

**BOSHAM LIMITED, SHOPWYKE
LIMITED, CS EAST LIMITED AND CS
SOUTH LIMITED**

Chichester District Council (Tangmere)
Compulsory Purchase Order 2020

Proof of Evidence of

Matthew Bodley

16 August 2021

Ref: PCU/CPOP/L3815/3264148

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1. Heads of Terms issued by Developer – 28 May 2021
2. Heads of Terms issued by Matthew Bodley – 30 July 2021

1. INTRODUCTION

Qualifications and Experience

- 1.1 I, John Matthew Scott Bodley, have been a professional member of the Royal Institution of Chartered Surveyors since 1992 and am a member of its Valuer Registration Scheme. In addition, I hold a Bachelor of Science degree in Urban Estate Surveying from Trent Polytechnic (now known as Nottingham Trent University). I have over 30 years' professional experience, 26 of which have been in the field of compulsory purchase and compensation.
- 1.2 I am the managing director and sole employee of Matthew Bodley Consulting Limited which is a consultancy business formed in June 2015 specialising in compulsory purchase and compensation advice.
- 1.3 Before setting up my own business I worked for 20 years at Drivers Jonas LLP (latterly Deloitte Real Estate), two years at GVA Grimley (now known as Avison Young) and two years at Carter Jonas LLP. I was Head of the National Compulsory Purchase and Compensation Practices at each of those firms.
- 1.4 I have advised numerous acquiring authorities, developers, private landowners and occupiers in respect of compulsory purchase procedure and compensation. This has involved acting both for those promoting and implementing compulsory purchase powers, and for those who are subject to them. I have advised the promoters of several regeneration projects, acting for both acquiring authorities and developers. Examples of town and city centre schemes I have been involved with include Reading (Oracle), High Wycombe (Eden), Bath (Southgate), Oxford (Westgate), Winchester (Silverhill), Glasgow (Buchanan Galleries extension) and Edinburgh (St James).
- 1.5 I have advised on the use of compulsory purchase powers for several housing led schemes including in Shoreham, Barnet, London Victoria and Maidenhead. I am currently advising developers on housing led schemes at Elephant and Castle, West Hampstead and Lewisham.
- 1.6 I am currently advising Enfield Council on its Meridian Water Regeneration Project where I am responsible for leading the third party negotiations and acted as an expert witness at the public local inquiry into the Strategic Infrastructure Works compulsory purchase order ("CPO") earlier this year. The CPO has recently been confirmed, which will enable the delivery of approximately 5,000 new homes.
- 1.7 I have provided compulsory purchase advice on projects of national significance including the London 2012 Olympic and Paralympic games, High Speed 1, High Speed 2,

Crossrail, Crossrail 2 and the Bakerloo Line Extension. I have given evidence as an Expert Witness at public local inquiries and in the Upper Tribunal (Lands Chamber).

- 1.8 I have acted on behalf of several landowners and businesses who have been subjected to compulsory purchase powers. Whilst at Drivers Jonas I was the principal author of the series of five public information “*Claimants’ guidance booklets*” produced by the then Department for Transport Local Government and the Regions (now Ministry for Housing, Communities and Local Government (“**MHCLG**”)) in England and Wales, first published in 2001. I have been a member of the Compulsory Purchase Association since its inception in 2002 and served as an elected committee member for five years from 2008 to 2013.

Involvement with the Project

- 1.9 I am instructed by Bosham Limited, Shopwyke Limited, CS East Limited and CS South Limited which are all companies controlled by the Heaver family (the “**Heavers**”). The Heavers own land at Tangmere in Chichester which has been included in the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 (the “**Order**”).
- 1.10 The Order is being promoted by Chichester District Council (the “**Council**”) in connection with the proposed development of the area known as the Tangmere Strategic Development Location (“**TSDL**”). The proposed development is a housing led scheme for up to 1,300 homes, an expanded village centre, primary school, open space, community facilities, associated infrastructure and other associated works (the “**Scheme**”) which it is intended will be undertaken by Countryside Properties (UK) Limited (the “**Developer**”).
- 1.11 I was instructed in January 2021, with the primary purpose of advising the Heavers of their entitlement to compensation in the event that their interests were compulsorily acquired pursuant to the Order.

My Instructions

- 1.12 My instructions are to advise the Heavers on the following matters:
- (a) to provide advice to the Heavers on their entitlement to compensation in the event that their land is compulsorily acquired, having regard to the relevant statutes, case law and established principles for assessing compensation, which are commonly referred to as the “**Compensation Code**”;
 - (b) negotiations with the Council and the Developer to agree terms upon which the Heavers would be prepared to dispose of their interests by private treaty agreement;

(c) to present evidence to the public local inquiry into the Order in support of the objection by demonstrating that it is not necessary to force the Heavers to sell their land – they are willing to either sell their land to the Council or commit to building out their land in accordance with policy requirements for the TSDL, (including the approved masterplan) in a way which does not prejudice the delivery of the remainder of the TSDL.

1.13 In carrying out these instructions I have been assisted by other members of the Heavers' professional team which includes Savills, Quod, Mosaic Urban Design and Masterplanning, i-Transport LLP, PG Consulting Civil and Infrastructure Engineers, Ashurst LLP and David Elvin QC.

1.14 I recognise fully, and have complied with, the duties owed by me to the inquiry in my role as an expert witness.

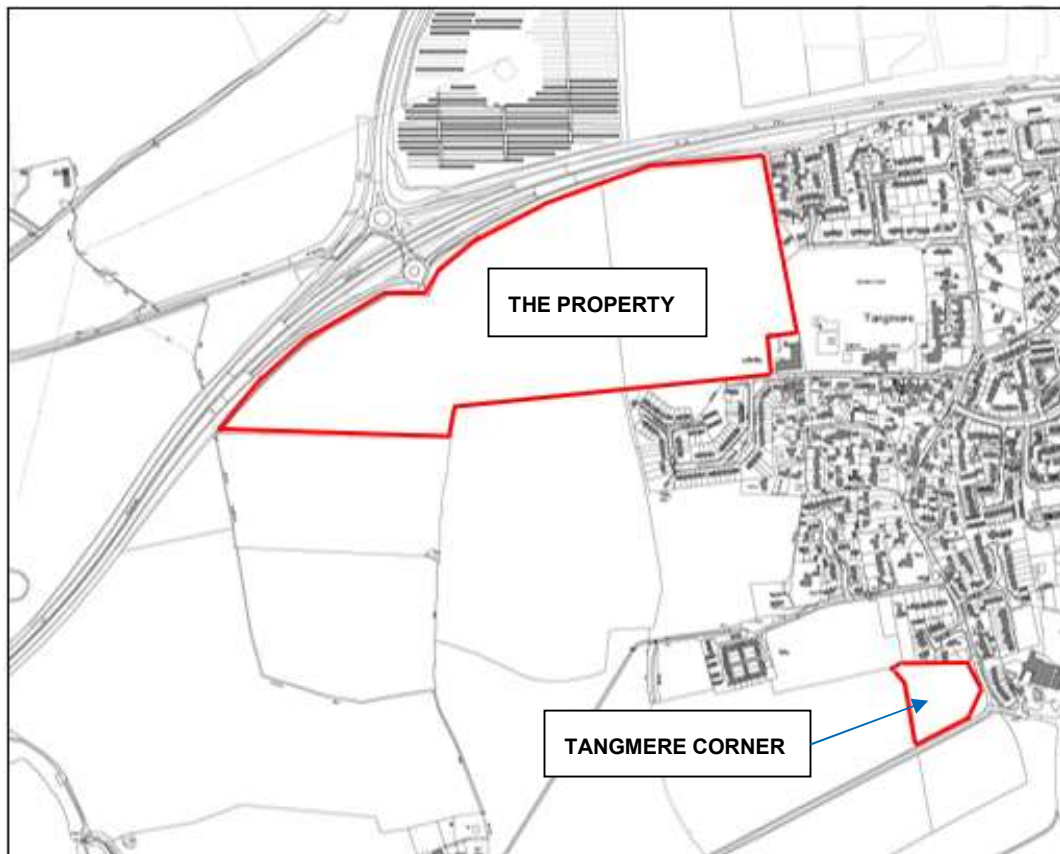
Scope of Evidence

1.15 My evidence provides:

- (a) a brief description of the land owned by the Heavers which has been included in the Order (Section 2);
- (b) Planning Policy Framework and Context (Section 3);
- (c) the background to the current position (Section 4);
- (d) the grounds of objection (Section 5); and
- (e) Statement of Truth and Declaration (Section 6).

2. THE HEAVEN LAND INCLUDED IN THE ORDER

- 2.1 The Heavers own various land interests in and around Tangmere. The interests which have been included in the Order comprise two separate land parcels which are hereafter referred to as the “**Property**” and “**Tangmere Corner**” (together the “**Properties**”) and are shown outlined in red for identification purposes on the drawing below.



- 2.2 The Property and Tangmere Corner are described below.

Location

- 2.3 The Properties are both located within the TSDL which sits to the west of the village of Tangmere within the administrative district of Chichester in West Sussex. The Property forms the northern part of the TSDL and is bounded to the north by the A27 trunk road. There is a direct road access into the Property via the A27/A285 junction.
- 2.4 Tangmere Corner is located in the south east corner of the TSDL and is directly accessible from Tangmere Road.

Description

- 2.5 Both the Property and Tangmere Corner comprise undeveloped arable farmland.

Site Area

- 2.6 The approximate site areas of the Properties are as follows:

Description	Site Area	
	Hectares	Acres
The Property	22.35	55.22
Tangmere Corner	1.15	2.83

- 2.8 The Properties are within the TSDL which has a total site area of approximately 75.47 hectares (186.46 acres).
- 2.9 The Property is included in the Order as plots 15, 16 and 17. Plot 16 is owned by Bosham Limited and Shopwyke Limited. Plots 15 and 17 are owned by CS South Limited and CS East Limited respectively. The companies which owns plots 15 and 17 are effectively connected to the Heavers but are separate legal entities.
- 2.10 Plots 15 and 17 comprise narrow strips along the southern and eastern boundaries of the Property and are referred to as the “**Control Strips**”. Separate objections have been submitted on behalf of the owners of the Control Strips.
- 2.11 Tangmere Corner comprises plots 2, 3 and 4 and is owned by Bosham Limited and Shopwyke Limited.

Tenure

- 2.12 The interests in the Properties owned by the respective owners stated in paragraphs 2.9, 2.10 and 2.11 are freehold interests.

Option Agreement

- 2.13 The Property (excluding the Control Strips) is subject to a Promotion and Option Agreement with Bloor Homes Limited and Bloor Holdings Limited (together “**Bloor**”) dated 21 December 2012 (the “**Bloor Option**”). This grants an option to Bloor to acquire up to 50% of the Property and to market the remainder. The option was for an initial period of six years up to 2018 but has been extended by agreement to 21 December 2024.
- 2.14 The option price is 85% of market value less the option fee, and certain qualifying costs, and Bloor is also entitled to 15% of the sale price for the remaining 50% to be marketed.

The consideration receivable by the Heavers for both the option land and the land to be marketed is subject to a Minimum Land Price of £500,000 per gross acre.

3. PLANNING POLICY FRAMEWORK AND CONTEXT

3.1 The planning policy framework for the area is described in the Council's Statement of Reasons and Statement of Case and I will not, therefore, repeat in detail within this Proof, but will instead summarise the key points as they are relevant to my clients' land. I will also refer to the differing views about the appropriate interpretation and application of the planning policy framework referenced in the Council's Statement of Case.

3.2 Relevant local planning policy documents include:

- (a) The Chichester Local Plan: Key Policies 2014-2029 (adopted July 2015)
- (b) The Site Allocation Development Plan Document 2014-2029 (adopted January 2019)
- (c) The Tangmere Neighbourhood Plan: Post Examination Version (adopted March 2016)
- (d) Draft Chichester Local Plan Review

The Chichester Local Plan 2015

3.3 The relevant policy allocation in the adopted Local Plan is as follows:

Policy 18: Tangmere Strategic Development Location:

"Land at Tangmere (within the area shown on the Policies Map) is allocated for mixed development, comprising:

- 1,000 homes;
- Community facilities;
- Open space and green infrastructure.

Development will be master-planned in accordance with Policy 7, taking into account the site-specific requirements, proposals for the site should:

- *Be planned as an extension to Tangmere village, that is well integrated with the village and provides good access to existing facilities;*
- *Incorporate new or expanded community facilities (possibly including a new village centre) providing local convenience shopping. Opportunities will be sought to deliver enhanced recreation, primary education and healthcare facilities;*

- *Incorporate small scale business uses;*
- *Make provision for green links to the National Park and Chichester city. Opportunities should be explored for provision of integrated green infrastructure in conjunction with the other strategic sites to the east of the city;*
- *Protect existing views of Chichester Cathedral spire and reduce any impact on views from within the National Park;*
- *Subject to detailed transport assessment, provide primary road access to the site from the slip-road roundabout at the A27/A285 junction to the west of Tangmere providing a link with Tangmere Road. Development will be required to provide or fund mitigation for potential off-site traffic impacts through a package of measures in conformity with the Chichester City Transport Strategy (see Policy 13);*
- *Make provision for improved more direct and frequent bus services between Tangmere and Chichester city, and improved and additional cycle routes linking Tangmere with Chichester city, Shopwhyke and Westhampnett. Opportunities should also be explored for improving transport links with the 'Five Villages' area and Barnham rail station in Arun District; and*
- *Conserve and enhance the heritage and potential archaeological interest of the village, surrounding areas and World War II airfield, including the expansion or relocation of the Tangmere Military Aviation Museum.*

Development will be dependent on the provision of infrastructure for adequate wastewater conveyance and treatment to meet strict environmental standards.

Proposals for development should have special regard to the defined County Minerals Safeguarding Area. Preparation of site plans will require liaison with West Sussex County Council at an early stage to ensure that potential mineral interests are fully considered in planning development”.

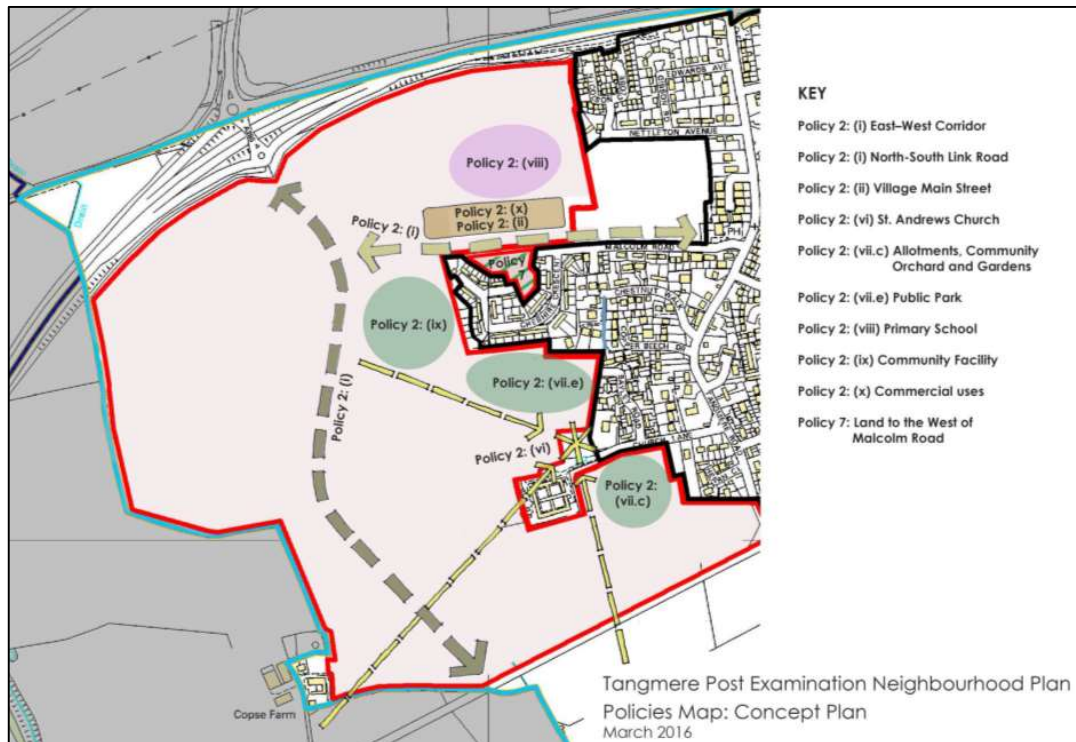
Tangmere Neighbourhood Plan March 2016

- 3.4 Paragraph 3.10 of the Neighbourhood Plan states that its primary purpose will be to translate the provisions of the Local Plan policies for Tangmere into a policy framework to guide the preparation of a masterplan to accompany future planning applications for the TSDL.
- 3.5 The specific policies relating to the TSDL are set out in Policy 2 which accords with Policy 18 of the Local Plan and provides additional detail. Policy 2(i) states:

Policy 2(i)

- 3.6 *“The site layout makes provision for the Tangmere Sustainable Movement Network of Policy 9, including the creation of the ‘East-West Corridor’ and the ‘North-South Link Road’ including road, footpath, cycleway and bus routes as shown on the Policies Map and Concept Plan”.*

- 3.7 The Concept Plan showing the East-West Corridor and the North-South Link Road is shown below. The Concept Plan is not intended to show the precise location of these roads but rather to establish the principle.



Draft Chichester Local Plan Review

- 3.8 The emerging plan for the district is currently the Local Plan Review 2035 Preferred Approach – December 2018. The Council has recently adopted a new Local Development Scheme that sets out the timetable for the emerging plan. The next iteration of the plan is scheduled to be published for consultation in March 2022. Submission to the Secretary of State is due to take place in June 2022 with Examination in September 2022 and adoption in March 2023.
- 3.9 The emerging plan maintains the strategic allocation at Tangmere through Policy AL14: *Land West of Tangmere*. This draft policy increases the number of planned homes from 1,000 to 1,300. The site specific requirements remain largely the same.

Masterplan

- 3.10 In November 2020 the Developer published the “*Framework Masterplan Document for TSDL*” (the “**Masterplan**”) which was prepared by Terence O’Rourke architects and sets out the design principles and approach for delivering up to 1,300 homes at the TSDL.

- 3.11 The intended methodology for delivery is set out in the “Next Steps” section and proposed a single outline planning application to be prepared for the entire TSDL following the Council’s endorsement of the Masterplan. This would be followed by a series of reserved matters applications to bring the development forward in phases over an anticipated 10-12 year period. It states that the first reserved matters application will likely relate to the key strategic infrastructure.
- 3.12 The Masterplan was formally endorsed by the Council’s Planning Committee on 8 January 2020 (LPA ref: 19/02836/MAS).

Planning Application

- 3.13 The Developer submitted an outline planning application (LPA ref: 20/02893/OUT) for the TSDL on 18 November 2020 for:

“a residential-led mixed use development comprising up to 1,300 dwellings (Use Class C3), an expanded village centre (comprising flexible units suited to Use Class E and pubs or drinking establishments and/or takeaways in Use Class Sui Generis), community uses, primary school, informal and formal open space, playing pitches, footpaths, cycleways, associated landscaping, utilities and drainage infrastructure, including on-site pumping station(s) with connection to the Strategic Foul network; associated infrastructure and groundworks; with all matters reserved except for the principal access junctions from the A27 grade-separated junction and Tangmere Road and the secondary access at Malcolm Road”.

- 3.14 All matters are reserved apart from the principal access points as follows:
- A27/A285 access with Pedestrian Crossings;
 - Malcolm Road – solely to access new school and parking area for expanded local centre. No vehicular through route to the wider TSDL;
 - Tangmere Road western access via roundabout with visibility splays; and
 - Tangmere road eastern access via simple priority T-junction with visibility splays.
- 3.15 Two of these four access points, including the primary access, are controlled by the Property.
- 3.16 The Planning Statement accompanying the application states that delivery is intended over a 10-12 period. The phasing of the proposed scheme is yet to be agreed but it is intended that the first phase of residential development would proceed at the south of the site adjacent to Tangmere Road. This would require the prior construction of an appropriate haul road from the A27 site access for construction traffic. It is intended that the second phase would proceed at the north of the site, also making use of the A27

access. Subsequent phases would work inwards simultaneously, making use of the north-south spine road.

- 3.17 The Council has resolved to grant planning permission subject to the withdrawal of a holding objection by Highways England and the completion of a Section 106 Agreement. The planning permission, when granted, will be subject to conditions, one of which limits the number of dwellings to be occupied at 300 until access from the A27/A285 junction has been delivered.
- 3.18 I understand from paragraph 7.12 of the Council's Statement of Case that the Section 106 Agreement is unlikely to be completed until the Order has been confirmed, the Order Land vested and transferred to the Developer.

Planning Prospects for Development of the Property Independent from the Remainder of the TSDL

- 3.19 As noted above there is a different interpretation of the appropriate application of the planning policy framework. The Heavers have taken independent planning advice from Quod. This advice has considered the question of whether planning permission for a housing led scheme could be achieved on the Property independent of the rest of the TSDL. The advice concluded that planning permission should be granted provided:
- (a) the development proposed is broadly aligned with the Masterplan supported by the Council's Planning Committee in January 2020, or one proposed by the Developer that receives planning permission through the Developer's current application which has received a resolution to grant permission (or a fresh site-wide masterplan in accordance with policy);
 - (b) the proposals would deliver the infrastructure items identified for the Property by the Tangmere Neighbourhood Plan Concept Plan, namely the North-South Link Road, the East-West Corridor, the Village Main Street, the safeguarded land for the primary school and the more general requirements for structural landscaping, green infrastructure, and sustainable movement network;
 - (c) the proposal did not prejudice the delivery of the rest of the TSDL.
- 3.20 Such a proposal would be granted planning permission by an objective decision maker as it would accord with the development plan in line with section 38(6) of the Planning and Compulsory Purchase Act 2004. This case would be strengthened by the presumption in favour of sustainable development at paragraph 11 of the National Planning Policy Framework and the "*tilted balance*" in favour of significantly boosting

housing supply, which would apply given the current absence of a five year supply of deliverable housing.

- 3.21 There is no legal requirement for a development on the TSDL to be delivered by a single developer or in a single phase. It is far from unusual for strategic development sites to be delivered in several phases and by different developers. Indeed, the Developer's proposal envisages the TSDL being delivered in phases over a 10 to 12 year period. It would also appear to envisage delivery by more than one developer as I understand that it has reached (or is close to reaching) agreements with Bloor and Seaward Homes on this basis.
- 3.22 There would also be no legal requirement for the Heavers to deliver infrastructure beyond the land within their own ownership and control provided it accords with the site wide masterplan and does not prejudice delivery of the later phases. The Property has the advantage of being adjacent to the existing A27/A285 junction which Policy 18 of the Local Plan identifies as the primary access point to the TSDL. It is also within the Heavers' power to deliver other infrastructure required for the delivery of the TSDL. The requirement for an East-West Corridor as an extension to Malcolm Road can be met on the Property, as can the Village Main Street and the commercial and community uses that would form part of it. The preferred location for the new primary school is also within the Property. The Heavers would also be willing to pay an appropriate financial contribution towards the delivery of site wide infrastructure and to ensure that land is safeguarded for the provision of access and infrastructure on, under and over the Property – this could be secured by appropriate planning obligations.
- 3.23 My clients are able to meet all of the policy requirements for a development of the Property independent from the TSDL without causing any prejudice to the delivery of the rest of the TSDL and as noted above, would be willing to safeguard and make land available within the Property for the delivery of the remainder of the TSDL development. Accordingly, notwithstanding the views expressed by the Council, planning permission should be forthcoming for a development of the Property independent from the wider TSDL.

4. BACKGROUND

- 4.1 I have only been instructed on this matter since January 2021. Accordingly, my understanding of events prior to this date is based on information provided to me by my clients.
- 4.2 The Heavers do not object to the principle of development in accordance with the adopted and emerging planning policy taking place on their land. In fact, they have been seeking to achieve development on their own land for a number of years pre-dating the Order. To this end in December 2012, in anticipation of an allocation in the Local Plan, the Heavers entered into the Bloor Option to bring forward housing development on the Property. If Bloor fails to secure a satisfactory planning permission by the end of the option period, my clients intend to promote their own planning application for the Property and has already appointed a team and commenced background work on scheme design and viability. This work has helped inform my clients' understanding of the development potential of the Property including compliance with the planning policy framework for the TSDL and delivery of a scheme in line with the approved masterplan.
- 4.3 Unfortunately, the Council's intervention through the appointment of the Developer and the threat of compulsory acquisition has caused uncertainty and acted as an impediment to the achievement of development on the Property. The threat of compulsory acquisition coupled with the Council's reluctance to engage with any landowner/developer seeking to bring forward a freestanding phase of the TSDL has clearly been a deterrent to incurring planning and promotion costs at risk which would ultimately prove to be abortive in the event the Property is compulsorily acquired. I understand that both my clients and Bloor have received negative feedback from the Council concerning Council support for a freestanding planning application for the development of the Property in line with the TSDL planning policy framework. This negative feedback has been a hindrance to the promotion of a planning application. My clients do, however, have the benefit of very clear technical and legal advice which provides them with confidence that it would be reasonable for Bloor to seek to promote a planning application, either now or in advance of the expiration of the option period – this is notwithstanding the threat of compulsory acquisition. It is, however, understandable that Bloor would not wish to incur the cost of promoting a planning application whilst the threat of compulsory acquisition remains. Accordingly, my clients decided to leave it to Bloor to come to their own decision as to whether or not to promote a planning application in the knowledge that my clients will be free to promote their own planning application once the option period has expired.
- 4.4 The Heavers are capable of and willing to make their land available for the purposes of delivering the Scheme (or an alternative scheme which would deliver the Council's policy

objectives for the TSDL) without the need for the use of compulsory purchase powers. Indeed, they have entered into a contractual arrangement with Bloor which requires Bloor to use reasonable endeavours to promote a planning application at the Property.

4.5 My clients' position has consistently been that they are willing to proceed on any one of the following three bases:

- (a) promote the Property and deliver development in line with the Council's policy requirements for the TSDL and offer appropriate undertakings to the Council to this effect; or
- (b) enter into a private treaty agreement to sell the Property to the Council or the Developer on reasonable commercial terms that fairly reflect the "Compensation Code"; or
- (c) enter into a joint venture agreement with the Council and/or the Developer to facilitate development of the Property in accordance with the Scheme.

4.6 In all of the above scenarios the Heavers would seek to retain ownership of Tangmere Corner and promote a housing development via their development company, Heaver Homes Limited, in accordance with the adopted and emerging policy for the TSDL. The retention of Tangmere Corner by the Heavers appears to have been accepted by the Council and the Developer.

4.7 The Order is, therefore, simply unnecessary.

4.8 There are two other principal landowners within the TSDL, namely: the Church Commissioners; and the Pitts. The Church Commissioners own approximately 25.73 hectares (63.58 acres) to the south of the TSDL comprising plots 9, 10, 11 and 12 of the Order. The Pitts own approximately 26.24 hectares (64.83 acres) in the middle of the TSDL, shown as plots 5, 6, 7, 8A, 8B, 13 and 14. I understand that the Pitts have in the past had separate negotiations with developers and entered into option agreements with Seaward Homes with the intention of bringing forward their own development proposals on their land.

4.9 Neither the Church Commissioners nor the Pitts are able to access the A27/A285 junction without crossing the Property.

4.10 I am informed that over a period of time discussions have taken place between the Heavers, Bloor and the other two principal landowners to bring forward a redevelopment of their combined interests and on 30 July 2020 the parties entered into a Memorandum of Understanding (the "**MOU**"). The MOU sets out background information about the

TSDL and the potential use of compulsory purchase powers by the Council, which it states, all parties are strongly opposed to.

- 4.11 The MOU states that all parties will work together to achieve the shared aim of bringing forward a policy compliant development of their land holdings within the TSDL and states that they have the necessary resources and expertise to achieve this. A number of “*Shared Objectives*” are set out in the MOU to achieve this aim.
- 4.12 The MOU has had the effect of demonstrating to the Council and the Developer that the three principal landowners were willing to work together to deliver a policy compliant scheme for the TSDL. This appears to have encouraged the Developer to become more focused on negotiating with the landowners with the aim of reaching agreement. The fact that terms have been agreed with the other principal landowners serves only to reinforce my clients' view that compulsory acquisition is unnecessary – especially as it is becoming increasingly apparent that my clients are the only remaining landowners of any substance and have made it clear to the Council and the Developer that they are willing to agree terms for the voluntary transfer of their land to the Council, subject to agreeing appropriate commercial terms. This could comprise either the sale of the land for compensation in line with the Compensation Code or, as an alternative, either a joint venture arrangement whereby my clients agree terms to work alongside the Council and the Developer to deliver the Scheme, or my clients give an undertaking to the Council in line with the principles outlined in paragraphs 3.22 and 3.23 above.
- 4.13 In 2018, the Council ran a competitive process to select a developer for the TSDL and committed to use its compulsory purchase powers in the event that agreements could not be reached with the existing landowners. The Developer was selected as the Council's preferred developer.
- 4.14 The Council and the Developer entered into a Development Agreement (“**DA**”) on 5 February 2019. The “*Common Objectives*” of the Council and the Developer for entering into the DA are defined within the document as: (a) adherence to adopted planning policy; and (b) optimising the development of the TSDL such that value is maximised. The DA does not commit the Developer to building out the Scheme, in whole or part, other than a broad obligation to use “*reasonable endeavours*” to deliver a vaguely defined “*Development*”. The determination provisions at clause 5.2(c) allow the Developer to terminate the DA if it is no longer viable, and the definition of Viability turns on the Developer's opinion of viability, giving the Developer considerable leeway to terminate the DA.
- 4.15 Clause 3.3 of the DA gives the Developer the deciding vote in respect of the negotiations for the acquisition of third party land interests. Any acquisition must, in the Developer's

opinion, be reasonable in the context of the Common Objectives which include the maximisation of value. Clause 4.6 of Schedule 3 of the DA gives the Developer full control of the process for the vesting of third party land.

- 4.16 The DA does not make clear what is to happen to land acquired by the Developer (or transferred to the Developer following vesting) if the DA is terminated, but the Council is potentially at risk of being required to reimburse the Developer on an indemnity basis the Developer's reasonable and proper costs associated with pursuing the planning application and the promotion of the Order. There is a cap of £300,000 in respect of the costs associated with the Order, but the other Developer costs are uncapped (clause 5.3 of the DA). This provision is unusual and clearly weakens the Council's independence and objectivity because any decisions to be taken by the Council concerning both the planning process (including whether or not it would be lawful and appropriate for my clients to promote a freestanding phase of the TSDL) and the Order will be influenced by the potential financial consequences of coming to a conclusion which is averse to the wishes of the Developer.
- 4.17 Following its appointment, I understand that the Developer commenced negotiations with the Heavers. From the content of the Statement of Case I understand that the Developer has also entered into negotiations with Bloor, the Church Commissioners, the Pitts and Seaward Homes. Draft Heads of Terms have been issued to the Heavers but these have not been agreed. I understand that the Developer has negotiated draft Heads of Terms with the Church Commissioners and the Pitts for a voluntary acquisition of their interests and that these negotiations are at an advanced stage and it is expected that they will be concluded shortly. Similarly, I understand that the Developer is close to agreeing terms with Bloor and Seaward Homes.
- 4.18 I was not directly involved in the negotiations between the Developer and the Heavers, until June 2021. As explained below, following my appointment my immediate main tasks were to review the Heads of Terms under negotiation and advise on the most appropriate form of commercial arrangement within the context of the fact that the Council had made the Order and that there was a likelihood of compulsory acquisition. It inevitably took some time for me to review the background correspondence and to advise on an appropriate strategy. Prior to this, negotiations were undertaken on behalf of the Heavers by Colin Wilkins, a development director at Savills. I am informed that the Developer has been responsible for all negotiations on behalf of the acquiring authority and that the Council has had no direct involvement. In my clients' opinion these negotiations have been unnecessarily protracted and the Developer has sought to use the threat of compulsory purchase as a negotiating tool to try to force the Heavers to enter into an agreement. I am also informed that my client raised its concerns with the Council about

the conduct of negotiations, but it was apparent that the Council had no real interest in intervening and was content to leave matters to the Developer.

4.19 I have been provided with a copy of the most recent draft Heads of Terms issued by the Developer dated 28 May 2021, a copy of which is included at Appendix MB1. These are largely unchanged from the previous draft Heads of Terms issued on 8 December 2020 and which were provided to me when I was instructed in January 2021. For the record, I did not have any input into these Heads of Terms.

4.20 My observations on these Heads of Terms are summarised below:

- (a) the terms offered were in the form of an option in favour of the Developer as opposed to an unconditional acquisition;
- (b) Tangmere Corner was excluded from the proposed agreement and would not form part of the land the Developer would have the option to acquire;
- (c) the Developer would have the option to draw down up to 50% of the developable land within the Property;
- (d) the option period would run for up to seven years;
- (e) the Heavers would be required to seek to agree a Deed of Variation of the Bloor Option that would enable Bloor to acquire up to 50% of the developable land within the Property. The agreement with the Developer would be conditional on the Heavers being able to achieve a variation of the Bloor Option;
- (f) the Developer would pay for the land drawn down at 90% of Market Value, subject to the Developer having the ability to defer payment of 50% of the purchase price by 12 months;
- (g) the consideration would be subject to a Minimum Land Price of the greater of £175,000 per gross acre or £350,000 per net developable acre;
- (h) the Developer would deduct planning and promotion costs, capped at £600,000, from the consideration payable;
- (i) all costs relating to site wide infrastructure, including access into the site, would be equalised and apportioned to the various land parcels within the TSDL on a pro-rata gross acreage basis;
- (j) the Developer would be subject to overriding objectives to maximise value and minimise costs.

- 4.21 There is no recognition within the Developer's Heads of Terms of the strategic value of the Heavers' property in providing the primary access into the wider TSDL from the A27/A285 junction. The value of this is significant and should properly form part of the market value of the land assessed under the Compensation Code. Instead, an equalisation approach is proposed.
- 4.22 I can see why an equalisation approach would be very attractive to the Church Commissioners and the Pitts as their properties are incapable of independent development, other than at very low densities. However, such an approach is completely unacceptable to the Heavers as it would deprive them of a significant element of the value inherent in their interest. This is unfair.
- 4.23 Accordingly, the terms offered by the Developer fall short of the compensation that would be payable if the Property was compulsorily acquired, both in terms of the structure of the offer and the potential financial consideration.
- 4.24 On 28 October 2020 the Council made the Order.
- 4.25 As noted above, I was instructed on 16 January 2021, shortly after the Order was made. I provided advice to my clients as to the appropriate basis of compensation and this was used as a basis for comparison with the Developer's offer as set out in their Heads of Terms of 8 December 2020 and the subsequent update issued on 28 May 2021.
- 4.26 On 30 July 2021 I emailed revised Heads of Terms to Mr Ged Denning of DWD setting out the terms upon which my clients would be prepared to dispose of their interests to the Council. The revised Heads of Terms reflect the compensation that my clients would be entitled to if their interests were compulsorily acquired in accordance with the Compensation Code. A copy of the revised Heads of Terms is included as Appendix MB2.
- 4.27 I have not yet received a substantive response to the revised Heads of Terms. I have however made it clear to DWD and the Council that my clients are willing to treat with the Council (and the Developer) on a voluntary basis without the need for compulsory acquisition, but the terms agreed will need to be in line with the Compensation Code. The previous Heads of Terms were not.
- 4.28 My clients remain willing to negotiate with the Council and the Developer.

5. GROUNDS OF OBJECTION

5.1 My clients' ground of objection are set out in their letter of objection submitted on their behalf by Ashurst LLP on 9 December 2020. I expand upon a number of these grounds of objection below.

The Order is unnecessary

5.2 The Order is not necessary to achieve the Council's objectives. My clients have expressed a willingness and desire to achieve the redevelopment of the Property in accordance with the existing and emerging planning policies for the area. Such development would also comply with the masterplan endorsed by the Council.

5.3 The Heavers have taken independent planning advice from Quod which confirms that planning permission would be forthcoming for a housing-led development on the Property independent from the remainder of the TSDL. The reasons for this are explained at paragraph 3.19 to 3.23. Such a development would be in accordance with the Council's policy objectives and would also be in accordance with the purposes which the Council has put forward in its justification for the use of compulsory purchase powers.

5.4 The Council notes in its Statement of Case that the Bloor Option has not resulted in a planning application being submitted. The very fact that the Bloor Option was entered into demonstrates my clients' aspirations to bring forward a development on the Property. However, these aspirations have been impeded by the Council's reluctance to enter into meaningful pre-application discussions with either my clients or Bloor, by the threat of compulsory acquisition, by the Council's appointment of the Developer and by the making of the Order.

5.5 Alternatively, my clients are also willing to participate in a joint venture arrangement with the Council and/or the Developer to facilitate the development of their land and have made the Council and the Developer aware of their willingness to do so.

5.6 Similarly, they are prepared to dispose of the Property to the Council or the Developer at a fair price which reflects their entitlement to compensation. The Council does not dispute in its Statement of Case that my clients are willing to make their land available to the Council. However, the Heads of Terms previously issued by the Developer fall short of my clients' entitlement under the Compensation Code both in terms of financial consideration and the structure of the agreement proposed.

5.7 Accordingly, I have issued revised Heads of Terms which fairly reflect the Compensation Code, and upon which my client would be willing to negotiate an agreement with the Council.

- 5.8 My clients would like to retain Tangmere Corner to undertake the development of this land themselves. The Council and the Developer have accepted the principle of this and it was provided for in the versions of the Heads of Terms issued by the Developer in December 2020 and May 2021. Whilst I consider the Heads of Terms put forward by the Developer to be unsatisfactory, for reasons which I will explain below, they do demonstrate that there is a clear acceptance by the Council and the Developer that the acquisition of Tangmere Corner is not required for the Scheme.

The Order fails to satisfy the statutory requirements of Section 226(1)(a) of the Town and Country Planning Act 1990

- 5.9 Section 226(1)(a) provides for the compulsory acquisition of land where this is required to facilitate development, redevelopment or improvement. For the reasons stated above the acquisition of my clients' land is not necessary to facilitate development as they are willing to enter into alternative arrangements which would achieve this.
- 5.10 Furthermore, there is no guarantee that compulsory acquisition will facilitate the development of the Property or any other part of the Order Land. As explained at paragraph 4.14 to 4.16 the responsibility for delivering the Scheme appears to rest entirely with the Developer, and not the Council. The DA places no absolute obligation on the Developer to deliver the Scheme, or even any element of it. The Developer is able to terminate the DA if, in its reasonable opinion, it is not able to satisfy its objective of maximising value.
- 5.11 A review of the DA is somewhat revealing. Whilst the Council wishes to convey the impression that there is clear contractual certainty concerning the arrangements for acquisition of the Order Land and delivery of the Scheme the reality of the actual contractual terms of the DA are very different. I note for example that at paragraphs 7.10 to 7.15 of the Council's Statement of Case, the Council provides a very positive and upbeat timetable for the delivery of the Scheme. Indeed, at paragraph 7.12 of the Statement of Case, Council states that: "*Once the CPO has been confirmed, the Council will take possession of the entirety of the Order Land within 6 months.*" In contrast, the DA makes provision for the Order Land to be acquired within 3 years from the date of confirmation of the Order with an option for the Developer to decide whether or not it wishes to proceed with the Scheme – this will be dependant, in part, on whether the Developer is satisfied that the Scheme is "*Viable*". Viability will be dependant, in part, on the Developer's understanding of the likely cost of delivering the Scheme. It is clear from my review of the Developer's initial Heads of Terms that there is a complete misunderstanding of the likely cost of acquisition of my clients' Property which includes the existence of the ransom value.

- 5.12 In terms of the Council's specific commitment to acquire all of the Order Land within six months of confirmation of the Order, I have not seen any undertaking from the Council to this effect. I am also surprised that the Council has made such a commitment when it is clear from the Heads of Terms from the Developer that there is no desire on the part of the Developer to acquire all of the Property either in one tranche or within six months of confirmation of the Order.

The Order fails to comply with the MHCLG Guidance on the use of compulsory purchase powers

- 5.13 Guidance to acquiring authorities on the use of compulsory purchase powers is set out in "*Guidance on Compulsory purchase process and The Crichton Down Rules*" issued by MHCLG (July 2019) (the "**Guidance**"). In addition to the Guidance, case law is also relevant, but this will be the subject of legal submissions in due course.
- 5.14 I consider there to be three areas in particular where the Council has not complied with the Guidance as summarised below.

Inadequate Attempts at Private Treaty Acquisition

- 5.15 Paragraph 2 of the Guidance states that acquiring authorities should attempt to acquire the land and rights included in a compulsory purchase order by agreement, and will need to be able to demonstrate that they have taken reasonable steps to achieve this. The price paid for acquisitions by agreement should be based on the compensation that would be payable if the acquisitions were compulsory. Compulsory purchase is intended as a "*last resort*" when attempts to acquire by agreement have failed.
- 5.16 The Council has not been directly involved in the negotiations that have taken place to date but has instead abrogated responsibility to the Developer¹. Whilst it is acknowledged that negotiations have taken place, the Developer's attempts at negotiation fall short of my clients' entitlement to compensation and accordingly, do not meet the requirements of the Guidance.
- 5.17 The Heads of Terms issued by the Developer fall short of my clients' entitlement under the Compensation Code both in terms of financial consideration and the structure of the agreement proposed. In summary, the terms offered by the Developer amount to no more than an option in the Developer's favour to draw down up to 50% of the net developable area over as yet undefined parts of the Property, exercisable over a period of up to seven years, at 90% of market value with 50% of the payments being deferred for a further year. The proposed agreement seeks to place an obligation on my clients to vary their

¹ If it would assist, a copy of the correspondence with the Council can be made available to the Inspector.

existing agreement with Bloor Homes. In other words, the Developer is seeking the ability to draw down the parts of the Property they would like (which are as yet undetermined), at a time of their choosing over the next seven years, for an as yet undetermined price at a discount to market value, and to defer payment for a further 12 months.

- 5.18 There is no acknowledgement of the Property's inherent value by virtue of its location which controls the primary access into the TSDL.
- 5.19 The Developer is seeking full control without taking any responsibility, which seems to be similar to the position they have managed to agree with the Council as set out in the DA. The Developer's motives appear to be maximisation of value of its proposed development, which is an expressly stated objective in the DA, as opposed to paying fair compensation to landowners whose land is being taken from them against their will.
- 5.20 An agreement based on the Developer's proposal would not provide my clients with any certainty as to when their land would be acquired (if at all) and what compensation they would receive. It would instead lead to an extended period of uncertainty and anxiety of up to seven years. This is in addition to the period of uncertainty they have already experienced following the Council's decision to appoint a development partner in 2018.
- 5.21 This is highly unsatisfactory to my clients and is an inappropriate use of the Council's compulsory purchase powers and clearly does not meet the requirements of the Guidance. Such an approach is disproportionate and constitutes a breach of section 6 of the Human Rights Act 1998 and Article 1 of the First Protocol of the European Convention on Human Rights.
- 5.22 Furthermore, the Developer's offer, which is only seeking to acquire up to 50% of the developable land within the Property and no part of Tangmere Corner, provides clear evidence that the Developer agrees that it does not need to acquire all of my clients' land in order to deliver the Scheme. Indeed, it does not even provide a commitment that it will acquire any of the Properties. It also acknowledges that it is capable of working with other developers to deliver the Scheme by its acceptance of working with Bloor.
- 5.23 The Developer appears to be primarily driven by a desire to maximise profit. Whilst this is an understandable objective for a private developer to pursue, it is entirely unacceptable for the Council to allow its statutory powers to be used in this way.

Timing of Availability of Funding

- 5.24 Paragraph 14 of the Guidance deals with funding. With regard to timing of funding, paragraph 14(b) states that all funding should generally be available now or early in the

process but failing that the funding required for land acquisitions should be available within the statutory three year period following confirmation of the compulsory purchase order.

- 5.25 There is no evidence that this is the case here. The Developer has not provided any detail on the timing of delivery of the Scheme. Instead, they have referred to an indicative 10 to 12 year delivery period. Indeed, they have not even provided a commitment to deliver the Scheme. The Heads of Terms produced by the Developer are in the form of an option with a draw down period of up to seven years.
- 5.26 The Council notes in its Statement of Case that there is an obligation on the Developer to deliver the development, but the obligation is in fact not an absolute obligation but merely a requirement to "*use reasonable endeavours*" to do so. Furthermore, the "*Programme*" in the DA, referred to by the Council, is outdated and, in any event, ends at implementation of the planning permission and does not include any further detail as to construction timeframes. Any variation to the Programme is also entirely within the Developer's gift, as the Developer merely needs to give "*due consideration*" to the Sponsor Board's comments.
- 5.27 The Developer does not appear to have a clear idea of when it requires the land. It has not provided an indicative construction programme beyond a vague reference to a 10 to 12 year delivery period. I assume this is why the Developer is seeking an option period of up to seven years. Compulsory purchase powers only remain operable for three years following confirmation of a compulsory purchase order. It would appear that the Developer does not require all of the Order Land until some time beyond the period that the powers will remain operable. On this basis the Order is premature.

The purposes of the Order could be achieved by other means

- 5.28 Section 1 of the Guidance deals specifically with compulsory purchase orders made under section 226 of the Town and Country Planning Act 1990. Paragraph 106 has four bullet points which set out matters of particular relevance which the Secretary of State will take into account when deciding whether or not to confirm an order under the 1990 Act. Bullet point 3 states that a relevant consideration is whether the purposes of the acquiring authority could be achieved by any other means, including the appropriateness of any alternative proposals put forward by owners of the land.
- 5.29 As stated above, my clients have put forward alternative proposals that do not require the use of compulsory purchase powers as summarised at paragraph 4.5.
- 5.30 The Council in its Statement of Case misunderstands my clients' objection as to certainty on the infrastructure required. My clients' contention is not that certainty is not required

but that certainty can be delivered without the Order through the alternative proposals already referred to.

Conclusion

- 5.31 For the reasons stated above the Council has not demonstrated a compelling case in the public interest to justify the use of compulsory purchase powers in this case. Accordingly, the Order should not be confirmed against my clients' interests in the Properties.

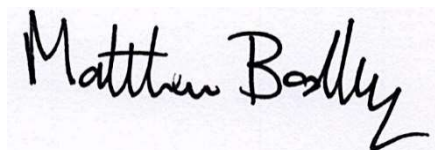
6. STATEMENT OF TRUTH AND DECLARATION

Statement of Truth

- 6.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Declaration

- 6.2 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 6.3 I confirm that I understand and have complied with my duty to the inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 6.4 I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- 6.5 I confirm that I have no conflicts of interest.
- 6.6 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the inquiry.
- 6.7 I confirm that my report complies with the requirements of the Royal Institution of Chartered Surveyors (RICS), as set down in the RICS practice statement Surveyors acting as expert witnesses, and the RICS Professional Statement Surveyors advising in respect of compulsory purchase and statutory compensation.

A handwritten signature in black ink that reads "Matthew Bodley". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

Matthew Bodley

16 August 2021