

APPENDIX MB6: Emails to CRT Regarding
Proposals to Impose Restrictions on Plots 106 and
113

Matthew Bodley

From: Matthew Bodley
Sent: 27 November 2019 15:36
To: Kevin Hopkinson
Cc: Bernadette McNicholas
Subject: RE: Meridian Water - London Borough of Enfield Land and Rights Acquisition Requirements from Canal and River Trust
Attachments: 382-KCA-XX-XX-DR-A-9253-D.pdf

Hi Kevin

Further to my email below I now attach a revised drawing identifying all of the land required from CRT. There are annotations on the drawing providing details of why each piece of land is required. The land will be included in a compulsory purchase order which we anticipate will be made early next year.

My client is interested in exploring with you and your client whether there are alternative arrangements that we can put in place rather than outright freehold acquisition in respect of the airspace above the canal and the parcels of land on the east side as we understand that this would be preferable to your client.

With respect to the airspace your client suggested a 999 year lease at a meeting earlier in the year and I agree this is something that is principle agreeable. With regard the land on the east side the Council needs certainty that development or changes in ground level can be controlled so as not to affect the flood levels in the wider area. It does not necessarily need to own the land to achieve this provided sufficient covenants/controls are put in place.

Please give me a call when you are in a position to discuss.

Regards
Matt

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From: Matthew Bodley
Sent: 01 October 2019 18:12
To: Kevin Hopkinson <kevin@cpreak.com>
Cc: Bernadette McNicholas <Bernadette.McNicholas@canalrivertrust.org.uk>
Subject: Meridian Water - London Borough of Enfield Land and Rights Acquisition Requirements from Canal and River Trust

Hi Kevin

I refer to your email of 9 September setting out your proposed fee arrangements for advising the Canal and River Trust in this matter. Please accept my apologies for the delay in coming back to you. We discussed the matter on the telephone on 17 September as I wanted to clarify a few issues. In this conversation we provisionally agreed your proposed fee basis subject to me obtaining instructions from my client, Enfield Council. I confirm that I now have client's instructions to agree your fees on the following basis:

Matthew Bodley

From: Matthew Bodley
Sent: 28 February 2020 17:51
To: Russell Mills
Cc: Kevin Hopkinson
Subject: Meridian Water - London Borough of Enfield Land and Rights Acquisition Requirements from Canal and River Trust
Attachments: CRT - Annotated Dwg 5 November 2019.pdf; Meridian Water - Canal and River Trust Plot Plan v1.0.pdf; Canal & River Trust Interests Plan.dwg; CRT CPO Plots (version 6).xlsx; CRT Flood Mitigation Measures.pdf

Hi Russell

I hope you are well. Apologies again for the delay in providing you with the information pack on this one. I now attach the following:

- CRT – Annotated Dwg 5 November 2019 – this drawing shows in simple terms the approximate locations of the areas of land required and the reasons they are required. This has been provided to you previously. Please note that area (2) is no longer required.
- PDF extract of draft CPO Map showing the CRT plots required and which will be included in the CPO.
- As above in DWG format – I’m not sure whether you want this or not. It has been provided to me (although I can’t open it!) so I thought I would let you have it in the event you wanted to view in DWG.
- Excel schedule summarising the CRT CPO plots identified on the CPO Map extract. This includes site area of each plot and brief explanation of why required. Land acquisitions are shown in pink and new rights in blue. The reason for the pink and blue hatching in the location of the bridge is to show an overlap of land acquisition and new rights. Land acquisition is required for the airspace which will comprise the bridge structure and new rights are required in the area beneath this in order to construct the bridge and subsequently maintain it.
- CRT Flood Mitigation Measures – drawing show the proposed flood mitigation barrier to be constructed adjacent to the existing vehicle safety barrier.

As we have previously discussed it is our preference to reach a private treaty agreement to acquire the land interests and rights required but, as is normal, these will be included in the CPO to protect against the unlikely event that we cannot reach an agreement. As CPO is a fairly inflexible tool we have to show the pink areas as areas to be acquired as freehold title absolute as there is no ability for us to acquire a lesser interest than this. However, we can reach alternative arrangements by agreement. So, for example, in respect of the bridge we have discussed with your client a proposal to acquire a 999 year lease of this area at a peppercorn rather than freehold title. Similarly, with regard to the parts of the towpath where we need to control ground levels and construct a flood safety barrier we would be prepared to reach an agreement whereby your client retains ownership but allows us access to undertake the works and places a restriction on title to prevent ground levels altering in a way which would prejudice the flood mitigation measures which are to be put in place.

I trust this all makes sense but should you wish to discuss please do not hesitate to contact me.

Once you have had a chance to look through the information I suggest we speak in order to agree how to progress matters.

I trust this is in order and look forward to hearing from you.

Regards
Matt

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Matthew Bodley

From: Matthew Bodley
Sent: 05 June 2020 14:00
To: Kevin Hopkinson; Russell Mills
Subject: Meridian Water - London Borough of Enfield Land and Rights Acquisition Requirements from Canal and River Trust
Attachments: CRT Valuation Note 2020-06-04.pdf; PLA v TFL - Value of Air Rights.pdf; Matharu - Subsoil.pdf

Dear Kevin and Russell

I refer to our previous discussions regarding the above matter

My understanding of the current position is that we have agreed that the land on either side of the Canal should be valued at an amenity rate, albeit we have not yet agreed what that rate should be, but that we have a difference of opinion in respect of the approach to valuing the bridge crossing.

Dealing first with the issue of amenity land values I have recently agreed terms with the Lee Valley Regional Park Authority to acquire 5.21 acres of Green Belt land at Harbet Road. The price paid equates to £16,524 per acre and accordingly I propose that this price is paid for the land which the Council is seeking to acquire from CRT. The area of land in question is 3,198m² (0.79 acres). As detailed in my email to Russell of 28 February, the Council does not need to acquire the land to east of the Canal but would instead be prepared to proceed on the basis of access to undertake works and imposing restrictions on future use of the land. Notwithstanding that the Council would not be acquiring freehold title to the land I would be prepared to recommend that a price should be paid for this land on the same basis as the land to be acquired to the west of the Canal.

Accordingly, I propose a price of £13,055 (0.79 acres @ £16,524) for the land and rights to be acquired on either side of the Canal. This offer is subject to contract and Council approval.

With regard to the bridge crossing, I believe we have agreed that this can be undertaken on the basis of a 999 year lease at a peppercorn as opposed to a freehold transfer. However, we have a significant difference of views as to how this should be valued. I believe that following my discussion with the two of you back in April that it is with you to come back to me with comparables to support your approach to valuation, but I have not received anything yet. Whilst I would still be interested to review whatever information you could provide I thought it would be helpful if I provided an explanation to you as to what I consider the appropriate approach to be. I did provide a brief explanation in my email to Russell of 14 April. I now attach a note which sets out a more comprehensive explanation of what I consider to be the correct approach to valuation. I also attach two Lands Tribunal decisions which I believe support my approach.

I should be interested to hear your views on the attached documents.

Finally, I need to come back to you on the matter of fees. We agreed an undertaking up to an initial cap of £3,000 and I understand you have now reached this cap. I have discussed this with my client who has approved an increase in this cap by a further £3,000 thereby raising the cap to £6,000. Due to a misunderstanding, you submitted an invoice to me on 30 April. Whilst the Council agrees to reimburse fees in accordance with the agreed terms, it is not in a position to pay fees on an interim basis. Fees will be paid on settlement of the agreement. I suggest that it would be simplest if you could bill your client directly in the interim and the Council will reimburse CRT as part of the settlement.

I trust all this is in order and look forward to hearing from you regarding my proposal for settling the compensation.

Should you wish to discuss please do not hesitate to contact me.

Regards
Matt

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Matthew Bodley

From: Matthew Bodley
Sent: 15 July 2020 18:27
To: Kevin Hopkinson; Russell Mills
Subject: Meridian Water - London Borough of Enfield Land and Rights Acquisition Requirements from Canal and River Trust

Hi Kevin and Russell

I hope you are both well.

I am writing to update you of the current status of the proposed CPO. We now anticipate that it should be made around about the end of this month. Due to the unusual times we are all living and working in at the moment a copy of the notice will be served electronically as well by post, so at least one of you should receive it via email. I have also instructed the land referencers to email copies to the solicitors whose contact details you have previously provided to me.

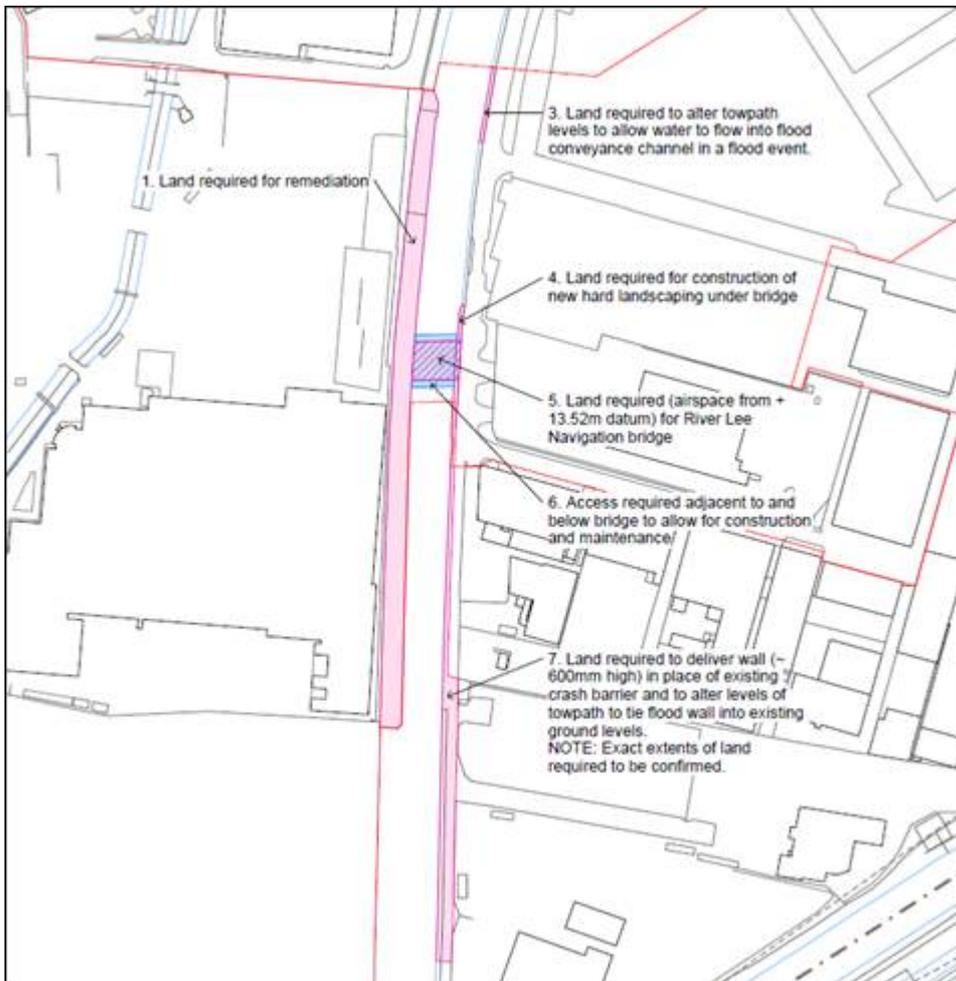
As previously stated it remains the Council's preference to reach an agreement to acquire the land and rights sought but these will be included in the CPO to provide the certainty that they can be acquired in the event that we can't reach agreement. The CPO will only be implemented as a last resort.

Following advice from Counsel there is to be a slight change in the way that airspace required for the bridge over the canal will be dealt with in the CPO. It had originally been intended that the Council would seek to acquire the freehold interest in the strata of airspace required for the bridge structure. However, whilst it is possible to acquire strata of airspace by agreement it is only possible to do so by compulsion if there is specific provision within the enabling act. The enabling act in this case is the Town and Country Planning Act 1990 which does not contain such specific provision, accordingly, the powers sought in respect of the airspace (as shown hatched red as reference 5 in the drawing below) will be in the form of new rights rather than a freehold interest in the strata. The rights sought will be to: construct the bridge; use it for public pedestrian and vehicular traffic; inspect, maintain and repair into perpetuity. We have previously discussed proceeding by way of an agreement for a 999 year lease at a peppercorn rent which was the suggestion proposed by your client and I confirmed that the Council agreed to proceed on this basis. This remains our preferred way of proceeding.

The powers sought in respect of all other plots will remain the same as previously advised, but for ease of reference I shall repeat them here, referring to the numbers in the drawing below:

- Ref 1 – freehold acquisition
- Ref 2 – not required (not shown on drawing below)
- Ref 3 – freehold acquisition. The Council does not need to acquire this land if terms can be agreed to restrict any changes to the ground levels of this land. It is necessary to control the ground levels as part of the flood mitigation strategy. These restrictions cannot be imposed by way new rights so the only way the Council can achieve its requirements in the absence of agreement, is by compulsorily acquiring the land. The Council would prefer to reach agreement to impose the restrictions and leave the land in CRT's ownership. Compensation would still be payable in respect of this land to reflect the imposition of restrictive covenants.
- Ref 4 – freehold acquisition. Same comments as for Ref 3 above – the Council needs to impose restrictions over the land as part of the flood mitigation strategy and would prefer to reach an agreement whereby this could be achieved without the need to acquire the land. In addition the Council needs to undertake public realm improvements on this land.

- Ref 5 – rights in respect of the bridge structure as referred to above.
- Ref 6 – this applies to a corridor on either side of the bridge structure (Ref 6 on the drawing below only points to the corridor on the south side of the bridge but it would also apply equally to the corridor on the north side). The rights required are for future inspection, repair and maintenance of the bridge.
- Ref 7 - freehold acquisition. Same comments as for Ref 3 above – the Council needs to impose restrictions over the land as part of the flood mitigation strategy and would prefer to reach an agreement whereby this could be achieved without the need to acquire the land. In addition the Council needs to undertake public realm improvements on this land.



With regard to the assessment of compensation/price I have set out my views in my email to you of 5 June. My views are not altered by the change in approach in respect of new rights as opposed to freehold acquisition in respect of the airspace required for the bridge structure, and as stated above our preference remains to proceed by way of a long lease. When do you think you will be in a position to respond to me on the matter of compensation/price?

In the event that we cannot agree the price in the near future, my client would be prepared to proceed by way of a “*compensation contract*” whereby we could agree the structure of the transaction in terms of the lease and new rights to be granted and the title restrictions to be imposed and leave the price to be assessed at a later date by reference to the “*compensation code*” with a mechanism to refer the matter to third party dispute resolution and/or the Lands Chamber in the event that we are unable to reach agreement. This could also include the payment of an advance payment by the Council on entering into the contract. In my view this would be of benefit to both parties in that it would provide certainty of the land arrangements which would give CRT comfort that they would be able to retain ownership of those interests in land over which the Council needs to impose restrictions but would leave open the ability for further negotiations in respect of price.

If this is something which would be of interest to your client I would be happy to draft up some Heads of Terms for your consideration. I should be grateful if you would seek your client's instructions on this proposal.

I trust that the content of this email makes sense but should you require clarification on any point please do not hesitate to contact me.

I look forward to hearing from you regarding my proposal on how to progress this case.

Regards

Matt

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Matthew Bodley

From: Matthew Bodley
Sent: 27 July 2020 13:26
To: Kevin Hopkinson
Subject: RE: Meridian Water - London Borough of Enfield Land and Rights Acquisition Requirements from Canal and River Trust

Hi Kevin

Thanks for your email and attached letter. I have forwarded this to my client and I will respond fully in due course once I have had the opportunity to fully consider the contents and discussed with my client.

I note that you have acknowledged the change of approach regarding the bridge – i.e. new rights being used instead of acquisition of freehold interest in strata of airspace. It remains the Council's preference to proceed by way of a 999 year lease at a peppercorn. I understand that your client is agreeable to this approach, and it was, in fact, your client that proposed it in the first place. Please could you confirm that your client is agreeable to this approach. Similarly, we are proposing to include plots on the east side of the Canal as acquisition plots in the CPO, but it would be our preference not to acquire this land but to leave it in the ownership of your client subject to the imposition of rights.

Compulsory purchase is a fairly inflexible tool in certain respects and, therefore, the basis of acquisition that we are proposing above can only be achieved by agreement. In the absence of agreement we will have to fall back on the CPO – i.e. seek acquisition of the new rights for the bridge in perpetuity and the acquisition of the pink land east of the Canal rather than simple imposition of restrictions. It is for this reason that I proposed a “compensation contract” which would enable us to specify the precise terms of the land to be transferred, rights to be granted and restrictions placed over the various plots of land. Given that we seem to be some way apart on compensation at the moment, the calculation of compensation could be reserved to a later date if we can't agree it, with a right to refer to Tribunal in the absence of agreement – i.e. replicating the compensation provisions that would apply if the interest was acquired pursuant to CPO.

Have you had the opportunity of seeking your client's instructions on my proposal of proceeding by way of a compensation contract?

On the subject of compensation, you have previously said that you would provide comparables which support your proposed basis of assessing compensation for a canal/river crossing on a “ransom” basis. I think you were waiting for clearance from your client before providing me with the information. Are you now able to provide this information please?

I look forward to hearing from you on these matters. In the meantime I will discuss the content of your letter with my client and come back to you with my thoughts.

Regards
Matt

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