off of all future projects, just waiting on further information before they can move forward with the drafting of the document. Awaiting on comments for NWL on the agreement and protective provisions.

Kamran Hyder accepting that negotiations have been good but that we would disagree that the point is a new one it is a relatively longstanding one and it was felt prudent that for the sake of consistency the PPs agreed on Sea Link should follow through to those agreed for the purposes of this project but given a development yesterday evening we are concerned that an impasse has been reached.

ExA asked NG to clarify if three plots of land are going to be classified as class 8, NG confirmed they don't need to come into Little Waltham pumping station however outside of the boundary, they may still need temporary possession powers for temporary water supply to the nearby compound which there is also a provision in the DCO. Other parcel of land outside the water that would be in the same position.

ExA wants to clarify why NWL wish to see specific protective provisions included, how are they progressing?

NG responded negotiations have been going well, point regarding Sea Link has been raised and they hope to include bespoke provisions for NWL in Deadline 6 subject to concluding discussions.