
THE TOWN AND COUNTRY PLANNING ACT 1990 AND
THE ACQUISITION OF LAND ACT 1981

CHICHESTER DISTRICT COUNCIL
(TANGMERE) (NO 2) COMPULSORY
PURCHASE ORDER 2023

STATEMENT OF EVIDENCE
OF
PETER ROBERTS FRICS CENV
ON BEHALF OF
CHICHESTER DISTRICT COUNCIL

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GLOSSARY

Acquiring Authority:	The Council
Bloor Option:	Promotion and Option Agreement dated 21 December 2012 between Mr and Mrs HG Heaver, Bloor Homes Limited and Bloor Holdings Limited
Compensation Code:	The body of statute, case law and relevant guidance to which the Upper Tribunal (Lands Chamber) and higher courts would have regard when determining the assessment of compensation.
Compulsory Purchase Order Decision:	The Inspector's Report dated 11 November 2021 confirming the Original CPO
Council:	Chichester District Council (who is also the Acquiring Authority)
Countryside:	Countryside Properties (UK) Limited – the Council's appointed developer
First Inquiry:	The Inquiry held on 7, 8 and 9 September 2021 concerning the Original CPO
Guidance:	Compulsory Purchase and the Crichel Downs Rules: Guidance, MHCLG, July 2019 (CD/8)
Heaver Objectors:	Bosham Limited (company number 11145803) and Shopwyke Limited (company number 11145921)
Market Value	The amount which the land if sold in the open market by a willing seller might be expected to realise ¹
Order:	Chichester District Council (Tangmere) (No. 2) Compulsory Purchase Order 2023 (CD/1)
Order Land:	Chichester District Council (Tangmere) (No. 2) Compulsory Purchase Order 2023 Map (CD/2)

¹ As set out at section 5 of the Land Compensation Act 1961

Original CPO	Chichester District Council (Tangmere) Compulsory Purchase Order 2020 (CD/13)
Other Heaver Objectors:	Herbert George Heaver, Temple Bar Partnership LLP, Denton & Co Trustees Limited and Alice Rebecca Chishick
Pitts Family:	Andrew John Pitts, Deidre Jane Pitts, Michael William Pitts, Diana Mary Pitts, Valerie Ann Young and Woodhorn Group Limited
Scheme:	The development comprising the implementation of planning application ref: TG/20/02893/OUT and associated applications as more particularly described at Section 3
SMTL:	Saxon Meadows Tangmere Limited
Saxon Meadows Residents:	The leaseholders of the 28 residential units located at Saxon Meadows. These leaseholders are also shareholders of SMTL

1.0 INTRODUCTION

1.1 I am instructed by Chichester District Council (the “Council”) to provide expert evidence in respect of the Chichester District Council (Tangmere) (No2) Compulsory Purchase Order 2023 (the “Order”) **(CD/1)**.

1.2 My evidence addresses the following matters:

- Section 1 - Introduction
- Section 2 – My qualifications and experience
- Section 3 -Description of the scheme (TSDL)
- Section 4 – The interests to be acquired
- Section 5 - The Guidance
- Section 6 - Negotiations with the affected parties from 2011 to September 2021
- Section 7 – Negotiations with the affected parties from September 2021 to this Inquiry
- Section 8 – Viability and Deliverability Matters
- Section 9 – The Heaver Family Objection
- Section 10 – The Other Heaver Objectors – Tangmere Medical Centre
- Section 11 – The SMTL Objection
- Section 12 – The Saxon Meadow Residents’ Objections
- Section 13 – Non-Statutory Objections
- Section 14 – Conclusions by reference to the Guidance
- Section 15 - Professional Statements

1.3 In providing my evidence I have concentrated on paragraphs 2, 3, 13, 14, 15, 17 and 106 of the Guidance on Compulsory purchase process and The Crichel Down Rules (the “Guidance”) **(CD/8)**. I am instructed that these are most relevant to this matter.

1.4 In this context, I am instructed that the amount of compensation payable to affected parties is not a relevant matter for consideration and that the appropriate forum for settling such disputes is the Upper Tribunal (Lands Chamber).

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- 1.5 Similarly, I am also instructed that disputes in respect of the amount of fees to be reimbursed to affected parties in reaching voluntary private treaty agreements is not a relevant consideration as to whether the Order should be modified, refused or confirmed in full.
- 1.6 In the event that I am mistaken on either of these points I will need to seek instructions from the Inspector as to whether further evidence is required to assist the Inquiry.
- 1.7 I have, in providing this evidence, reviewed and relied upon the evidence of:
- Andrew Frost (Director of Planning and Environment)
 - Hannah Chivers (Principal Planning Policy Officer)
 - Martin Leach (Countryside)
- 1.8 Whilst I was aware of this matter previously in the role of a “watching brief”, I first became directly involved in August 2021 immediately prior to the commencement of the Public Inquiry² (the “First Inquiry”) in respect of the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 (the “Original CPO”) (**CD/13**). In this regard, I presented evidence to that Inquiry in response to the outstanding objections made by Ashurst on behalf of the “Heaver Objectors³” and “Other Heaver Objectors”⁴
- 1.9 Since that time, I have overseen the progress of negotiations with the various landowners and interested parties in seeking to secure terms that would avoid the need for the Council to exercise any compulsory purchase powers both in respect of the Original CPO and this Order.
- 1.10 Such negotiations were initially primarily with the Heaver Objectors⁵ and National Highways⁶ on the basis that, if voluntary agreement could be reached with these entities in respect of land and interests that lie outside the Original CPO Plan limits, the current Order would not be required.
- 1.11 However, it has not been possible to agree terms with the Heaver Objectors due, primarily, to differences of opinion between their agent (Mr Bodley) and me in respect of the Market Value of their interests. In this regard, Countryside had, prior to the First Inquiry, agreed terms with all the other landowners⁷ and had secured a “resolution to grant” planning permission across the whole TSDL. They therefore offered commercial terms which were rejected by the Heaver Objectors.

² Held on 7, 8 and 9 September 2021

³ See definition in the Glossary.

⁴ *ibid*

⁵ *ibid*

⁶ *ibid*

⁷ See Appendix 3

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- 1.12 Mr Bodley⁸ has, since then, sought to resurrect this offer and present it as having been made by the Council for the purposes of an Advance Payment. However, any payment made in response to an Advance Payment request⁹ is based solely on the Council's opinion of value¹⁰ and is made in the "no scheme" world where no land assembly has taken place. As such, contrary to the stance taken by Mr Bodley and Ashurst¹¹, the Council is under no obligation whatsoever to match Countryside's offer nor make assumptions in doing so, that do not apply pursuant to the statutory framework.
- 1.13 In addition, whilst I agreed terms with National Highways in respect of their interests, the Heaver Objectors have taken legal action against National Highways the effect of which has been to prevent National Highways from transferring their land and interests to the Council.
- 1.14 The Heaver Objectors were, until 17 November 2023¹², unwilling to agree voluntary terms for the acquisition of their land as they had been advised that they were reliant on the Council exercising compulsory purchase powers in order to benefit from Capital Gains Tax relief that might not be available if they were to agree a voluntary acquisition.
- 1.15 I understand that their concerns related to section 247 (1) of the Taxation of Chargeable Gains Act 1992 which provides that roll-over relief applies where:
- "a) land ("the old land") is disposed of by any person ("the landowner") to an authority exercising or having compulsory powers; and*
- (b) the landowner did not take any steps, by advertising or otherwise, to dispose of the old land or to make his willingness to dispose of it known to the authority or other¹³s; and***
- (c) the consideration for the disposal is applied by the landowner in acquiring other land ("the new land") not being land excluded from this paragraph by section 248."*
- 1.16 I understand that this may be relevant as the Heaver Objectors had entered into a Promotion and Option Agreement (the "Bloor Option") on 21 December 2012 which provided, ultimately, for the potential disposal of Plot 17¹⁴ of Bloor Homes Limited. As such, it appears that they are concerned

⁸ Land agent for the Heaver Objectors

⁹ Section 52 of the Land Compensation Act 1973

¹⁰ Section 52(2)(3)(b) of the Land Compensation Act 1973 states *"the amount of any advance payment under this section shall be equal to 90 per cent of the following amount, that is to say- in any other case, an amount equal to the **compensation as estimated by the acquiring authority.**"*

¹¹ Solicitors for the Heaver Objectors

¹² See letter attached at Appendix 7

¹³ My emphasis

¹⁴ As described in the schedule to the Order and shown on the Order Map (CD/2)

that a voluntary sale to the Council could threaten their ability to argue that section 247 (1) is satisfied.

- 1.17 The Council were therefore in the position whereby the Heaver Objectors expressly required the exercising of compulsory purchase powers for the acquisition of their land, and yet objected to the Council obtaining compulsory purchase powers to assemble all the required interests and also blocked National Highways from transferring their interest to the Council without which the scheme cannot be implemented.
- 1.18 It appears, from the letter dated 17 November 2023¹⁵ and the terms attached thereto¹⁶ that the Heaver Objectors have changed their position in respect of tax matters and are now seeking terms that exclude any exercise of compulsory purchase powers. Whilst this change of direction is very late in the day, it is a positive step forward and the number of matters in dispute do appear to have reduced albeit significant issues remain.
- 1.19 Whilst agreement had previously been reached with Saxon Meadow Tangmere Limited (SMTL) and the residents of Saxon Meadow which resulted in amendments being made to the Original CPO, SMTL instructed new advisors¹⁷ in respect of the current Order and have reopened the previous agreement by submitting an objection which is stated to be made on behalf of SMTL who are acting on behalf of the residents.
- 1.20 A number of residents of Saxon Meadows who are leaseholders and shareholders of SMTL have submitted independent objections in support of SMTL.
- 1.21 The Council and Countryside have engaged with SMTL on the understanding that SMTL and the residents of Saxon Meadows have a common interest in any agreement by virtue of being not only residents but also leaseholders and shareholders. In this regard, agreement has been reached on the main principles and I have been told by Mr Olden and Mr Wolfenden that Heads of Terms have been agreed.
- 1.22 However, it is unfortunately the case that, despite the Council being very clear from the outset as to what fees would be reimbursed by the Council, Mr Olden and Keystone Law in particular have issued invoices to SMTL that, in my opinion, are grossly excessive and cannot be considered to be

¹⁵ As attached at Appendix 7

¹⁶ As attached at Appendix 8

¹⁷ Mr Olden of Olden Property Consulting and Keystone Law

reasonable or proportionate to the size and complexity of the task, but SMTL require full reimbursement of these fees by the Council as a condition of any withdrawal.

- 1.23 In this regard, Keystone Law have now written to the Council denying that the Heads of Terms were ever agreed in an obvious attempt to delay the withdrawal of SMTL's objection and maintain a dispute in respect of the fees raised by Keystone Law to SMTL.
- 1.24 Despite making several requests of Mr Olden I still do not have details as to the current fee position but understand that, as at the end of September, total fees of circa £84,000¹⁸ had been incurred and it is likely that the total amount could now be in excess of £90,000.
- 1.25 The Council have therefore been put into the position whereby SMTL will not withdraw their objection unless the Council agrees to pay all the fees raised by Mr Olden and Keystone Law without limit or regard as to what those fees relate to and contrary to the principles which SMTL have been advised by their own Counsel, apply.
- 1.26 There are three objections made by non-statutory objectors which are addressed at section 13 of this evidence. Whilst the Council and I have taken full account of these objections they do not raise matters that can realistically be addressed by voluntary agreement.

¹⁸ i.e., £70,000 + VAT

2.0 QUALIFICATIONS AND EXPERIENCE

2.1 My name is Peter Roberts.

2.2 I hold the following relevant professional designations:

- Fellow of the Royal Institution of Chartered Surveyors
- RICS Chartered Environmentalist
- RICS Registered Valuer
- RICS Registered Expert Witness
- Member of the Compulsory Purchase Association.

2.3 I joined the Valuation Office of the Inland Revenue in 1989 and qualified as a Chartered Surveyor in 1995 before joining Rapleys LLP in 2000 where I was appointed a partner in 2010. I joined Dalton Warner Davis LLP as a partner in January 2018 and am now a director following their acquisition by RSK Group. I have 33 years' experience dealing with contentious and complex property matters including compulsory purchase matters.

2.4 My current responsibilities include:

- Strategy and valuation advice in respect of compulsory purchase compensation, rights of light profit assessments, viability matters, covenant restrictions, section 18 (1) diminution, wayleaves, easements, overage and option agreements.
- Provision of Expert evidence in respect of diminution, negligence and valuation dispute issues, compulsory purchase proceedings and viability matters to the High Court, County Courts, Parliamentary Select Committee, Planning and CPO Public Inquiries, DCO examinations, adjudications, arbitrations and the Upper Tribunal (Lands Chamber).
- Formal "Red Book" valuation advice.
- Project management and agency advice in respect of land development opportunities.
- Residential valuation, service charge and enfranchisement disputes.

2.5 I advise a wide range of clients including Crest Nicholson Plc, Countryside Properties, Taylor Wimpey, McCarthy & Stone Retirement Lifestyles Ltd, The Cooperative Group, SSE plc/Keadby Generation Limited, CEMEX UK Operations Ltd, Phillips 66, North Hertfordshire District Council, Huntingdonshire District Council, IJM Land Berhad, Network Rail, Wm Morrison Supermarkets plc,

Applegreen plc, Rontec Limited, Redcar Bulk Terminal Limited, Matalan Ltd, Accor Hotels and Frontier Estates.

- 2.6 I also provide advice to private individuals and accept instructions from solicitors to act as an expert witness, joint expert witness or independent expert.
- 2.7 I am regularly appointed by the RICS to act in the capacity of an Independent Expert valuer in respect of “non rent” development and valuation disputes These typically comprise development disputes between developers and/or landowners concerning matters such as overage or option agreement disputes, negligence and profit shares.
- 2.8 I also provide advice and expert evidence to the RICS in connection with Disciplinary Panel Hearing proceedings and investigations concerning RICS registered firms and members.
- 2.9 I have provided seminars on various professional matters to solicitors, surveyors and clients.
- 2.10 I am aware of and have complied with the RICS Professional Statement “Surveyors advising in respect of compulsory purchase and statutory compensation” 1st edition, April 2017.¹⁹
- 2.11 I am also aware of my duty to the Inquiry and the standards expected of me as an expert witness. I provide further confirmation in this regard at section 15 of this evidence.

¹⁹ A copy is available at <https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/land-standards/surveyors-advising-in-respect-of-compulsory-purchase-and-statutory-compensation-uk>

3.0 DESCRIPTION OF THE SCHEME (TSDL)

- 3.1 The Order Land²⁰ comprises approximately 77 hectares of predominantly undeveloped open and flat land that falls from north to south and is in use for arable farming. It is located to the west of the village of Tangmere, West Sussex, between the A27 and to the north and Tangmere Road to the south. There is further agricultural land lying to the south and west with residential houses adjoining the Order Land to the east.
- 3.2 The Order Land is further described at section 2 of the Statement of Reasons **(CD/3)** and section 2 of the Statement of Case **(CD/15)**. Mr Frost also provides further detail at Section 2 of his evidence.
- 3.3 As set out at both section 5 of the Statement of Reasons **(CD/3)** and section 5 of the Statement of Case **(CD/15)**, the Order is required to assemble all required land and interests in order to deliver the Scheme in accordance with the TSDL Masterplan **(CD/16)**.
- 3.4 The purpose of the Scheme is to deliver residential-led development comprising some 1,300 homes, an expanded village centre (comprising units suited to Use Classes E and pubs or drinking establishments and/or takeaways in Use Class sui generis under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, (formerly Use Classes A1, A2, A3, A4, A5 and B1(a) under the Town and Country Planning (Use Classes) Order 1987)), community facilities, education facilities, open space and green infrastructure.
- 3.5 The Scheme is essentially the same as that for which the Original CPO was secured with the only material amendment comprising the reduction of the area required from SMTL to deliver the community orchard. This amendment was consequential to the modification made to the Original CPO which, in turn, was consequential to the agreement with SMTL in respect of the land to be acquired from them.
- 3.6 As I set out within this evidence, SMTL has now re-opened this agreement and has requested that the entirety of the community orchard be relocated away from SMTL's ownership such that a further planning amendment application²¹ has been submitted and is subject to a resolution to grant permission.
- 3.7 The detailed justification for the Order is provided in the evidence of Mr Frost who confirms that of the TSDL scheme is important to the Council being able to achieve its housing targets set out in its

²⁰ As shown on the Order Map (CD/2)

²¹ 20/02893/OUT

Local Plan **(CD/10)** and Emerging Local Plan **(CD/11)**. This issue is further discussed in the evidence of Ms Chivers.

- 3.8 The TSDL development was first identified for residential development in 2010 within the Council's "Focus on Strategic Growth Options" consultation document and the Council commenced discussions with the various landowners in 2010 in the hope that the landowners would coordinate development and delivery of the TSDL.
- 3.9 However, in this context the Heaver Objectors created two ransom strips along the boundary of Plot 17²² comprising Plots 16²³ and 18²⁴ on 20 December 2012. In my opinion, this was done so that they could potentially sell off the main site to a developer whilst retaining any ransom value that might be created by the planning designation.
- 3.10 In addition, the Heaver Objectors entered into a Promotion and Option Agreement relating only to Plot 17 with Bloor Homes Limited and Bloor Holdings Limited on 21 December 2012 (the "Bloor Option").
- 3.11 As the Bloor Option only related to Plot 17 and excluded the ransom strips (i.e., plots 16 and 18), Bloor Homes Limited could only deliver development on Plot 17 and the Heaver Objectors retained full control of the provision of access to the adjoining land.
- 3.12 No planning application has been submitted by either Bloor Homes Limited or the Heaver Objectors although I note from Mr Bodleys' evidence to the First Inquiry that he argued that *"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."*²⁵
- 3.13 Any comprehensive planning application would require the applicant to have control over the ransom strips and the adjoining land or at least have an agreement in place with those landowners. It is informative, therefore, that no planning application was received by the Council as this suggests that Bloor Homes Limited realised that there was limited, if any, possibility of a successful planning application without the cooperation of the Heaver Objectors and adjoining landowners.

²² As described in the schedule to the Order and shown on the Order Map **(CD/2)**

²³ Ibid

²⁴ Ibid

²⁵ See paragraph 4.3 of Mr Bodley's evidence to the First Inquiry.

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- 3.14 In this regard, it was apparent to the Council that the landowners required encouragement to cooperate with each other to deliver comprehensive development and therefore, mindful of the increasingly pressing need to deliver residential development, the Council resolved to secure and exercise compulsory purchase powers on the 12 September 2013. This approach accords with paragraphs 2 and 17 of the Guidance.
- 3.15 Anticipating that there may be a delay in bringing its strategic development locations forward (and the TSDL in particular), the Council resolved on 8 October 2013 to use its compulsory purchase powers, if necessary, in order to bring forward delivery of the strategic development locations intended to be allocated in the Local Plan **(CD/10)**.
- 3.16 The TSDL was allocated in the Local Plan **(CD/10)** which was adopted in July 2015 but no planning application was made by either Bloor Homes Limited/Heaver Objectors or any of the other landowners and it was clear to the Council that agreement between the landowners to deliver comprehensive development was unlikely.
- 3.17 In light of the lack of any sign of serious intent on the part of the landowners to bring forward development, the Council decided to make a request on 7 June 2016 to allocate funds for work to be undertaken to value the entire site prior to a CPO and to appoint a CPO solicitor to advise on the process.
- 3.18 A further report was taken to Cabinet on 11 July 2017 which outlined the various steps which needed to be taken in order to carry out a CPO including the selection of a development partner.
- 3.19 Persona Associates were engaged by the Council to carry out a full land referencing investigation and, as part of this, they issued land questionnaires pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976 on the 25 January 2018. A further report was also taken to Cabinet and Council on 6 March 2018 in order to allocate additional funds to the delivering the TSDL through a CPO.
- 3.20 Following this, it was decided that the Council would appoint a development partner by way of an open competitive tender process led by Knight Frank²⁶. The Council anticipated that the successful development partner would be responsible for assembling the land interests required for the development of the TSDL, ultimately with its support for use of a CPO if it should become necessary.

²⁶ Knight Frank LLP

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- 3.21 The Cabinet resolved on 4 September 2018 to appoint Countryside²⁷ as their Development Partner and to continue dialogue with the landowners to facilitate development without having to secure compulsory purchase powers.
- 3.22 Countryside and the Council formally entered into a Development Agreement **(CD/22)** on 5 February 2019. As part of its appointment, Countryside committed to a Land Acquisition Strategy that was kept under review by the parties throughout the subsequent period. This strategy addressed how Countryside proposed that the land acquisitions required for the Scheme would be managed.
- 3.23 The Land Acquisition Strategy stated that it would be Countryside's preference to reach an agreement with each affected owner/interested party by private treaty wherever practicable. Countryside also provided a commitment, at all stages during any potential statutory process to confirm and implement a CPO, to continue its efforts to reach agreement with any remaining parties to acquire the outstanding land interests to enable delivery of the Scheme.
- 3.24 Notwithstanding Countryside's appointment, the Council also engaged in the land acquisition process. In this regard, a letter was issued on 8 November 2019 to all relevant parties by the Council indicating that, despite negotiations being undertaken between Countryside and the various landowners, this did not preclude a landowner from making contact direct with the Council at any stage.
- 3.25 Despite engagement by both the Council and Countryside, agreement between the landowners remained elusive and no planning application(s) had been received from either Bloor Homes Limited/Heaver Objectors or any of the other landowners.
- 3.26 However, the main landowners entered into a Memorandum of Understanding **(CD/24)** on 30 July 2020 which raised the prospect of them delivering comprehensive development independently of both the Council and Countryside.
- 3.27 Unfortunately, this Memorandum of Understanding proved, on closer inspection, to be little more than an agreement to agree and required the landowners to work together to agree an equalisation approach whereby the costs and revenues arising from comprehensive development would be averaged across the entire development site. Such an approach is entirely usual where landowners are prepared to share value with each other to mutual benefit.

²⁷ Countryside Properties (UK) Limited – the Council's appointed developer

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- 3.28 The problem from the Heaver Objectors' point of view is that they were still bound by the terms of the Option Agreement with Bloor Homes Limited which restricted their dealings with their land and Bloor Homes Limited were not a party to the Memorandum of Understanding. Furthermore, as has subsequently become clear, the Heaver Objectors had no intention of accepting an equalisation approach.
- 3.29 Although the Council still hoped that the landowners would build on the Memorandum of Understanding and formally agree equalisation terms, it was decided that, as 10 years had passed since the development was first considered and 7 years since the Bloor Option had been entered into, it was time to seek compulsory purchase powers. The Original Order was therefore made on 28 October 2020.
- 3.30 At the time of making the Original Order, the Council were informed, as a result of the land referencing exercise and issuing of statutory questionnaires, that the land designated in this Order as Plots 19C, D and E²⁸ comprised designated highway under the control of West Sussex County Council.
- 3.31 On the basis that these plots are required to create a highway junction and take access from the A27 into the TSDL, the point was made to the Council that would be able to rely on section 278 of the Highways Act 1980 to construct the junction to an adoptable standard such that compulsory acquisition of the land (including the subsoil) would not be appropriate.
- 3.32 As Plot 19B²⁹ lay outside of the designated adopted highway, it was agreed that this would be included in the Original Order and National Highways indicated that, as the registered owner, they would be prepared to transfer the entirety of this land to the Council.
- 3.33 The Original Order was therefore made and submitted for confirmation excluding the land that the Council had been advised comprised adopted highway.
- 3.34 Whilst a number of objections were made against the Original Order, only the Heaver Objectors maintained objections for consideration during the Original Inquiry. Notwithstanding this the Original Order was confirmed on 11 November 2021.
- 3.35 The Council, following confirmation of the Order approached National Highways to agree the acquisition of Plot 19B³⁰. However, National Highways advised on 16 February 2022 that the

²⁸ See the Order Map (CD/2)

²⁹ Ibid

³⁰ This was Plot 18 in the Original CPO

information previously provided by West Sussex County Council wasn't correct and that, whilst National Highways maintained the access track, it was in the capacity of a landowner not as highway authority. As such, the Council were told that they would need to acquire Plots 19D as well as Plot 19B.

- 3.36 National Highways also confirmed that they were not sure whether Plot 19E lay in their ownership but, either way, it wasn't adopted highway. The Council formed the view that, whilst it will ultimately be a matter for a claimant to demonstrate to the satisfaction of the Upper Tribunal (Lands Chamber), they would assume for these purposes of this exercise that Plot 19E is owned by the Heaver Objectors.
- 3.37 The Council contacted West Sussex County Council to clarify the confusion in respect of their previous position regard formal adoption and were provided with a corrected plan on 4 March 2022. This confirmed that the original information provided by them was incorrect and that their understanding now accorded with the position adopted by National Highways.
- 3.38 It was therefore the case that, due entirely to West Sussex County Council providing incorrect information upon which the Council had relied in restricting the extent of land to be compulsorily acquired, the Council could not compulsorily acquire Plots 19C, D and E and could not, therefore, connect the spine road for the development to the A27.
- 3.39 It was therefore necessary for the Council to enter into negotiations with National Highways and the Heaver Objectors with the intention of trying to reach voluntary agreements such that compulsory purchase powers could still be exercised pursuant to the Original CPO for the other interests.
- 3.40 As I have set out in sections 6, 7 and 9 the Council has had extensive negotiations with the Heaver Objectors but to no avail. It is clear from those negotiations that the Heaver Objectors wish to continue arguing for a ransom position and, to this end, have sought to make the withdrawal of their objection conditional upon agreeing certain matters with a view to future Upper Tribunal (Lands Chamber) proceedings.
- 3.41 As I have already set out, terms have been agreed with National Highways in respect of Plots 19B and 19D but the Heaver Objectors have brought legal proceedings against National Highways preventing them from being able to complete these terms.

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- 3.42 It is therefore the case that the Order is required so that the Council may rectify the position that, through no fault of their own, they now find themselves in and facilitate delivery of housing 13 years after the development was first proposed.
- 3.43 The Council is rightly concerned that this situation does not arise again. As such, it is important to highlight that the Council are relying on information provided to them by National Highways that Plots 19A, C and F are owned by National Highways and comprise adopted highway. On the assumption that this information is correct, the Council will not need to acquire these plots and can rely on section 278 of the Highways Act 1980. However, these plots are included in the Order to remove a potential impediment to the scheme should history repeat itself and it transpires that this land is not adopted after all.
- 3.44 In summary, the scheme is long overdue despite exhaustive attempts to assemble all the required land interests and it is now clearly apparent that, absentia the grant and exercise of compulsory purchase powers, comprehensive development will not come forward.

4.0 THE INTERESTS TO BE ACQUIRED

4.1 The interests in the Order Land are described in Section 2 of the Council's Statement of Case (CD/15) by reference to the numbered Plots shown on the Order Map (CD/2).

4.2 I have grouped the interests according to ownership as follows.

Heaver Objectors' Land – Plots 1, 3, 4, 5, 16, 17, 18 and 19E

4.3 The Heaver Objectors' Land can be split into three main parcels.

Plots 1, 3, 4 and 5

4.4 Plots 1, 3, 4 and 5 collectively comprise farmland located to the southeast of the Order Land of approximately 11,957 square metres in area.

4.5 I understand that the freehold interest of Plots 1, 3 and 5 is registered to Bosham Limited and Shopwyke Limited. John Philip Heaver and Emilie Jane Heaver are both Directors of these companies and Wilsons Trust Corporation Limited has significant control.

4.6 Plot 4 is unregistered but is reputed to be in the ownership of Bosham Limited and Shopwyke Limited.

4.7 The Order lists John Heaver Farming Partnership as the occupier of these plots. I have repeatedly requested confirmation from the Heaver Objectors as to the legal basis of occupation but, in the meantime, understand that there is no formal occupation arrangement in place such as a lease or licence.

4.8 Furthermore, I also understand that the land is farmed under by Shores Meadow Farming Partnership who are contracted by John Heaver Farming Partnership but this has yet to be formally confirmed by the Heaver Objectors.

Plots 16, 17 and 18

4.9 Plot 17 is a large section of farmland comprising two fields to the north of the Order Land of approximately 223,479 square metres in area running adjacent and to the south of the A27. Land Registry records indicate that it is registered to Bosham Limited and Shopwyke Limited.

4.10 Plots 16 and 18 comprises strips of land approximately 1 metre in width and approximately 1,320 square metres in area on the southern and eastern edges of Plot 17. These strips were created by the Heaver Objectors in 2012 in a deliberate attempt to create ransom strips over the remainder of the TSDL.

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- 4.11 Plot 16 is within the ownership of CS South Limited, Bosham and Shopwyke Limited and Plot 18 is owned by Bosham and Shopwyke Limited.
- 4.12 CS South Limited is a company for which John Philip Heaver and Emilie Jane Heaver are both Directors and for which John Philip Heaver has significant control.
- 4.13 As with Plots 1, 3, 4 and 5, I have requested confirmation from the Heaver Objectors as to the legal basis of occupation but this has not been forthcoming. Notwithstanding this, I understand that the land is farmed under by Shores Meadow Farming Partnership by way of contract with John Heaver Farming Partnership but there is no formal lease or licence in place.
- 4.14 Plot 17 is subject to the terms of the Bloor Option³¹. However, I understand that Plots 16 and 18 are excluded from this agreement.
- 4.15 I understand from the Council that the Tangmere Medical Centre benefits from certain rights of access over these plots for purposes associated with the occupation of the Medical Centre. The Council has previously committed to re-providing these rights as set out within the Compulsory Purchase Order Decision³² in respect of the Original CPO and has since sought to complete a formal Deed.

Plot 19E

- 4.16 This is a small section of track extending to approximately 39 sqm. There is a clear discrepancy in the Land Registry deeds such that it cannot be stated with any certainty as to who owns the land. However, the Council has assumed, for the purposes of this exercise, that the Heaver Objectors may be able to demonstrate ownership of this land.
- 4.17 It had been understood that this land had been formally adopted by West Sussex County Council and this was the basis for this land not being included in the Original CPO. However, it has now been confirmed that the information provided to the Council was incorrect such that this plot is now required to be included.
- 4.18 I have assumed that this plot is used by Shores Meadow Farming Partnership to enable the farming of Plots 16, 17 and 18 in accordance with their contractual relationship with John Heaver Farming Partnership.

³¹ Promotion and Option Agreement dated 21 December 2012 between Mr and Mrs HG Heaver, Bloor Homes Limited and Bloor Holdings Limited

³² See paragraphs 92 to 96.

4.19 I understand that the Tangmere Medical Centre may be claiming rights of access over this plot but I have yet to see any evidence of this. It would be surprising if such rights did exist bearing in mind the proximity of Plot 19E to the Medical Centre.

The Pitts Family Land – Plots 6, 7, 8, 9A, 9B, 14 and 15

4.20 Plots 6, 14 and 15 are within the ownership of Andrew John Pitts and Plots 7, 8, 9A and 9B are within the ownership of Deirdre Jane Pitts, Michael Williams Pitts, Diana May Pitts and Valerie Ann Young. SMTL also claim ownership of Plots 8, 9A and 9B.

4.21 Collectively, these plots extend to approximately 262,371 square metres and cross the Order Land from the western boundary of the Order Land to Tangmere Road.

4.22 SMTL have physically restricted rights of access over Plot 7 in order to access the field referred to within the Order as Plot 9. However, I understand that the residents of Saxon Meadows, who own their properties as leaseholders with SMTL as the freeholder do not have any explicit rights of access over this plot and are reliant on informal permission from the Pitts Family that may be revoked at any time.

4.23 The Council has proposed terms that would allow Saxon Meadow residents rights over this plot but the performance of such agreement would depend upon the Council being able to take voluntary or compulsory acquisition of the required land from the Pitts Family.

4.24 The Saxon Meadow residents benefit from utility rights in the subsoil. The Council does not propose to interfere in any way with these rights.

4.25 The Saxon Meadow residents do not have any explicit rights of access over Plot 8. However, it is probable that they would be able to assert prescriptive rights due to the effluxion of time.

4.26 The Saxon Meadow residents do not have any explicit rights over Plots 9A and 9B. As neither of these plots are required for access it is difficult to envisage that any claim for adverse possession or prescriptive rights by the residents would succeed.

Church Commissioners of England/CC Projects – Plots 10, 11, 12 and 13

4.27 These plots comprise a large section of farmland in the southeast of the Order Land extending to 257,278 square metres.

4.28 Plots 10, 11, 12 & 13 are within the ownership of C.C. Projects, which is a development vehicle of the Church Commissioners of England. Land in the ownership of the Church Commissioners was transferred to C.C. Projects to allow it to be party to the voluntary agreements with the Council and Countryside under CPO 1 and the Order.

Saxon Meadow Tangmere Limited – Plots 8, 9, 9A and 9B.

- 4.29 SMTL are the registered freeholder of a field located directly to the east of Saxon Meadows which extends to 6726 sqm. The entirety of this land was included in the Original CPO for the purposes of a community orchard but, following negotiations and modification of the Original Order, the required area was reduced to 3,342 sqm with SMTL retaining the balance as a buffer.
- 4.30 The position was explicitly recorded at paragraphs 5 to 7 of the Compulsory Purchase Order Decision in respect of the Original CPO.
- 4.31 Following further objections in respect of the Order, the Council is now proposing to remove this field in its entirety and is requesting a modification of the Order.
- 4.32 This field comprises Plots 9, 9A and 9B. As the Pitts Family also claim ownership of Plots 9A and 9B it will for SMTL and the Pitts Family to resolve the ownership thereof.
- 4.33 SMTL shares ownership of Plot 8 with the Pitts Family. The Council has proposed to acquire this strip and place it in the sole ownership of SMTL.

National Highways – Plots 19A, 19B, 19C, 19D and 19F

- 4.34 Plots 19A and 19F comprise adopted highway embankment extending to 775 sqm and 1,483 sqm respectively.
- 4.35 Plot 19C is also adopted highway but comprises the junction of the farm track connecting Plot 17 to the A27. It extends to 40 sqm.
- 4.36 It is not proposed to acquire Plots 19A, C or F as the Council can rely upon the terms of a section 278³³ agreement. However, they have been included within the Order in case it transpires that these plots are not actually adopted after all or it becomes apparent that the ownership of the subsoil needs to be transferred to the Council.
- 4.37 Plots 19B and D comprise a private track leading to Plot 17 that has been constructed and maintained by National Highways but has not been adopted, presumably as the track has not been constructed to adoptable standards and was not intended to be made available for public use. These plots extend to 29 sqm and 63 sqm respectively.

³³ Highways Act 1980

Unknown – Plot 2

4.38 Plot 2 comprises 100 sqm of unregistered grass verge along Tangmere Road. No party has come forward to claim title of this land hence it not been possible to enter into any negotiations with the purported owner.

Other Parties

4.39 Objections have been submitted by Ms Warwick, Mr and Ms Plain and Ms Stone. They have no interest in, or registered rights over, any of the Order Land.

4.40 In this regard, whilst I note that Ms Stone claims a right of way over Plot 7 there is nothing registered on title and no indication that the Pitts Family have granted express rights or failed to exercise their control and use of the land to the extent that a prescriptive right might have arisen.

Summary

4.41 As set out in the Statement of Case, the extent of the Order Land is substantially the same as that when the Original CPO was confirmed in November 2021³⁴, except for the addition of Plots 19A, 19C, 19D, 19E and 19F adjacent to the A27 southern roundabout, together with minor adjustments to the boundaries of Plots 1, 2 and 13 to reflect title updates and boundary changes which were identified following the land referencing process for the Order.

³⁴ As set out in the Compulsory Purchase Order Decision

5.0 THE GUIDANCE³⁵

5.1 I have been instructed to provide evidence as to the extent to which the Council has complied with the Guidance. I have therefore summarised relevant extracts from the Guidance below to provide context to my comments as set out later in this evidence. I set out my conclusions in each case in section 14.

Paragraph 2

5.2 Compulsory purchase powers should only be exercised when it is expedient to do so and there is a compelling interest in the public interest.

5.3 In this regard, the TSDL scheme is fully compliant with planning policy and the Council has been seeking to secure site assembly since at least 2011, initially through encouraging the various landowners to cooperate with each other and, more recently, appointing Countryside to take the lead.

5.4 In this context, the Council is required to:

“demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.”

5.5 I have set out the history of negotiations as sections 6 and 7 which clearly demonstrates that the Council, their solicitors and I/DWD, supported by Countryside, have made repeated and strenuous attempts to agree terms with the various parties and have enjoyed a high degree of success in that regard. However, the Heaver Objectors, whilst stating that they are prepared to agree terms, have consistently refused terms offered by the Council that preserve their right to pursue full entitlement to compensation or have responded with unreasonable conditions that they should have known could not be accepted by the Council.

5.6 I, in leading the negotiations on behalf of the Council, have been fully conscious of the requirement to offer terms that at the very least accord with the compensation to which landowners would be entitled pursuant to the “Compensation Code”. I have also taken into account, the benefits that would be secured by the Council and Countryside in avoiding these proceedings.

³⁵ (CD/8)

5.7 However, as I set out in my response to the objection submitted by Ashurst on behalf of the Heaver Objectors there is a significant difference of opinion as to what the compensation should be, to the extent that Mr Bodley (their agent) was seeking, in respect of the Original CPO, a minimum non-refundable payment for his clients' land of £30,000,000 although there was evidence before the First Inquiry that the residual land value for the entirety of the TSDL with the benefit of planning permission for development thereof was only £16,680,753³⁶.

5.8 Mr Bodley, as agent for the Heaver Objectors, did not challenge the independent valuation of the TSDL land at £16,680,753, nor explain how it could be possible for his client's land to be worth nearly twice the value of the entirety TSDL land.

5.9 I have asked Mr Bodley to provide me with his updated opinion of value but he has only indicated that his valuation will have increased.

5.10 Insofar as such questions of compensation are not resolved by agreement, they will ultimately be a matter for the Upper Tribunal (Lands Chamber) and, bearing in mind that the terms offered by the Council preserve the right of the objectors to refer this matter to the Upper Tribunal, I am content that the Council has acted reasonably and discharged this obligation in full.

5.11 It is also clear from the Guidance that:

“Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- *plan a compulsory purchase timetable as a contingency measure; and*
- *initiate formal procedures This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.”*

5.12 In this regard, despite being in discussions with the Heaver Objectors since 2011, no agreement has been reached and it is clear that the magnitude of disagreement in respect of the value of their

³⁶ See paragraph 5.10 of the Viability Assessment provided to the Inquiry in respect of the Original CPO. The reference at the previous CPO was CD/14.

interest is such that it is almost certainly the case that the Upper Tribunal (Lands Chamber) will be required to make a determination at some point.

5.13 The final part of paragraph 2 states:

“When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers’ report seeking authorisation for the compulsory purchase order should address human rights issues.”

5.14 The position in respect of Human Rights and Equality is set out by Mr Frost at section 8 of his evidence and Section 10 of the Council’s Statement of Case³⁷ which concludes:

“In light of the significant public benefits which would arise from the implementation of the Scheme as set out within this Statement and having regard to the extent of the interference with parties’ rights, the Council has concluded that it would be appropriate to make the Order. It does not regard the Order as constituting any unlawful interference with individual property rights.”³⁸

5.15 It is clear from the various statements made by the Heaver Objectors that they want development to come forward but on the basis that they ransom and therefore control the delivery of the remainder of the development. This is contrary to the principle of the TSDL which provides for comprehensive development and also the approach usually taken in the market by reasonably prudent site assemblers whereby schemes of this nature are brought forward on an equalisation basis.

5.16 In any event, the Heaver Objectors will have the ability to make their arguments on valuation matters before the Upper Tribunal (Lands Chamber) who are the appropriate body for dealing with such disputes.

5.17 With regard to SMTL, the reality is that the land transfers and grants of rights that they have requested from the Council can only be conferred if the Council are granted compulsory purchase powers pursuant to this Order.

³⁷ (CD/15)

³⁸ See paragraph 10.5 of the Statement of Case

Paragraph 3

5.18 Although the Council and I have had regard to the Compensation Code in setting out proposed terms to affected landowners, regard has been also had to the overall costs and requirement to secure “value for money”.

5.19 In this context, the Guidance states that:

“When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase. For instance, the early acquisition may avoid some of the following costs being incurred:

- *legal fees (both for the order making process as a whole and for dealing with individual objectors within a wider order, including compensation claims)*
- *wider compulsory purchase order process costs (for example, staff resources)*
- *the overall cost of project delay (for example, caused by delay in gaining entry to the land)*
- *any other reasonable linked costs (for example, potential for objectors to create further costs through satellite litigation on planning permissions and other orders)”*

5.20 As I set out below in response to the individual objections, the Council has been keen from the outset to avoid having to incur these costs and, to that end, made generous offers to the Heaver Objectors and National Highways with inflated monetary offers to reflect the cost and time savings that would be secured by avoiding these proceedings.

5.21 Unfortunately, the Heaver Objectors have not accepted any of the various alternative offers made to them and have responded with proposals that can’t be recommended to the Council.

5.22 In addition, the Heaver Objectors have injuncted National Highways to prevent it from selling their land to the Council, despite the fact that the Council and National Highways had agreed terms and solicitors had been appointed by both parties to complete the transfer.

5.23 With the exception of the initial terms which were agreed with Mr Bodley's predecessor³⁹, all offers made by the Council preserved the right for the Heaver Objectors to refer disagreements to the Upper Tribunal Lands Chamber.

Paragraph 13

5.24 This paragraph of the Guidance is concerned with balancing the intentions of those with an interest in the land that the Council is proposing to acquire and the wider public interest.

5.25 It has been the case that, since at least 2011, the Council has worked with the landowners, including the Heaver Objectors to come together and deliver the TSDL. To this end, the landowners comprising the Heaver Objectors, Church Commissioners for England and Pitts Family entered into a Memorandum of Understanding dated 30 July 2020⁴⁰ the stated terms of which were that:

"The Parties shall continue to co-operate and collaborate in order to:

- a. Bring forward a masterplan for the TSDL pursuant to Policy 7 of the Local Plan and a comprehensive and sustainable policy compliant development of the TSDL in accordance with the strategic development objectives in the Council's adopted and emerging planning framework;*
- b. **Agree an appropriate equalisation methodology approach**⁴¹; and*
- c. Agreed a procurement and delivery strategy and demonstrate that the policy objectives can be achieved without the need for the Order."⁴²*

5.26 The Church Commissioners and Pitts Family have now entered development agreements with Countryside. It is only the Heaver Objectors who have refused to agree terms with either the Council or Countryside.

5.27 In this regard, I am aware from my discussions with the Pitts Family and the Church Commissioners/CC Projects, that they are of the same mind as the Council and do not accept that the Heaver Objectors have a ransom position. The failure of the scheme to come forward thus far is therefore wholly due to the Heaver Objectors failing to comply with the terms of the Memorandum of Agreement **(CD/24)** in respect of, inter alia, equalisation measures which they willingly negotiated and agreed with the other landowners.

³⁹ These were development agreements.

⁴⁰ **(CD/24)**

⁴¹ My emphasis

⁴² Term 1 of Memorandum of Understanding

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- 5.28 It is therefore my opinion that it is in both the public interest and the interest of the landowners that the TSDL is delivered and the inflated expectations of the Heaver Objectors as to the value of their land do not over-ride the benefits to the other landowners and the wider public that would be released as a result of the TSDL development.
- 5.29 In this regard, the Council is expected to demonstrate that:
- It has a clear idea of how it intends to use the land which it is proposing to acquire; and
 - It can show that all the necessary resources are likely to be available to achieve that end within a reasonable timescale.
- 5.30 The Council intends to use the land to implement the TSDL development in partnership with Countryside. The planning basis for the TSDL is set out comprehensively in the evidence of Ms Chivers.
- 5.31 The Council can also demonstrate that the development will be delivered by Countryside. In this context the evidence of Mr Leach clearly demonstrates both intention and ability to deliver the TSDL development.

Paragraph 14

- 5.32 The Council is required to address, in respect of the delivery of the TSDL:
- The sources of funding; and
 - The timing of that funding
- 5.33 As set out in the evidence of Mr Leach, the TSDL development will be funded by Countryside from its own resources.
- 5.34 With regard to the timing of the development, Countryside had hoped to be able to commence site investigations on the Heaver Objectors' land to enable the commencement of development at the earliest opportunity. To this end, I approached the Heaver Objectors in August 2022 to try and agree a Licence to allow temporary possession. Whilst the Heaver Objectors indicated that they were agreeable to the granting of temporary possession they requested the payment of a premium of £100,000 which they stated was to reflect crop loss.
- 5.35 The Heaver Objectors do not farm the land hence they would not incur any loss in respect of crops. In addition, the figure appeared to be based on a hypothetical assessment of gross turnover rather than a realistic net profit.

5.36 Notwithstanding the basis of the calculation, the figure of £100,000 plus fees as demanded by the Heaver Objector was so far in excess of what can be considered to be reasonable or commercially acceptable and it was clear that there was limited intention, if any, on the part of the Heaver Objectors to agree reasonable terms such that Countryside took the decision to postpone their site investigations.

5.37 I am aware that there are powers available pursuant to section 172 Housing and Planning Act 2016 to enter and survey land in connection with a proposal to acquire an interest in or a right over land.

5.38 However, the Council and Countryside took the view, in light of the history of negotiations with the Heaver Objectors, that it was likely that the exercise of such powers would be resisted and challenged by the Heaver Objectors. In the interests of not incurring further costs and having to engage in more litigation, the decision was made to keep matters simple and concentrate on trying to agree the main terms for acquisition of the required land.

Paragraph 15

5.39 This paragraph requires the Council to demonstrate that:

“...the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- The programming of any infrastructure accommodation works or remedial work which may be required; and*
- Any need for planning permission or other consent or license.”*

5.40 I am unaware of any physical or legal impediments to the delivery of the TSDL scheme that would not be unlocked by the exercise of compulsory purchase powers.

5.41 Ms Chivers sets out the position in respect of planning matters within her evidence but it is my understanding that the Council has resolved to grant planning permission for the TSDL subject to the completion of a section 106 agreement. There is no barrier to that section 106 agreement being completed, and it will be completed once the Council has been able to secure possession of the Heaver Objector’s land and transfer ownership thereof to Countryside who would then become a signatory.

Paragraph 17

5.42 This paragraph mainly refers to the level of engagement expected between acquiring authorities and affected parties. In this regard it states:

“Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.”

5.43 In this context, the Council and/or Countryside have reached agreement with the following parties:

- The Pitts Family
- Church Commissioners for England and CC Projects
- Southern Gas Networks
- Seaward Properties Limited
- Bloor Homes Limited/Bloor Holdings Limited

5.44 Terms have been agreed with National Highways but the Heaver Objectors have brought legal actions stopping the transfer. There is nothing further that the Council and/or Countryside can lawfully do to expedite the completion of the transfer.

5.45 Terms were agreed with the Other Heaver Objectors at the Inquiry to the Original CPO and endorsed by the Inspector. The Council has made attempts to formally document the agreed terms and it is hoped that this will be completed shortly.

5.46 Heads of Terms have been agreed with SMTL and a formal agreement issued. However, SMTL have advised that they will not complete the agreement or withdraw their objection until the Council agree to pay all of their consultant’s’ fees regardless as to how they were incurred or what they relate to. This is a fundamental change from their original position where they accepted, and were advised by their Counsel, that there is a requirement for fees to be reasonable. I interpret this as

meaning reasonable in quantum having regard to the nature and complexity of the work undertaken.

5.47 Again, whilst the Council is cognisant of paragraph 3 of the Guidance, the costs incurred by SMTL are wholly unrealistic and beyond anything that can be reasonably commercially prudent to accept.

5.48 Overall, the Council have complied with the provisions of the Guidance and the lack of agreement in respect of the outstanding objections is due to:

- Overinflated expectations of value (Heaver Objectors); and/or
- Inflated legal fees (Other Heaver Objectors, SMTL and Saxon Meadow residents) and
- Legal proceedings preventing the transfer of ownership (Heaver Objectors and National Highways)

5.49 It is my opinion that the Council has gone above and beyond the requirements of paragraph 17 and the failure to agree terms with the remaining objectors is due to factors beyond the control of the Council such that compulsory purchase powers are required to be exercised as a matter of last resort.

Paragraph 18

5.50 This paragraph states:

“In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a compulsory purchase order full access to alternative dispute resolution techniques. These should involve a suitably qualified independent third party and should be available wherever appropriate throughout the whole of the compulsory purchase process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties.”

5.51 The Council has offered terms to the Heaver Objectors that provide for a voluntary reference to a Third Party including the Upper Tribunal Lands Chamber. However, the Heaver Objectors advised that they require the service of formal compulsory purchase notices in order to maximise their Capital Gains Tax relief. As such, they were unable to agree ADR. It now appears, as of 17 November 2023, that they have changed their position and terms are now being discussed, once again, for a voluntary acquisition and reference to the Upper Tribunal (Lands Chamber).

5.52 ADR would not be appropriate in respect of the Other Heaver Objectors as there is no dispute in respect of compensation.

5.53 ADR is not applicable in respect of the SMTL objection as the only issue in dispute, as far as I am aware, concerns the reimbursement of fees.

Paragraph 106

5.54 The Guidance sets out four matters which the Inspector and Secretary of State can be expected to consider in determining whether or not to confirm the Order.

5.55 The first matter concerns the extent to which the purpose for which the land is being required fits in with the Local Plan. Evidence on this point is provided by Ms Hannah Chivers and, bearing in mind that I am not a planning expert, I have relied upon her conclusions which are set out in her proof of evidence.

5.56 In light of this, it is apparent that the purposes for which the land is being acquired wholly fit in with the Local Plan⁴³ for the area.

5.57 The second matter has regard to the extent to which the scheme will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area. Evidence on this point is provided by Mr Frost.

5.58 The third matter is set out as follows:

“whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.”

5.59 The Council has relocated the proposed community orchard in light of SMTL changing their mind as to the extent of their land they were prepared to release. However, the Council can only meet the remaining concerns raised by SMTL, if the Council are able to take ownership of land that is currently wholly or partially owned by the Pitts Family. This requires the grant of compulsory purchase powers.

5.60 The Heaver Objectors have proposed their own terms for the acquisition of their land. However, although they state that such terms are based on proposals made by the Council the reality is very different. In this regard, their terms (prior to their change of direction on 17 November 2023) proposed that they will not withdraw their objection until three months after a General Vesting

⁴³ Both current and emerging

Declaration (GVD) has been served pursuant to the Original CPO and that, if the GVD has not been served by 29 November 2023 the agreement automatically terminates.

5.61 This means that the Heaver Objectors would not, under any circumstances, withdraw their objection until after this Inquiry has closed even if the Council were to agree these terms, and the Council is required to serve a General Vesting Declaration without any certainty as to their ability to acquire the National Highways land.

5.62 I am hoping that, in light of the letter received from Ashurst dated 17 November 2023⁴⁴ it may now be possible to agree terms that enable the withdrawal of their objection prior to the commencement of the Inquiry but this will require an acceptance, on their part, that an Advance Payment should have regard to the Statutory Principles and there is nothing requiring the Council to adopt the offer made by Countryside. Furthermore, there will need to be an agreement in respect of fees.

5.63 The fourth matter concerns:

“the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important.”

5.64 The reference to viability is commonly misunderstood to refer to viability as understood in the context of testing the ability of the scheme to deliver policy compliant levels of affordable housing and section 106 contributions in the context of local planning policy requirements and the National Planning Policy Framework.

5.65 However, this paragraph is concerned with the extent to which the Secretary of State is satisfied that the scheme will be delivered. In this regard, it is commonly the case that schemes which are not viable in planning terms or commercial terms are still delivered as the party delivering the development is taking a different view to that of the wider market.

5.66 In this case, the scheme is, in any event, viable from a planning policy perspective and fully delivers policy requirements in respect of affordable housing and section 106 obligations. The viability of

⁴⁴ As attached at Appendix 7.

the scheme is clearly demonstrated by the Knight Frank Viability assessment **(CD/23)** which was attached at Appendix 4 to the Council's Statement of Case **(CD/15)**.

- 5.67 I have considered this report and set out my comments at section 8 from the perspective of whether the proposed scheme is sufficiently viable in commercial terms to enable the payment of compensation to the Heaver Objectors. I do not need to consider the level of compensation likely to be paid to other landowners as commercial terms have been agreed such that the Heaver Objectors, as far as I am aware, will be the only affected party making a compensation claim as a result of being disposed of land.
- 5.68 It has been particularly necessary to carry out this exercise bearing in mind that, if Mr Bodley was correct in 2021 with his opinion that the Heaver Objector's land was worth a minimum of £30,000,000 even though the land value of the entire TSDL site was only £16,700,000, the entire scheme would be rendered wholly unviable and undeliverable.
- 5.69 I have therefore provided advice to the Council as to what I consider the correct basis of compensation would be, if determined by the Upper Tribunal (Lands Chamber) together with an assessment of the risks in the event that my conclusions, particularly in respect of ransom and planning matters, were incorrect.
- 5.70 Whilst the actual figures are confidential to the Council and commercially sensitive, I have formed the opinion that, even if Mr Bodley was correct in respect of all of these points (which I categorically do not believe to be the case), the resultant value would still be well below his estimate and at a level where the overall scheme continues to be commercially viable.
- 5.71 In any event, Mr Leach's evidence clearly sets out Countryside's clear and unequivocal intention to deliver the scheme once the Council have been granted the power to compulsorily acquire the interests of the Heaver Objectors and National Highways.

6.0 NEGOTIATIONS WITH AFFECTED PARTIES FROM 2011 TO SEPTEMBER 2021

6.1 There is a long history of negotiations and discussions with all the affected parties that were discussed at length during the previous First Inquiry that was held to consider objections to the Original CPO.

6.2 By the time of the First Inquiry, agreements had been reached with the majority of objectors such that the only objections remaining comprised those submitted by the Heaver Objectors, the Other Heaver Objectors and two non-statutory objectors. The SMTL objection had been withdrawn and no objections had been made or maintained by any of the residents of Saxon Meadows.

6.3 In this regard, paragraphs 67 and 68 of the Compulsory Purchase Order Decision stated:

“Opportunities to progress alternative arrangements to compulsory purchase have been available for many years prior to making of the Order but the necessary outcomes have simply failed to materialise. In contrast, the now advanced arrangements in place between the Authority and Countryside provide a sound and effective basis for imminent Scheme delivery. Indeed, this has already been demonstrated to date by the partnership’s significant recent progress. There is no existing comparable alternative in play.

Although the Authority has not been able to reach voluntary agreement with the parties, it is not credible to suggest the Council has not taken reasonable steps to engage and to acquire the relevant outstanding interests by agreement.”

6.4 As at the date of drafting this evidence in respect of the Order, the only outstanding statutory objectors are the Heaver Objectors the Other Heaver Objectors, SMTL and 11 residents of Saxon Meadows whom I refer to collectively as “the residents”.

6.5 In this context, the objection submitted in respect of the Heaver Objectors states:

“the Council has failed to demonstrate any attempts to acquire those parts of the Order Land which comprise the CPO 1 Land by agreement”.

and the objection submitted in respect of SMTL states:

“SMT is aggrieved that CDC and its development partner have singularly failed to appropriately engage with SMT at any stage of the proceedings before or since the draft Order was made. Accordingly, the draft Order unreasonably fails to deal with the issues which are raised in this objection below and is premature. Further, the lack of meaningful engagement with SMT residents

prior to reaching this point seriously undermines CDC's credentials when it claims there is a compelling public interest case for confirming the use of compulsory purchase powers."

6.6 Notwithstanding the expressed views of the previous Inspector, it is therefore necessary for me to revisit the extent of negotiations with the remaining objectors that took place before the First Inquiry before I consider, at section 7, the extent of negotiations since the First Inquiry.

Heaver Objectors

6.7 It is a feature of the TSDL that it requires the cooperation of the individual landowners. In this regard, the Council had been in discussions with all the various landowners since at least 2011 in the hope that they would work together in a collaborative manner to bring the TSDL site forward.

6.8 However, it became apparent over a long period of time that the landowners were unable to cooperate without the direct intervention of the Council exercising compulsory purchase powers.

6.9 There were a number of reasons as to why the landowners could not reach agreement but the principal reason was that the Heaver family rejected an equalisation approach whereby costs and revenues would be shared across the TSDL as they considered that they were key to the delivery of the TSDL and therefore required a ransom share of the overall proceeds. The other landowners did not agree that such a ransom existed and agreement between the landowners proved elusive.

6.10 Following its appointment as Development Partner and having agreed a Land Acquisition Strategy with the Council, Countryside made contact in September 2018 with the main landowner parties.

6.11 In the first instance this was to confirm its appointment as Development Partner, provide contact details for future discussions and to establish that it would like to commence private treaty negotiations for the acquisition of the respective landowner's interests in the TSDL.

6.12 My colleague (Mr Denning) advised in respect of the subsequent negotiations and attended most if not all meetings where that was considered necessary or conducive to reaching agreement on appropriate commercial terms. As experts with considerable experience in strategic land assembly themselves, Countryside took a lead role in the negotiations of detailed commercial terms, supported by my colleague's strategic overview and he was consulted on all meetings, proposals and exchanges of communication and correspondence between the parties.

6.13 It is clear from discussing this matter with my colleague, reviewing emails, correspondence and files notes, that all the landowners were advised by appropriate professional and legal representatives.

6.14 Countryside provided regular updates on land assembly efforts to the Council through the meetings held by the Sponsor Board, attended by the senior representatives of the parties to the

Development Agreement. The Council was both advised and consulted on aspects of the progression of those negotiations and where necessary (or requested) liaised directly with the owners of the interests in the TSDL.

- 6.15 The freehold landowners and their advisors clearly had a detailed knowledge of the scheme, the development proposals and the fact that the Council were enabling the delivery of the Scheme to meet its housing targets. They were also made aware, in accordance with paragraphs 2 and 17 of the Guidance, that the Council intended to use its statutory powers of acquisition, if necessary, to assemble the land interests through use of a compulsory purchase order as a matter of last resort.
- 6.16 The Council encouraged Countryside to seek commercial terms based on the value of the completed development that were, by their very nature, more favourable than Compensation Code assessments which disregard the proposed development in assessing the Market Value of their interests.
- 6.17 This was a collaborative approach which is entirely appropriate in these circumstances. In this regard, the landowners were provided with updates as to Countryside's progress with the delivery of the scheme, principally the site investigations, master planning together with the various public consultations and the subsequent outline planning application.
- 6.18 Comprehensive offers to purchase the Heaver Objectors' land, the Pitts Family land and the Church Commissioners' Land were made by Countryside on the 7 November 2018.
- 6.19 These offers were based on the principle of equalisation of value, whereby all costs and receipts are shared on an equal basis in accordance with the pro rata gross acreage of each landowner interest. Two potential contractual models were offered and Countryside indicated that it remained open to discuss variations of those or other potential deal structures.
- 6.20 The Heaver Objectors entered into a Memorandum of Understanding dated 30 July 2020 (**CD/24**) with the Church Commissioners for England and the Pitts Family agreeing, in effect, that they would work together to deliver the TSDL development. As part of this agreement, it was explicitly stated at paragraph N (d) thereof that the parties would *"...agree an appropriate equalisation methodology approach to determine the value to be applied across their respective landholdings"*.
- 6.21 In addition, paragraph 1(b) stated that *"The Parties shall continue to co-operate and collaborate in order to: (b) Agree an appropriate equalisation methodology approach;..."*

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- 6.22 The intention of equalisation is that the total cost and revenues across the whole of the TSDL would be apportioned on either an acreage or unit basis across the land ownerships so that everyone shares in the net value generated by the development.
- 6.23 It is evident that the Memorandum of Understanding was no more than an agreement to agree, and paragraph 2 (7) provided that *“Each Party may at any time withdraw from this memorandum of understanding...”* However, this was relied upon by the Heaver Objectors at the First Inquiry as evidence that the Landowners would reach agreement without the intervention of the Council. In reality, the Heaver Objectors did not intend to agree equalisation terms as they considered, and continue to do so, that they have a ransom position.
- 6.24 Nevertheless, Countryside, in its negotiations with all the landowners, assumed that the Memorandum of Understanding between the landowners had been entered into in good faith and offered terms on an equalisation basis. In effect, Countryside and the Council acted as independent facilitators bring the landowners together for the purposes of agreeing equalisation.
- 6.25 This was subsequently the basis of all agreements reached with the landowners and the basis of the terms offered to the Heaver Objectors.
- 6.26 However, the Council was concerned at the length of time it was taking for the landowners to agree terms such that the Original CPO was made on 28 October 2020 in the hope that it would address any party seeking to gain an advantage by holding out from agreeing terms and to avoid further slippage of time. This accorded with paragraph 2 of the Guidance.
- 6.27 Following a lengthy period of negotiation with the Heaver Objectors, a final draft of Heads of Terms was settled on 26 April 2021. The main terms mirrored those agreed with the other landowners and provided for equalisation of value across the TSDL.
- 6.28 Although these were not signed by the Heaver Objectors, Countryside was advised that the signing thereof was a formality such that the need for the exercise of compulsory purchase powers would fall away and the development could proceed without further delay.
- 6.29 I have attached these Heads of Terms at **Appendix 1**.
- 6.30 However, my colleague was contacted by Mr Bodley in June 2021 and it subsequently transpired from his email dated 30 July 2021 that the Heaver family had appointed him to take over negotiations from their previous agent. Following his appointment, he had advised the Heaver family not to enter into the agreed terms and to abandon any concept of equalisation between the landowners.

6.31 In effect, the time and cost agreeing the Memorandum of Understanding and finalising the terms of equalisation had been entirely wasted.

6.32 In this regard Mr Bodley advised me that:

“It is clear to me that the Countryside offer is less favourable to my clients than the compensation entitlement... ..Significantly there does not appear to be any recognition within the draft Heads of Terms of the strategic value of my client’s property in providing the primary access into the wide Strategic Development Location from the A27/A285 junction. I consider the value of this to be significant and it should be reflected in any agreement between our clients.”

6.33 He attached proposed Heads of Terms to this email which provided for an initial minimum non-refundable minimum land price of £30,000,000 with further payments to be calculated on the basis that:

“The Land Consideration will include an appropriate sum in respect of ransom for the provision of access to the Land to the south of the Property and the Control Strips. In no circumstances will the Land Consideration be less than the Minimum Land Price.”

6.34 Mr Bodley would have been aware, in setting out these terms, that paragraph 5.32 of the Viability Statement as submitted to the First Inquiry stated:

“We are of the opinion that the Market Value of the freehold interest in the property on a special assumption that planning permission for a 1,300 unit scheme described herein has been obtained and with vacant possession at the Valuation Date is: £16,700,000 (Sixteen Million seven Hundred Thousand Pounds).”

6.35 In effect, Mr Bodley was claiming, on behalf of his client, that the Heaver Objectors’ land, which comprises roughly 30.8⁴⁵ of the overall TSDL land area had a Market Value, of 179% of the Market Value of the entire TSDL. This is not remotely credible.

6.36 I have attached a copy of these Heads of Terms at **Appendix 2**.

6.37 On the basis that it was clearly apparent to me that agreement was not going to be reached with Mr Bodley or his client on an equalisation basis, Countryside responded by issuing Heads of Terms on 25 August 2021 with an initial payment that incorporated an incentive in accordance with paragraph 3 of the Guidance and proposed that disputes in respect of valuation issues be referred to the Upper Tribunal (Lands Chamber).

⁴⁵ i.e., Heaver Family Land of 58.03 acres divided by 188 acres for the entirety of the TSDL.

6.38 These Heads of Terms were offered on a commercial basis in the lead up to the First Inquiry and were made against the background of having secured commercial agreements with the other landowners and a “resolution to grant” planning permission. Neither of these matters apply in assessing compensation.

6.39 I have attached a copy of these Heads of Terms at **Appendix 3**.

6.40 However, Mr Bodley’s client rejected these terms and maintained their objection. In this regard, Mr Bodley advised at paragraph 4.5 of his written evidence to the First Inquiry that:

“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

I enter into a joint venture agreement with the Council and/or the Developer to facilitate development of the Property in accordance with the Scheme.”

6.41 As far as the Council, Countryside and I were concerned, no formal proposals had been made by Mr Bodley’s clients in respect of points (a) and (c) and, with regard to point (b), I could not accept, and still cannot accept, that a minimum payment of £30,000,000 can be remotely described as “reasonable commercial terms”.

6.42 The fact remains that Mr Bodley’s client has refused to engage in discussions regarding planning matters or provide a reasoned/supported valuation and has yet to explain why a hypothetical purchaser, as envisaged by the Compensation Code, would pay a sum to acquire the Heaver family interests which incorporated a ransom premium, and/or offer nearly twice what the entire combined TSDL site is worth.

6.43 In my opinion, the main reason that Mr Bodley and his client’s planning advisors have refused to engage on these points is because they have objected to the Order simply to try and force the Council to offer financial terms that would not otherwise be justified.

6.44 In this regard, I reported, at paragraph 4.5 of my evidence to the previous Inquiry, that:

“Despite the fact that the terms previously offered [by me] do in my opinion represent ‘fair compensation’ I have been actively engaging with Mr Bodley in this regard. However, I have been

unable to agree terms with Mr Bodley. In my opinion the central reason for this is that Mr Bodley and/or his clients are seeking, as a condition of any agreement, a non-refundable minimum upfront payment that is unsupported, significantly in excess of their entitlement, and wholly unreasonable.”

6.45 Whilst his client refused to withdraw their objection to the Original CPO or accept the Heads of Terms on offer, Mr Bodley did not present any oral evidence to the First Inquiry. The Council was therefore unable to test his planning and valuation assumptions that had clearly led him to propose £30,000,000 as a minimum land value.

6.46 As set out at paragraph 4 of the Order Decision:

“The Inquiry had expected to hear evidence of objection on behalf of Bosham Limited, Shopwyke Limited, CS South Limited and CS East Limited. By letter dated 6 September 2020, however, the objectors informed the Inquiry that, as they do not oppose the principle of the Scheme and as other key land-owners had withdrawn their objections, they did not consider it to be beneficial for anyone to appear. The objectors maintain their written objections to the Order (and including the previously submitted Statement of Evidence²). Mr Goode, solicitor to those and other associated objectors, attended the Inquiry as a non-participating observer, but did helpfully contribute to matters of clarification and in answer to Inspector questions.”

6.47 In this regard, I note that the Inspector stated at paragraph 90 of the decision letter confirming the First CPO, that (as regards the objection by the Heaver family):

“For the reasons set out in the above assessment, I conclude the objections raised do not provide a basis to withhold confirmation of the Order.”

Other Heaver Objectors – Tangmere Medical Centre

6.48 The central point of concern set out in the objections to the Original CPO related to the re-provision of rights that would be extinguished by the exercise of compulsory purchase powers as they relate to land required for the scheme. However, neither the Council nor Countryside intend to interfere with those rights.

6.49 Heads of Terms were issued on 3 March 2021 and were responded to for the first time on 30 June 2021 by Ashurst acting on behalf of Herbert and Shelagh Heaver.

6.50 Heads of Terms were issued on 3 March 2021 and were responded to for the first time on 30 June 2021 by Ashurst acting on behalf of Temple Bar Partnership LLP.

6.51 Heads of Terms were issued on 3 March 2021 and were responded to for the first time on 30 June 2021 by Ashurst acting on behalf of Denton and Co Trustees Limited.

6.52 Heads of Terms were issued to Dr Alice Chiswick on behalf of the Tangmere Medical Centre and its interests in Plot 15, 16 and 17 of the Order Land. Heads of Terms were issued on 25 February 2021 and were responded to for the first time on 1 July 2021 by Ashurst on behalf of the Tangmere Medical Centre.

6.53 The Inspector at the First Inquiry noted at paragraphs 92 to 96 of the Compulsory Purchase Order Decision that:

“92. Whilst the Centre and others would lose existing rights over parts of the Order land, the Acquiring Authority remains committed to re-grant the same entitlements which they now enjoy. Such an offer was made in the form of a suggested agreement provided on 25 August 2021. The Authority has also made further commitment through a subsequent deed dated 8 September. The Authority has bound itself to continue to offer to re-grant those rights even after any confirmation of the Order.

93. The objectors remain concerned by the absence of specific details in relation to such matters as timescale, process and procedure for negotiations, and I note their suggestion of alternative terms.

94. I am satisfied by the Authority’s willingness and commitment, as expressed through its undertakings, to re-grant existing rights. An in-principle legal commitment can only go so far at this point. The Authority’s commitment is clear and it would be for the parties to consider how to take details forward.

95. Further, given the undoubted importance of medical services to the future operation and success of the new sustainable community which the TSDL is intended to become, I find no reason to question or doubt the integrity of the Authority’s commitment to reinstatement.

96. I note the Authority’s commitment to re-grant relates not just to the Medical Centre, but also to interests held by the Other Heaver Objectors.

97. There is no reason to oppose the Order on this basis.”

6.54 It was therefore the case that, as at the closing of the First Inquiry, the Council had provided a commitment to re-providing the rights and it simply remained a matter of the respective solicitors being able to agree the drafting and completion of documentation.

SMTL and the residents of Saxon Meadows

6.55 The original Masterplan proposed that an area of land be acquired by the Council from SMTL to provide a community orchard as part of the Scheme. To this end, an offer to purchase the land was submitted to SMTL c/o Ms Harper on 8 September 2020.

6.56 Following further negotiations with SMTL, they proposed that they should retain part of the land identified as being required for the community orchard but make the remainder available to be incorporated into the development as a “buffer zone”. In this regard, paragraphs 11.120 to 11.124 of the Council’s Statement of Case stated:

“11.120 The objection requests that the area of land take of Plot 8⁴⁶ is reduced. This is stated to be a solution to their objection. The reduction in the size of Plot 8, in order to create a ‘buffer zone’, had not been previously raised with Countryside or the Council. Rather, the issue only became apparent when the objection was submitted.

11.121 In order to try to accommodate SMTL and the Saxon Meadow Residents, Countryside and the Council have reviewed the provision of a buffer zone and SMTL retaining the proportion of Plot 8 which they have requested, for use as private communal amenity space for the Saxon Meadow Residents.

11.122 This would result in a minor change to the outline planning application to reduce the planning application redline area. If the change can be accommodated in planning terms, the Council will formally request that should the Secretary of State be minded to confirm the Order, this is done with a modification to Plot 8 to remove the section of land which will be retained by SMTL. Attached at Appendix 7 is a plan of the reduced area which has been agreed by SMTL.

11.123 By making this modification, the objection of SMTL and the Saxon Meadow Residents would be overcome.

11.124 Countryside will continue to negotiate a deal to acquire the reduced area of Plot 8 voluntarily which will still be within the Order.”

6.57 SMTL’s agent withdrew their objection on 22 March 2021 stating:

“I can confirm that the acquiring authority have agreed to my client’s’ request: to only acquire half of their land identified for CPO (‘plot’ 8’). The revised drawings provided by CDC in their statement of case are acceptable. In light of this, Saxon Meadow Tangmere Ltd have agreed to formally withdraw their objection”.

6.58 The position was stated at paragraphs 5 to 7 of the Compulsory Purchase Order Decision in the following terms:

⁴⁶ This comprised the area known as Plot 9 in the Order together with the area of open land immediately to the east of Plot 9

“5. The Authority has submitted a request to modify the Order by way of removal of land from Plot 8⁴⁷.

6. This land is in the ownership of Saxon Meadow Tangmere Limited (SMTL), which is the property holding company for a residential development between Plots 5, 6 and 8 known as Saxon Meadow. The Acquiring Authority has agreed with SMTL that part of Plot 8 can be removed from the Order to accommodate an area of buffer space between the proposed Scheme and Saxon Meadow for use as an amenity area by the development’s residents. The planning application for the Scheme has also been amended to remove this area. The previous objection to the Order by SMTL has been withdrawn on the basis that this modification would be sought by the Authority.

7. The modification relates to the removal of land from the Order and is not contentious. I am satisfied that no parties would be prejudiced by such variation. I now proceed to examine the Order on the terms as proposed to be modified.”

6.59 The Council had therefore recognised the concerns of SMTL and reached agreement that resulted in the withdrawal of their objection and was accepted by the Inspector as being appropriate.

6.60 Although SMTL had withdrawn their objection, the Council was keen to reach a full and final settlement to include a compensation payment in respect of the remaining land take. To this end, negotiations continued in respect of the potential agreement of compensation for the land take.

⁴⁷ The retained section of Plot 8 in the Original CPO is designed as Plot 9 in the current Order.

7.0 NEGOTIATIONS WITH AFFECTED PARTIES FROM SEPTEMBER 2021 TO THIS INQUIRY

7.1 I have set out below a summary of negotiations since the last Inquiry and, for ease, adopted the following headings:

- Negotiations with Heaver family and National Highways
- Negotiations with “other Heaver objectors” – Tangmere Medical Centre
- SMTL and Saxon Meadow residents
- Non statutory objectors

Negotiations with Heaver Family and National Highways

7.2 Having secured compulsory purchase powers to enable the compulsory acquisition of the Heaver family interests, the Council and Countryside commenced preparations to commence implementation of the development.

7.3 However, the Council and Countryside remained keen to reach voluntary agreement with the Heaver Objectors and thereby avoid having to instigate any compulsory purchase proceedings. In this regard, I emailed Mr Bodley on 20 September 2021 proposing a meeting to progress discussions and requesting details of availability.

7.4 I also requested that Mr Bodley liaise with his client and provide me with an unredacted copy of the Bloor Option. The Heaver Objectors had previously refused to provide a copy of this although, in my opinion, it was likely that the terms of that Option would be relevant to the valuation exercise and any hypothetical purchaser would require full sight, therefore.

7.5 Mr Bodley responded on 22 September 2021 advising that his client did not want to proceed with an agreement on the terms being offered and would await the confirmation of the Original CPO. I responded on 24 September 2021 making clear my desire for a meeting to start narrowing down the issues.

7.6 Further email exchanges took place but it was apparent that the Heaver Objectors were not prepared to engage prior to the Original CPO being confirmed hence I let the matter lie.

7.7 National Highways contacted the Council and Countryside on 1 November 2021 advising that they were agreeable to transferring their land to the Council and that “...our sales team advise they are ready to move quickly on this matter. Please confirm if the Council are agreeable to this.”

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- 7.8 My colleague responded on 16 November 2021 confirming that the Council did wish to proceed with the acquisition and requested indicative terms.
- 7.9 In the meantime, the Original CPO was confirmed on 11 November 2021 so I took the opportunity to email Mr Bodley on the 18 November 2021 requesting a “without prejudice” meeting to discuss broad principles. Mr Bodley’s response on 24 November 2021 advised that he would take instructions. I responded the following day requesting details as to his client’s intentions in respect of planting so that the Council could try and avoid interfering with any crops. No response was received.
- 7.10 As set out at paragraph 6.29 of the Statement of Reasons **(CD/3)** the Council, in light of my inability to secure a meeting, let alone agreement with the Heaver Objectors, commenced preparation of the General Vesting Declaration notices.
- 7.11 However, the National Highways Estates Team advised on 16 February that, contrary to the evidence provided to the First Inquiry, the land within plots numbers 19B, D and E did not comprise adopted highway and *“we must advise we believe the land should have been included within the scheme CPO.”*
- 7.12 This was followed by a further email from the National Highways Estates Team on 17 February 2022 which stated in reference to the West Sussex County Council adopted highway plan that:
“...this plan isn’t correct as it includes the spur, which the SRO clearly shows to be private access. Our Operational teams have maintenance responsibility for the spur (unlikely to ever have needed maintenance), but on a landowner basis, not on a public highway basis.”
- 7.13 This meant that, whereas previously the works required to construct the spine road junction with the A27 would have been carried out in accordance with an agreement pursuant to section 278 of the Highways Act 1980, these provisions no longer applied. It was therefore clear that it would be necessary for the Council to acquire these plots so that the construction works could take place.
- 7.14 National Highways confirmed that they would engage Carter Jonas to undertake a valuation as to the level of consideration that would be payable. Carter Jonas was instructed on 9 March 2022. However, as I set out below, it was unfortunately the case that Carter Jonas did not commence work until July 2022 or issue their report to National Highways until 13 October 2022 hence no progress in agreeing terms could be made for a further 8 months.
- 7.15 There was some doubt, at the time, as to whether Plot 19E was owned by the Heaver family or National Highways but there was no dispute that plots 19B to D were owned by National Highways.

It was therefore clear that, at the very least, the Council would need to agree terms with National Highways and, potentially, also with the Heaver family.

- 7.16 I telephoned Mr Bodley on the 19 May 2022 and followed up with emails on 24 and 25 May 2022 explaining the position that the Council now found themselves in and proposing terms whereby the Heaver Objectors would transfer ownership of Plot 19E to the Council and the Council would agree that the calculation of compensation in respect of the adjoining plot (Plot 17 on the Order Map (CD/2)) would be assessed as if Plot 19E formed part of that plot. I also advised that Countryside wanted to secure access for archaeology work from 23 September 2022 onwards.
- 7.17 Mr Bodley responded on 27 May 2022 by requesting full disclosure of the terms discussed between the Council and National Highways in respect of Plots 19B to D. I considered such a request to be entirely inappropriate and a potential breach of confidence.
- 7.18 I responded by email on 15 June 2022 to advise Mr Bodley, inter alia, that I was progressing terms with National Highways and would update as soon as I was in a position to do so. I also emailed under “without prejudice” cover on 18 June 2022.
- 7.19 There then followed a series of “without prejudice” email exchanges.
- 7.20 In the meantime, I issued a draft licence on 2 August 2022 that would enable Countryside to carry out site investigations. Mr Bodley responded on 8 August 2022 stating that his client required a crop loss payment of £80,000 together with a licence fee of £20,000.
- 7.21 It should be borne in mind that the Heaver Objectors do not occupy any of the land in question. I also have reason to believe, albeit Mr Bodley has declined to confirm this in open correspondence, that John Heaver Farming Partnership and Shore Meadow Farming Partnership, who are the entities controlling the farming the land, are completely separate to Mr Bodley’s clients and that, in the absence of any evidence to the contrary, there is no agreement in place between his clients and these entities.
- 7.22 It therefore remains to be explained by Mr Bodley how the Heaver Objectors would incur crop losses in the absence of them being in occupation of or farming the land and until such explanation is provided there is no proven entitlement to crop loss. Even if they did have an entitlement to crop loss it would not be calculated on the basis set out to me by Mr Bodley in which he claimed the anticipated gross turnover rather than net profit.
- 7.23 I have attached a copy of this Licence at **Appendix 4**.

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- 7.24 In view of the negotiating stance being adopted by Mr Bodley and his clients, I advised Mr Bodley on the 10 August 2022 that Countryside would postpone their site investigations until such time that a GVD could be served such that compensation could be assessed by, if necessary, the Upper Tribunal Lands Chamber.
- 7.25 In the meantime, I had been engaged in discussions with Carter Jonas, as agents for National Highways, ahead of them reporting back to their client and had agreed terms.
- 7.26 I prepared and issued Heads of Terms for a purchase of the National Highways land and issued these on 10 August 2022. Carter Jonas then finalised their report and took instructions from National Highways following which National Highways issued a Memorandum of Sale on 21 October 2022 and the matter was passed over to solicitors to complete the sale. In this regard, Gowlings, as solicitors for National Highways issued the draft Transfer on 5 December 2022. I therefore assumed that matters would proceed to a full transfer.
- 7.27 On the basis that I had been led to believe that the Heaver Objectors wanted to progress matters and that, having reached agreement with National Highways, the Council might not need to seek further compulsory purchase powers, I wrote to Mr Bodley on 16 December 2022 setting out three alternative proposals for the voluntary acquisition of Plot 19E.
- 7.28 The first option was to purchase Plot 19E outright. From the perspective of assessing compensation, I assumed that the acquisition of that plot would fall under the “no scheme” assumption such that the Heaver family would not be penalised in any way.
- 7.29 The second option was for the Council and the Heaver family to expressly agree that the compensation in respect of the adjoining plot (Plot 17) would be calculated on the assumption that Plot 17 and Plot 19E comprised a single plot. The Council proposed to pay a premium to the Heaver family on the same basis as had been offered to National Highways in respect of the remaining plots in the interests of treating both parties equally.
- 7.30 The third option was for the Heaver Objectors to confirm that they required the Council to secure another compulsory purchase order. This option was set out to accord with the Guidance and ensure that the Council was totally open with the Heaver family in respect of the consequences of being unable to agree voluntary terms.
- 7.31 All these options allowed the Heaver Objectors the ability to argue for full value at the Upper Tribunal (Lands Chamber) and none of them fettered or reduced their ability to secure the maximum amount of compensation allowed for under the code.

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- 7.32 I have attached a copy of this letter at **Appendix 5**.
- 7.33 Mr Bodley took instructions and on 23 February 2023 he advised that his client wished to proceed with the second option but subject to various conditions. The key condition was that the Council were required to make a payment to his client of £2,330,000. This was stated to be based on the Council's offer made back in August 2021 i.e., prior to the First Inquiry.
- 7.34 The point Mr Bodley had overlooked was that the offer he was referring to had been made by Countryside, not the Council, who had taken a commercial view with the intention of saving time and money by having to delay development and engage with the Inquiry proceedings. It was also subject to a claw-back provision that would apply in the event that, as I anticipated, the Upper Tribunal (Lands Chamber) determined compensation below that initially paid. This was entirely appropriate at the time and in accordance with paragraph 3 of the Guidance. In addition, as set out at paragraph 6.38, these Heads of Terms were offered on a commercial basis in the lead up to the First Inquiry and were made against the background of having secured commercial agreements with the other landowners and "resolution to grant" planning permission. Neither of these matters apply in assessing compensation.
- 7.35 Mr Bodley sought to justify his request for such a payment by referring to section 52 of the Land Compensation Act 1973 which allows a claimant to request payment on the basis of 90% of an acquiring authority's estimate. As I explained to Mr Bodley, the Council fully intends to comply with all the statutory and regulatory requirements but, by definition, section 52 refers to the Council's estimate not the claimant's opinion and does not entitle a claimant to demand or expect an amount other than 90% of the Council's estimate.
- 7.36 As such, there is no statutory requirement for the Council to pre-agree a section 52 payment and, as the Council does not accept Mr Bodley's figure or the offer made by Countryside, it is unable to make a section 52 payment for the amount contended by him. Notwithstanding this, the Council has provided Mr Bodley with an estimate of the section 52 payment they would be willing to make in the current circumstances but this has not resulted in any progress being made in the negotiations.
- 7.37 In the meantime, National Highways had contacted me on 5 January 2023 to advise me that they had received a claim from the Heaver Objectors' solicitors (Ashurst) within which it was stated that the Council were seeking to deny rights of access to the Heaver family.

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- 7.38 This was entirely false. The actual position was that I had put Mr Bodley to proof⁴⁸ as to the extent of the rights his clients claimed over that land⁴⁹ as he had, thus far, failed to explain the basis upon which his client takes access from Plot 17 to the A27.
- 7.39 The relevance of this was that any pre-existing rights would still be in force following a voluntary transfer of the freehold interest. As such, to the extent that rights exist in favour of the Heaver Objectors, they would not be extinguished by a voluntary transfer. My point was simply that, as the Heaver Objectors were asserting rights, it was only reasonable that they explained the nature of these rights and provided evidence thereof.
- 7.40 It is important to be clear that the Council has not taken any action, implied or otherwise, to prevent the Heaver family from taking access or asserting rights over the land in question and the assertions made by their solicitor to National Highways in this regard were totally without basis. No evidence has been provided by the Heaver Objectors to challenge that assessment. Nevertheless, National Highways put the land transfer on hold.
- 7.41 In view of the clear indication that agreement with the Heaver Objectors was not likely, and the lack of certainty that National Highways would proceed to sell their land to the Council it was decided that, in accordance with paragraph 2 of the Guidance to seek further compulsory purchase powers. To this end the Order was made on 30 March 2023.
- 7.42 Despite the making of the Order, I continued to engage with both the Heaver Objectors and National Highways in a bid to try and agree terms. In this regard I made another proposal to Mr Bodley on 5 May 2023 as follows:
- *“£10,000 paid on completion of the agreement*
 - *Agreement that the compensation entitlement in respect of Plot 16 (under CPO 1) assumes the inclusion of the additional land abutting the NH land*
 - *Payment of the Council’s estimate of advance payment within three months of the date of the agreement or the Council being satisfied that they have been provided with full disclosure of the various Heaver entities interest in the land, whichever is the latest. The standard of disclosure will be as set out in the legislation.*

⁴⁸ For example – see 6th paragraph on the first page of the letter dated 16 December 2022 referred to at paragraph 7.26 together with the 8th paragraph on the second page of the same letter.

⁴⁹ i.e., Plots 19B, C and D

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- *Service of GVDs in respect of all Heaver interests (albeit presumably excluding SMFP as they have no interest) at the earliest practical date after the completion of the agreement having regard to statutory timetables.*
 - *Reimbursement of reasonable legal fees for the drafting and completion of the agreement (to be agreed by the solicitors)*
 - *Reimbursement of reasonable surveying fees for the negotiation of this agreement (on production of timesheets etc) – My feeling is that £3,500 + VAT is reasonable based on what has been agreed with the agents for other parties.”*

7.43 However, it became apparent in my negotiations with Mr Bodley that the sticking points of agreement concerned not just the amount to be paid to the Heaver Objectors for entering into any agreement but that they expected the Council to reimburse all their professional fees dating back to prior to the First Inquiry.

7.44 In this context, I have repeatedly requested, but have never been provided with, an indication as to what fees are being contended for by the Heaver family and quantified requests for reimbursement so that I can set out the Council’s response. It is entirely unreasonable for anyone to expect payment without, at the very least, setting out an indication as to what they are seeking.

7.45 In addition, the Heaver Objectors issued proceedings in the High Court on 14 June 2023 claiming ownership of the National Highways land and seeking an injunction preventing the sale of the National Highways land to the Council. It is therefore the case that, until this matter is resolved by agreement or determination, National Highways are unable to further engage with the Council.

7.46 Following this, Ashurst⁵⁰ wrote directly to the Council’s solicitors on 18 July 2023 enclosing an Agreement for completion. The letter and attachment were passed to me by the Council so that I could pick up discussions with Mr Bodley.

7.47 I noted from the letter that Ashurst stated as follows:

*“As stated in the Objection, our clients have always been willing to sell the Property voluntarily and in fact accepted the Council’s terms in principle in February 2023, including the financial consideration proposed by the Council, subject to contract and a number of additional terms summarised in the Objection. On this basis, there was (and remains) no need for the Property to be included in CPO 2. For the record, we also note that **our clients have always been willing to sell the***

⁵⁰ Solicitors for the Heaver Objectors

CPO Land on reasonable commercial terms⁵¹ notwithstanding their view that the CPO Land can be developed independently without prejudicing development of the rest of the Tangmere Strategic Development Location and that therefore CPO 1 was unnecessary.

7.48 This letter was misleading as the offer made by the Council did not refer to any consideration other than the £10,000 payment in respect of Plot E. Furthermore, the consideration included by Ashurst in the proposed terms actually comprised the offer made by Countryside not the Council and was made prior to the First Inquiry⁵². In that context, it was entirely appropriate to make an enhanced offer as envisaged by paragraph 3 of the Guidance.

7.49 This letter also failed to mention that, as I have indicated above, the Heaver Objectors required reimbursement of their fees as a condition of any agreement but have failed to set out a clear position that can be understood by the Council and responded to.

7.50 I liaised with the Council's solicitors who responded to Ashurst's letter on 9 August 2023 and made the following points:

- The proposed agreement still required the exercise of compulsory purchase powers by the Council hence defeated the point of trying to reach agreement in the first place
- The level of value being required as the price for entering into the agreement is not justified
- The Council do not agree that the Heaver Objectors have provided sufficient information to enable an accurate estimate of compensation not least as the Council is still not clear as to the status of Shore Meadow Farming Partnership and John Heaver Farming Partnership
- The Council will not agree that crop loss is payable when a) the Heaver Objectors do not appear to be in possession of the land and b) compensation is being claimed on a redevelopment basis
- The proposed terms do not address the status of the National Highways claim
- The proposed agreement does not relate to all the land required
- The Council will not agree to the withdrawal of the Heaver Objectors' objection being delayed until a General Vesting Declaration Notice is served and becomes effective as this means that the objection will still be live during the Inquiry

⁵¹ My emphasis

⁵² See paragraphs 7.33 and 7.34 above.

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- It is premature for the solicitors to be engaging when Mr Bodley and I had yet to agree the principles of the proposed terms.

7.51 Notwithstanding these points, I noted that Ashurst were unambiguous in their statement that their client wishes to sell their Property and give the impression that the only matter preventing agreement is what is referred to as “reasonable commercial terms”.

7.52 The only indication I have received from Mr Bodley as to what the Heaver family consider to be “reasonable commercial terms” comprises his Heads of Terms dated 30 July 2021 wherein he was requesting a minimum payment of £30,000,000. He has been unwilling/unable to provide me with an updated opinion of value albeit I anticipate that he will argue that values have increased such that his client now expects an even greater sum.

7.53 I emailed Mr Bodley on 16 August 2023 with some further Heads of Terms for an acquisition by Countryside. The intent of these terms was that there would be no need for the Council to exercise any compulsory purchase powers but the Heaver Objectors would receive full compensation as if powers had been invoked and have the ability to refer the matter to the Upper Tribunal in the absence of agreement.

7.54 I have attached a redacted copy of these Heads of Terms at **Appendix 6**.

7.55 I emailed Mr Bodley on 21 August 2023 with Heads of Terms that followed the same broad principles as the Heads of Terms issued on 16 August 2023 except that these proposed an acquisition by the Council.

7.56 These were issued on a “without prejudice” basis hence I am unable to attach to this report.

7.57 I had previously responded to the Ashurst letter dated 18 July 2022, by inviting Mr Bodley to a “without prejudice” meeting in order to try and find a way through. This meeting took place on the 14 September 2023. Unfortunately, it was not possible to resolve the main issues.

7.58 I followed this meeting up with an email dated 28 September 2023 wherein I requested a meeting between planning experts in order to assist in my understanding as to why Mr Bodley is of the opinion that his client could develop their land completely independently of the TSDL.

7.59 Mr Bodley responded on 29 September 2023 stating:

“My client has no interest in arranging a meeting between planning consultants. We both know the positions of our client’s respective planners and I don’t see the point in the planners having a meeting to discuss this. As I have previously stated it is clear that there are significant differences

between the parties as to the planning prospects of the land in the no scheme world which has significant valuation implications.”

7.60 I responded on 29 September 2023 as follows:

“You and your client have been provided with chapter and verse as to why the Ashurst draft agreement is not acceptable to the Council so there little to be gained by going over old ground.

I have provided you with Heads of Terms for an agreement with the Council or an agreement with the developer. As you know, compulsory purchase powers are only supposed to be exercised as a matter of last resort hence the whole point of those proposed agreements, unlike the Ashurst terms, is that they negate any requirement to rely on compulsory purchase powers. In this context I am bemused as to why your client sustained a challenge to CPO 1 and is now objecting to CPO 2 and yet is proposing terms that necessitate the exercise of CA powers.

I am also at a loss to understand how my proposed terms are less favourable when they preserve your client’s right to have the matter determined by the Upper Tribunal so your client has full recourse to proceedings if they are unhappy with the compensation offered. Perhaps I am missing something?

It is misguided for you to interpret the Council’s unwillingness to accept the numbers you propose as meaning that they are reluctant to be a party to a land transaction with your client. The correct position is that the Council want to agree terms that avoid any exercise of CA powers and you have been provided with Heads of Terms that will achieve this.

I note your client’s refusal to a meeting between planning consultants which is less than helpful.

In this regard, I take issue with the statement that “we both know the position of our client’s respective planners”. All I know is that your client considers that they could secure planning permission for residential development of their land. No details as to what form this planning permission might take or how your client would argue their case on appeal following the inevitable refusal has been provided.

In this regard, the only information I have had from you as to your client’s position in respect of the interpretation and application of planning policy is that set out in paragraphs 3.19 to 3.23 of your proof of evidence to the last Inquiry. These five paragraphs don’t tell me anything and, unless I am mistaken, you are not a planning expert.

I can only assume that Quod are not particularly confident of their advice (which I can fully understand) or it has been misrepresented and this is why your client doesn't want to instruct Quod to engage particularly bearing in mind the amount of money at stake.

For the avoidance of doubt, the Council's invitation to engage on planning matters remains open and, as I am sure you must be aware, the Tribunal would want there to be discussions on these points prior to any hearing so a refusal to engage at this point is merely delaying the inevitable. At some stage we have to establish who is correct on these points – the LPA or your client or find some middle ground.”

7.61 Despite making it clear to Mr Bodley that the terms proposed by his client were not acceptable, Ashurst wrote again to the Council's solicitors on 13 October 2023 re-enclosing those terms albeit with a minor tweak in respect of confidentiality provisions.

7.62 Whilst this letter contained a number of inaccurate statements that mis-represented my position, it was clearly apparent that the Heaver Objectors now required the exercise of compulsory purchase powers in order to secure roll-over capital gains tax relief. In this regard, it was stated by Ashurst that:

*“The land comprised within CPO 1 will **need to be transferred by way of a GVD**⁵³. This is to ensure that the transfer falls within the type of transaction envisaged by Section 246 of the Taxation of Chargeable Gains Act 1992 and would enable the correct amount of capital gains tax be paid at the point at which compensation is either determined or agreed.”*

7.63 They were therefore in the bizarre position where they state on the one hand that “...there was (and remains) no need for the Property to be included in CPO 2. For the record, we also note that our clients have always been willing to sell the CPO Land on reasonable commercial terms⁵⁴” but, on the other hand, they requested the exercise of compulsory purchase powers to secure tax relief although they actively opposed the grant of such powers at the last Inquiry and have, so far maintained their objection in respect of the present proceedings.

7.64 I have attached a copy of this letter at **Appendix 7** and the attached Heads of Terms at **Appendix 8**

7.65 In this regard, the proposed terms drafted by Ashurst, provide that the Heaver family would not withdraw their objections to the current Order until the purchase of Plot 19E had been completed

⁵³ Mu emphasis

⁵⁴ See paragraph 7.47.

which, in turn would not take place until three months after a General Vesting Declaration notice had been served in respect of the Heaver family interests included in the Order.

7.66 Bearing in mind the current timetable for this Inquiry, it is readily apparent that Ashurst were proposing that its clients' objection is not withdrawn until after the Inquiry proceedings have closed. It is therefore the case that, even if I felt able to recommend acceptance of these terms and the Council accepted my advice, the objection would remain before the Inquiry and require Inquiry time.

7.67 Whilst the Guidance expects the Council to seek the agreement of terms that avoid the need for any compulsory purchase powers to be exercised, it was clear to me that the Heaver Objectors were insistent that the Council exercises its existing powers derived from the Original CPO. To this end, I wrote to Mr Bodley on the 24 October 2023 proposing the following terms:

- *“Purchaser = the Council*
- *Land = Plot 19E*
- *Consideration = £10,000 exclusive of VAT payable upon completion of Agreement*
- *The payment of VAT will be dependent upon whether the land is elected for VAT*
- *The transfer will be disregarded in accordance with the “no scheme” world assumption*
- *Legal fees for completing the transfer Agreement following signing of the Heads of Terms to be £7,500 exclusive of VAT*
- *Surveying Fees for reviewing and signing the Heads of Terms capped at £5,000 + VAT (subject to timesheets etc)*
- *Withdrawal of the objection on signing Heads of Terms*
- *Transfer conditional upon*
 - *National Highways transferring Plots 19B, C and D or*
 - *Confirmation of CPO 2,**(whichever occurs first)*
- *In the event that no GVD or NTT is served in respect of any part of the Heaver Family land by expiry of CPO 1 the land will be transferred back to the Heaver family at nil cost but without prejudice to the Council’s ability to serve a GVD or NTT pursuant to CPO 2*

These terms allow your client to make whatever arguments they want at the Upper Tribunal. I therefore see no reason, bearing in mind your previous comments, why your client would not consent to these terms.”

7.68 Mr Bodley responded to this proposal on 6 November 2023 with a number of comments going over old points. Notwithstanding this he responded to the principle of my proposal by stating:

“We have no interest in your latest alternative proposal which has come completely out of the blue. You are suggesting that my client agrees to a transfer of Plot 19E alone without any agreement for the transfer of the CPO1 Land. In other words, you are proposing that my client disposes of the principal access into its land, whilst retaining the majority of its land which will no longer have an access. That is clearly not acceptable to my client and I don’t understand why you think it would be. My client has no interest in this proposal and will not be withdrawing its objection on the basis of some Heads of Terms.”

7.69 I responded the same day pointing out that this was not a new proposal and the principles had been discussed previously⁵⁵. I also pointed out to him that:

“...it is a basic principle that a voluntary acquisition of the freehold interest in land does not extinguish any pre-existing third party rights. You are therefore mistaken to think that a voluntary acquisition would have any impact on your client’s existing rights to the extent that they exist which I presume the is the subject of your current dispute with National Highways. As this is the sole reason cited by you for rejecting that proposal, I look forward to confirmation that, having taken legal advice you will now reconsider your objection to this suggestion.”

7.70 In the absence of any further response from Mr Bodley I then emailed a full set of Heads of Terms on the 6 November 2023. The covering email advised, in respect of the access rights, that:

“You previously informed me that your client had granted rights of access to John Heaver Farming and Shores Farming hence, as I set out below, these would survive a purchase of the freehold interest. If you are, for any reason, not happy that these rights are robust enough the Council would be happy to grant a licence to them to provide comfort on the point.”

7.71 I have attached a copy of these Heads of Terms at **Appendix 9**.

7.72 In view of the continuing lack of response from Mr Bodley I commissioned the drafting of a formal Deed and emailed this to Mr Bodley and his client’s solicitors on 15 November 2023.

⁵⁵ See the letter dated 16 December 2022 as attached at Appendix 5

7.73 I stated the following in my covering email:

“I haven’t heard from you since my email below.

You told me on 2 November 2023 that your client “would not be withdrawing on the basis of some Heads of Terms” so I have commissioned the attached Deed to deal with that.

You raised various concerns in respect of your client’s access over Plot 19E – this Deed preserves and potentially enhances the existing rights following the transfer of title to the Council.

You have said that your client would only treat with the Council – this Deed provides for an acquisition by the Council.

You have told me that your client requires the exercise of CA powers so that your client can mount an argument for rollover relief. This Deed allows for that whilst acknowledging that, because the Council is prevented from acquiring the National Highways land by virtue of your clients’ proceedings, CPO 2 may still be required in any event.

You wanted the agreement to be “without prejudice” to your client’s compensation arguments. This Deed is to be disregarded when assessing compensation matters so, as far as the Upper Tribunal (Lands Chamber) is concerned, it never existed.

This Deed also preserves your client’s full statutory rights to request advance payments.

This Deed incentivises the Council to serve GVDs at the earliest opportunity and thereby avoid having to hand the land back.

If the Council cannot, for any reason, serve GVDs in time, your client will get the land back at nil cost.

The Purchase Price has already been agreed by you on behalf of your client(s).

I believe that I have addressed every objection you have raised and look forward to completion so that we move on and save Inquiry time.

I would be grateful for an update as to the progress of matters between your client and National Highways as I have no information in this regard.

I look forward to hearing from you.”

7.74 I have attached a copy of the formal Agreement at **Appendix 10**.

7.75 Again, no response was received until a letter arrived from Ashurst at 3:41 PM on 17 November 2023 from Ashurst.

7.76 This letter is attached at **Appendix 29**.

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- 7.77 This letter contains a number of serious and inaccurate assertions that require addressing as, taken together, they provide a thoroughly misleading version of matters.
- 7.78 In this regard, Ashurst do not, as a starting point, provide any evidence or explain their comment that I “...clearly has a separate agenda” nor do I accept that I am “...seeking to dictate terms to our client which he should realise are both unreasonable and unacceptable and in clear conflict with the advice contained within the CPO Guidance.” Both these assertions are factually incorrect as can be seen by a careful review of the actual correspondence.
- 7.79 My sole agenda, to the extent that I have one, from the outset has always been to seek a voluntary agreement that avoids the exercise of compulsory purchase powers except as a matter of last resort and, to that end, I have proposed terms on a variety of bases including a voluntary acquisition and reference to the Upper Tribunal (Lands Chamber) and was firmly rebuffed. Ironically, I note that this is now exactly what Ashurst are proposing which is a full about turn since their last communication.
- 7.80 In a similar fashion, Ashurst do not explain their statement that “We have, however, received two further contradictory emails from Mr Roberts, the first dated 2 November 2023 (attached draft Heads of Terms) and the second dated 15 November 2023 (attaching a draft agreement.”
- 7.81 I have referenced these emails at paragraphs 7.70 to 7.73 from which it should be apparent that the first email contained Heads of Terms and the second email contained a formal agreement based solely on those Heads of Terms. The formal agreement and Heads of Terms are entirely consistent with each other and, in the absence of Ashurst explaining the manner in which they can be considered even slightly contradictory to each other, this is another false assertion.
- 7.82 Ashurst describe my efforts to engage as “...a futile exercise” which I agree with but for entirely different reasons. In this regard, as I have set out above, I have tried to instigate valuation discussions with Mr Bodley and arrange meetings with the Heaver Objectors’ planning advisors but have been firmly refused on each occasion. I am unclear as to how progress valuation and planning matters if Mr Bodley and his client refuse to engage.
- 7.83 Mr Bodley has, to my admitted frustration, refrained from even providing a current indication of value or breakdown even for the purposes of negotiating and has refused to engage on even basic planning concepts. It would appear that he has either realised that his arguments are fundamentally flawed or decided to keep his powder dry in anticipation of making a reference to the Upper Tribunal (Lands Chamber) at the earliest possible opportunity.

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- 7.84 This is his prerogative but such an approach is contrary to both the Compensation Claims Protocol⁵⁶ and the RICS Professional Statement “Surveyors advising in respect of compulsory purchase and statutory compensation 1st edition, April 2017”⁵⁷. In stark contrast to Mr Bodley, I have explained my valuation approach and underlying assumptions so that he is fully aware of my position.
- 7.85 As I have pointed out to Mr Bodley, the Upper Tribunal (Lands Chamber) will inevitably require the parties to agree a Joint Statement so these discussions will have to take place at some point and his failure to engage in such discussions is merely delaying the inevitable.
- 7.86 I note that Ashurst claim that “*it is clear that the Council (or Mr Roberts) are no longer prepared to proceed on their previously proposed structure...*” This is another incorrect statement.
- 7.87 The actual position is as set out at paragraphs 7.27 to 7.36 above where I make the point that Mr Bodley sought to make additions to my proposed structure such that it was no longer acceptable or workable. In other words, Mr Bodley rejected my proposal and sought to replace it with his own terms.
- 7.88 The correct position, therefore, is that I proposed a structure, as set out in my letter dated 17 December 2022 which remains on the table but the Heaver Objectors previously made it clear that they required additional terms which have never been offered by the Council and which they were informed are not acceptable, chief of which was the ability for the Heaver Objectors to maintain their objection until after closure of the Inquiry, the required “advance payment” and the open ended nature of fees demanded.
- 7.89 In this regard, I note that Ashurst have, at the very last minute prior to the submission of evidence, fundamentally changed their position with regard to the withdrawal of their clients’ objection such that, rather than being withdrawn after the closure of the Inquiry proceedings, they are now proposing to withdraw on exchange of the agreement which is targeted for 30 November 2023.
- 7.90 I will need to discuss this with the Council’s solicitor to understand the extent to which this could be feasible if agreement of all other matters can be agreed but, at face value, this is a welcome development. This leaves the key question as to whether the proposed terms should require the exercise of compulsory acquisition powers, the payment to be made and the reimbursement of fees. I have addressed each of these issues below.

⁵⁶ <https://compulsorypurchaseassociation.org/land-compensation-claims-protocol.html>

⁵⁷ <https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/land-standards/surveyors-advising-in-respect-of-compulsory-purchase-and-statutory-compensation-uk>

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- 7.91 I was not aware, until receipt of this letter, that the Heaver Objectors were now carrying out a U turn on the need for the exercise of compulsory purchase powers and that they had reached agreement with National Highways.
- 7.92 Dealing with the first issue, my initial approach was to propose terms that enabled a voluntary referral to the Upper Tribunal (Lands Chamber) but I was told that this was unacceptable and the full exercise of compulsory purchase powers were required. It appears that the Heaver Objectors have changed their position and are now insistent on agreeing terms that do not require the exercise of compulsory purchase powers.
- 7.93 The Council was aware of the proceedings between the Heaver Objectors and National Highways but, until receipt of this letter, did not and could not have known that agreement in principle has been reached. The Council will need to verify this with National Highways and establish whether or not they are now free to proceed with the transfer of their interests.
- 7.94 This leaves the questions of the appropriate payment for the land and professional fees.
- 7.95 With regard to the first point Ashurst repeat the assertion, at paragraph 4 of the Proposed Terms as set out within their letter that, *“The Council initially offered an advance payment of 90% of an estimated value of £2.3 million... ..for the purposes of reaching agreement, that figure would be acceptable to our clients in the knowledge that the Upper Tribunal will arrive at a different valuation”*.
- 7.96 Neither Ashurst nor Mr Bodley have been able to point to any conversation or document wherein I or the Council offered 90% of £2.3 million. That is because the Council have never, at any point, made this offer. No amount of repeating this statement by Ashurst and Mr Bodley can change that fact however hard they try.
- 7.97 The Council has provided their opinion of market value on more than one occasion to Mr Bodley, Ashurst and the Heaver Objectors and made plain that they do not consider the market value of the land to be £2,330,000 or anything like it, let alone a minimum of £30,000,000 as previously proposed by Mr Bodley⁵⁸.
- 7.98 The Heads of Terms being relied upon by Ashurst (as attached at **Appendix 2**) are clear that the stated purchaser was Countryside not the Council and this offer was made by them on a commercial basis in light of the circumstances that existed at that time. It was not made by the Council and was

⁵⁸ See Appendix 2

not made in the context of a statutory advance payment. As I have already stated⁵⁹, these Heads of Terms were offered on a commercial basis in the lead up to the First Inquiry and were made against the background of having secured commercial agreements with the other landowners and a “resolution to grant” planning permission. Neither of these matters apply in assessing compensation.

7.99 Despite this point being emphasised and repeated to Mr Bodley and Ashurst “ad infinitum” their negotiating strategy has been to conflate two different offers by different entities in different circumstances and continue insisting that the Council have offered £2,330,000 when this is not the case. To be absolutely clear, the Council cannot and, quite rightly, will not be held to a financial offer made by the developer in complete isolation to all the other terms and circumstances of those offers.

7.100 In this regard, my offer to meet with Mr Bodley to discuss valuation issues remains on the table and I am more than happy to start making progress with him in understanding where the differences in valuation lie but this requires engagement by Mr Bodley and his clients’ planning consultant.

7.101 In the meantime, Ashurst/Mr Bodley/the Heaver Objectors are aware of the Council’s opinion of value and that remains on the table for acceptance. As Ashurst acknowledges, this, in no way hampers their ability to contend for a higher valuation at the Upper Tribunal (Lands Chamber).

7.102 I note that Ashurst state, in respect of costs that *“Our clients will be entitled to reimbursement of all reasonable costs incurred in connection with CPO 2, including costs of the objection corresponding with the Council, negotiating the terms of the agreement and effecting the transfer. The derisory figures offered by Mr Roberts are unacceptable.”*

7.103 Neither Mr Bodley or Ashurst have explained the basis of their clients’ entitlement to cost bearing in mind that no amendments to either the Original CPO or this Order have been conceded by the Council such that their objection could be classified as being successful. Notwithstanding this, I have previously requested details, on more than one occasion, from Mr Bodley of the costs being sought by his client and what they relate to but he has declined from providing these. This is a little strange bearing in mind that Ashurst have provided their costs in respect of dealing with the Other Heaver Objectors settlement hence I do not understand why these are not forthcoming.

⁵⁹ See paragraphs 6.38 and 7.34.

7.104 At the end of the day, I have made an offer that I consider reasonable having consulted with the Council's solicitors having regard to the complexity of this matter and, it is open to Ashurst to, instead of dismissing my offer out of hand as "derisory", engage, provide evidence and explain.

7.105 I am unable, with the time available to me since receipt of this letter to comment further in detail in respect to the remaining terms, not least as I need to discuss and take instructions from the Council.

Negotiations with "Other Heaver Objectors" – Tangmere Medical Centre

7.106 As set out above, the Order Decision in respect of the Original CPO was issued on 11 November 2021 and made reference to the Council's proposed agreement to re-provide all existing rights currently benefiting the Tangmere Medical Centre.

7.107 I understand that, following various iterations of the agreement, both parties were ready to exchange and complete the necessary Deeds before Christmas 2022. However, Ashurst advised on 20 December 2022 that they needed to amend the parties to the agreement.

7.108 As nothing further was heard, Ashurst were chased on 4 April 2023 and they were advised that the proposed Deeds would need to be amended to account of the making of the Order. Ashurst responded on 24 April 2023 advising that they required an increase in the fees to be reimbursed to them. An uplift in the fee allowance was accepted on 9 June 2023 conditional upon being paid on completion of the Deeds.

7.109 Since that time there have been various discussions and I understand that the relevant documents have been agreed and that electronic engrossments were circulated on 14 November 2023. I therefore anticipate that the objections will be withdrawn prior to the commencement of the Inquiry.

SMTL and Saxon Meadow Residents

7.110 As set out in section 6, SMTL reached agreement with the Council prior to the First Inquiry and that agreement was directly reflected in the Original CPO as confirmed.

7.111 The terms of that agreement were that the Council would create an orchard on part of the meadow owned by SMTL that would be open for use by SMTL but the Council would incur the costs thereof and ongoing maintenance.

7.112 The Council carried forward the terms of that agreement in drafting the current Order. However, despite this, SMTL have objected again and have requested that they retain ownership and full

control over the entirety of the meadow which is designated as Plots 9, 9A and 9B as denoted on the Order Map (CD/2).

7.113 In this regard, according to the Land Registry, the only sales to have taken place in Saxon Meadows since the First Inquiry are those of 6, 13 and 20 Saxon Meadows. None of the owners of those properties have submitted objections.

7.114 It is therefore the case that, with the exception of these specific owners, all other residents would have been consulted in their capacity as leaseholders and shareholders of SMTL in respect of the previous agreement.

7.115 I note from the letter dated 27 February 2023 from SMTL⁶⁰ that Mr Pickering, who is the Chairman and Director of SMTL, states:

“Saxon Meadow Tangmere Ltd (SMT Ltd of Company) owns the freehold interest of Saxon Meadow Tangmere and [is] the leaseholder for some 28 residences located there. SMT Ltd is the landlord and the Company itself is wholly owned by the residential leaseholders and is not a commercial investor.”

7.116 I further note that Keystone Law state in the objection submitted on behalf of SMTL that:

“It is the freeholder and management company for 28 residential leasehold properties known as Saxon Meadow, Tangmere (“the Property”).

SMT is currently authorised to represent the entire group of 28 residential leaseholders⁶¹ who comprise its individual shareholders, and therefore references to SMT (as objector) in this objection below should be taken to include each of those individual leasehold interests. SMT notes, however, that some leaseholders may submit objections.”

7.117 The relevance of this point is that a number of the residents claim that that they had no prior knowledge of the proposed scheme which is clearly not a credible position. In addition, Mr Olden, who is the CPO adviser/agent for SMTL has been adamant that he only represents SMTL and cannot take any responsibility for consulting with the individual residents in assisting the Council to reach a consensus with all the shareholders/residents. Bearing in mind the status of these residents (who are acting collaboratively through SMTL) this position is not credible either.

⁶⁰ See page 16 of the Exhibit attached to the Objection submitted by Keystone Law on behalf of SMTL.

⁶¹ My emphasis

7.118 In any event, Mr Olden has, during his negotiations with me, been accompanied by Mr Rees and I have also received correspondence from Mr Wolfenden purporting to represent SMTL.

7.119 Mr Olden's position is also inconsistent with that taken by Keystone Law who, as set out above, are clear that SMTL is authorised to speak on behalf of all the residents including those who have submitted individual objections.

7.120 Mr Denning and I have approached negotiations with SMTL and the residents on the basis as set out by Mr Pickering i.e., that SMTL is effectively controlled and owned by the residents such that all the residents can influence decisions made by SMTL. It is therefore the case that SMTL has a part to play in seeking the agreement of any proposals with all the residents as without their instructions SMTL cannot enter into any agreement.

7.121 As set out in section 6 of this evidence, the Council continued negotiations with SMTL in respect of agreeing a compensation package and addressing the detail of how the scheme would be implemented so far as it would impact upon SMTL.

7.122 In this regard, Mr Denning and SMTL's original agent (Mr Thomas) exchanged "without prejudice" emails following the issuing of the Order Decision in November 2021. This culminated in an onsite meeting on the 3 December 2022 between Mr Denning, Mr Thomas and SMTL officers comprising Mr Pickering and Ms Harper. The purpose of the meeting was to discuss how the works would be implemented and the potential impact on SMTL and the residents of Saxon Meadows.

7.123 Mr Denning emailed Mr Thomas on 6 December 2021 requesting a summary note from Mr Thomas of SMTL's queries and information requests. In the absence of any response, Mr Denning issued chaser emails on 24 December 2021, 10 January 2022 and 21 January 2022.

7.124 In the meantime, it had become apparent that the Original CPO did not include all the required land at the A27 junction the decision was made that the Order was required to rectify the position.

7.125 To this end, Mr Denning tried again to raise a response from Mr Thomas but as this was not yielding any response, he emailed Ms Harper on 31 January 2023 as follows:

"I appreciate that some time has passed since we met on site and the purpose of this email is to provide an update on the project, principally as you may be aware of some recent further correspondence issued by Gateley Hamer on behalf of Chichester District Council.

Please do let me know if you are not the correct person to contact concerning Saxon Meadows, if your role has changed. Immediately following the site visit I had attempted to make contact with Andrew Thomas, who I understood was representing the residents without getting a response.

Unfortunately, post confirmation of the original CPO, it became apparent that despite engagement with both National Highways and West Sussex County Council, incorrect statements about designation of highways were made. After a further period of negotiation with interested parties it has been determined that a further CPO is unfortunately required to assemble, in addition, some minor interests of land to the very North of the TSDL abutting the A27 highway and the spur from the roundabout. This does not impact on the original CPO over the Saxon Meadows land, which is still operative.

The second CPO is required unfortunately as we have uncooperative interested parties and without the CPO 2, CDC could not implement CPO 1. CPO 2 does include all of the same interests including the Saxon Meadows land that was negotiated with the residents in order to obtain removal of their objection. This has half of the original parcel remaining within the CPO 2 redline boundary, with residents retaining half of the amenity land nearest to the properties.

I understand that some referencing forms have been issued to residents at Saxon Meadows, which is a statutory duty for CDC as the Acquiring Authority. In particular a Matthew Rees seems to have concerns and contacted the referencing company. I wish to alay (sic) those concerns. Nothing new is proposed here and the form is exactly the same as that issued for CPO 1.

I would be happy to speak with any residents if they wish as I am sure this may be confusing to some.”

7.126 It is therefore clear from this, that Mr Denning was, quite properly, seeking to engage with SMTL’s agent and SMTL direct to continue discussions prior to the making of the Order.

7.127 Following further discussions, Ms Harper, on behalf of SMTL, advised that they had also tried to contact Mr Thomas but without success. She also requested a meeting directly with the Council.

7.128 In the meantime, Gateley Hamer had issued Request for Information letter requiring a response from SMTL and the Saxon Meadows residents by 6 February 2023. Ms Harper responded to Gateley Hamer requesting, inter alia, an extension of time. Ms Harper confirmed in that email that “*For clarification I am representing the Management Company – Saxon Meadow Tangmere Ltd and **Nos 1 -28 Saxon Meadow, Church Lane**⁶², Tangmere, West Sussex PO20 2GA, who are all shareholders of Saxon Meadow Tangmere Ltd.*”

⁶² My emphasis

7.129 Mr Denning was passed this email and emailed Ms Harper copying in Mr Pickering, Ms Ayton, Ms Tedman and Mr Rees. This email stated:

“We have of course had an exchange the other day on the matter of the ‘requisitions’ issued by Gateley Hamer on behalf of the Chichester District Council (CDC) and I tried to reassure you that the principles of what was agreed previously between the parties will be honoured i.e. that CDC have agreed to accommodate the wishes of residents/SMTL and only take half of the original parcel of land leaving a buffer zone (hatched blue) for use as private communal amenity space. The planning application for the Scheme has also been amended to remove this area...

I have explained that an unforeseen error/discrepancy in information provided by National Highways and West Sussex County Council has left CDC with no option but to make a further CPO. CDC has exhausted attempts to resolve this issue by entering negotiations to acquire further land interests which have been ongoing since January 2022, but now has no option but to make the next CPO. It is still hoped that those negotiations will be successful, but the second CPO must be twin tracked with those efforts.

The initial stages of preparation require CDC as Acquiring Authority to collect and record information on occupation and land ownership, this is why the additional forms have been served.

I am sorry if this is causing inconvenience or indeed any distress, but it is a statutory requirement to do this. I appreciate that the form is quite lengthy but the information sought is basically an update on that previously supplied. On behalf of CDC I can confirm that an extension is available, however the forms are required by the 17th February at the latest. I hope that is sufficient time.

If I can be of any further assistance then please do get in touch.”

7.130 Following a further exchange, Mr Denning emailed on 22 March 2023 stating:

“ I just wanted to let you know that the Council approved the use of its statutory powers and the making of the second CPO last night, which will resolve the land issues identified in my previous email.

I understand that the Cllr Simon Oakley requested a meeting between the Council and Saxon Meadow Ltd.

I am more than happy to arrange that, but in the meantime wanted to offer my assistance with any immediate queries you/the residents may have. Can I ask whether you have been able to reach your previous advisor, Mr Andrew Thomas and also if he will continue to be representing you?

Given the adjustment to the CPO boundary agreed with you previously and the confirmation of the previous CPO, the Council are hoping to make an unopposed CPO (2) which would therefore not require a Public Inquiry with an Inspector making a decision based on the Council's case (it is no different to the original CPO save for including some quite small land interests abutting the highway at the A27 roundabout to the North of the site).

I look forward to hearing from you."

7.131 Mr Rees then emailed Mr Denning on 22 March 2023 as follows:

"I would be grateful if you could you provide the specific details setting out the basis on which you appear to be representing Chichester District Council.

Please also provide the name of the Council Officer to whom you report / or who instructs you?

Please could you confirm if the RICS registration number below relates to you?

And could you explain precisely how you learned of potential discussions that may be in prospect between residents of Saxon Meadow and elected representatives of CDC?

These are urgent questions, so your prompt responses would be most helpful."

7.132 I responded directly on 22 March 2023 in the following terms:

"Thank you for your email.

I am instructed by the Council and, as you may be aware, presented evidence on behalf of the Council at the last Public Inquiry concerning this site. I liaise with Mr Frost of the Council and Ms Weber who is the Council's appointed solicitor in advising the Council as to the securing and exercise of compulsory purchase powers.

There was a Council Meeting on 21 March 2023. During that meeting, Councillor Oakley requested that a Council representative met with the Saxon Meadows Tangmere Limited. Mr Frost took this action on and has asked me to represent the Council and arrange this meeting.

Mr Denning has previously discussed compensation matters with Mr Thomas (Henry Adams) who we understood represented SMTL. Ged therefore, has first-hand knowledge of the Saxon Meadows development and concerns raised to date. I asked him to contact SMTL in the first instance albeit I am intending to be in attendance as well. Both Ged and I are specialists in compulsory purchase matters.

It would be helpful for me to understand your specific concerns so that I can clarify any issues with Mr Frost and his colleagues should they lie outside my immediate knowledge. In this regard, the only difference between this CPO and the existing CPO is the inclusion of additional land at the A27 junction. As such, the proposals, insofar as they effect Saxon Meadows, have not changed from those previously discussed. However, I fully appreciate that residents may find the uncertainty of compulsory purchase matters unsettling and I welcome the opportunity for dialogue.

Unfortunately, I am unavailable next week but would be grateful if SMTL could come back to Ged and me with proposed dates thereafter and a venue.

7.133 In the meantime, a meeting was arranged to take place on 4 April 2023. Neither Mr Denning nor I were present at that meeting.

7.134 In this regard, I note that the SMTL objection has helpfully included notes of that meeting at pages 24 to 33 of the “Exhibit to CPO Objection”.

7.135 This note clearly demonstrates that there was a full and detailed meeting discussing a range of topics. Bearing in mind that the only remaining matter in dispute between the Council and SMTL concerns the reimbursement of fees, I note that these notes (as prepared by SMTL) state on the third paragraph of page 25 that:

*“TP⁶³ asked if CDC would pay any professional fees incurred by SMT Ltd. YW⁶⁴ confirmed that CDC as **the acquiring authority had some obligations to reimburse professional costs with any reasonable negotiation**⁶⁵ as was the case when dealt with Andrew Thomas⁶⁶ in the first CPO. YW recall that in first CPO that involved the relinquishing of part of plot A which led to withdrawal of SM objection. YW confirmed **however that it was not CDC responsibility to pay for objection costs**⁶⁷. JW asked if compensation to SMT Ltd and its residents had been agreed. YW felt this had been made with the SMT representative, who was Andrew Thomas previously and it was best for SM residents to check directly with him.”*

7.136 I have assumed that, as this note was written and voluntarily provided by SMTL, they consider it to be accurate. It is reasonable therefore to conclude that SMTL were fully aware of the Council’s approach to the reimbursement of fees incurred by SMTL prior to them engaging any advisors.

⁶³ Terry Pickering – Saxon Meadow resident and leaseholder, shareholder and officer of SMTL

⁶⁴ Yohanna Weber – solicitor for the Council

⁶⁵ My emphasis

⁶⁶ SMTL’s original advisor

⁶⁷ My emphasis

7.137 Mrs Rendall emailed the Council on behalf of Mr Pickering on 6 April 2023 advising that the directors and shareholders of SMTL had, that week, appointed Mr Olden as their new surveyor in place of Mr Thomas. I was then contacted by Mr Olden of Olden Property Consulting Limited on 11 April 2023 advising that he had been instructed by SMTL and questioning why land was required from SMTL.

7.138 Mr Denning responding on 12 April 2023 with a detailed email summarising the position. Points 8 and 9 (out of 10) of that email explained that:

“8 There have been some positive discussions with SMTL via Mr Andrew Thomas. There was an attempt to agree terms to acquire the necessary interests by private treaty. I myself met with residents on site post confirmation of CPO1 to discuss other potential aspects that were of concern about the wider development and boundary treatments etc. However, these discussions stalled when the Council identified issues with land that had been incorrectly identified as adopted highway by the Highways Authority. CPO1 has not been implemented but is live and capable of being executed.

9. The simplest explanation that can be provided as to the present situation is that the CPO2 Order is necessary to incorporate the same land interests as CPO 1, but also seeks to acquire a small additional area of further land adjacent to the A27 roundabout junction in the north of the TSDL. This land was originally excluded from CPO1 as it was understood from adopted highway plans, issued by the Highways Authority at that time, to be adopted highway maintained at public expense in the ownership of National Highways. Following the confirmation of CPO1 it was indicated by National Highways that the records maintained by the Highways Authority were incorrect. This meant that two sections of the land (now Plots 19D and 19E in the Schedule to the Order) that had previously been understood to be adopted highway were incorrectly recorded as such. Therefore, the Order has been brought forward to acquire this land together with the other land interests falling within CPO1 and other land necessary to ensure access to the adopted highway is achieved.”

7.139 Mr Denning issued a fee undertaking to Mr Olden on 13 April 2023 which stated:

“A fee undertaking of up to £2,000 + VAT for professional fees is offered at this stage to providing advice to SMTL in respect of the compulsory purchase process and their compensation entitlement. There is an expectation that this will result in progressing discussions with the AA team.

The above is conditional on the following:

-
- *Fees only for you as compulsory purchase adviser will be considered **and will exclude any time relating the preparation of or advice in respect of the submission of an objection to the CPO**⁶⁸*
 - *SMTL/Olden Property acting in good faith to facilitate agreement, especially given the nature and extent of previous agreement with SMTL*
 - *Provision of time records*

We appreciate you may have spent some time reviewing documents and had initial consultation with your client which is reflected in the above undertaking. We hope this is sufficient comfort for you to have the proposed meeting tomorrow. “

7.140 In light of this, Mr Olden attended a Teams meeting the following day (i.e., 14 April 2023).

7.141 Mr Denning and I explained, during the Teams Meeting, the terms of the previous agreement reached with SMTL and the planning need for the inclusion of part of the field for the purposes of providing the community orchard. It was apparent that Mr Olden was unaware of the previous agreement reached with SMTL and was at great pains to distance himself and his client from that agreement.

7.142 Mr Olden responded that he was not instructed as the date of the previous agreement and that some of the residents of Saxon Meadows had changed such that they were not involved in the previous agreement. However, this is not correct.

7.143 In this regard, I have set out below all completed transactions involving objectors that have taken place in Saxon Meadows since the January 2021 bearing in mind that the First Inquiry took place in early September.

- Mr Rees completed the purchase of 4 Saxon Meadows on 5 January 2021. This was nine months prior to the First Inquiry and eleven months prior to the Compulsory Purchase Order Decision. It is therefore inconceivable that Mr Rees was not aware of the Original CPO and the terms of the agreement reached by SMTL.
- Ms Davey completed the purchase of 8 Saxon Meadows on 22 July 2021. Whilst this was after the withdrawal of the objection to the Original CPO it was prior to the First Inquiry and she would therefore have been fully aware of the Scheme and had the ability to submit an objection.

⁶⁸ My emphasis

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- Ms Mills-Rendall and Mr Hutchinson completed the purchase of 20 Saxon Meadows on 1 January 2022. They should have been made aware of the scheme by their conveyancing solicitors.

7.144 It is therefore the case that Ms Mills-Rendall and Mr Hutchinson are the only objectors who purchased their property after the First Inquiry.

7.145 Furthermore, whilst Ms Davey, Ms Mills-Rendall and Mr Hutchinson could not take part in the previous proceedings, it is reasonable to assume that they would have been advised by their conveyancing solicitors and would be aware from their inquiries of SMTL that the Council intended to compulsorily acquire part of the meadow for the purposes of creating an orchard.

7.146 Notwithstanding these points, Mr Denning, Mr Home (representing the Council) and Mr Abbey (Countryside) met Mr Rees, Mr Pickering, Mr Wolfenden, Ms Ayton and Mr Olden at the Saxon Meadows development on 19th May 2023 to discuss the various concerns raised by SMTL and the residents.

7.147 Immediately prior to that meeting, Mr Olden, on the 16 May 2023 had advised that he intended to issue an invoice to the Council in accordance with the fee undertaking. Mr Denning responded on 17 May 2023 as follows:

“As to reimbursement of ‘All costs’ incurred by SMTL, you will appreciate given the above commentary, this is not something that can be provided. An initial undertaking for reasonable professional fees has been provided (to be reviewed as discussions continue) in relation to the proposed compulsory acquisition of Plot 9.”

7.148 Mr Olden then issued an invoice to which Mr Denning responded:

“The undertaking was for reasonable fees to provide advice to your client in relation to the proposed compulsory acquisition of land within the redline boundary in which they/it has an interest. It was hoped that this would lead to potentially agreeing terms for the purchase of those interests.

*It is seemingly the case that issues around the extent of rights/ownership are of principal concern to them. I appreciate that the AA have had to provide a response to this matter but **to be clear the AA is not providing an undertaking for professional fees to resolve any disputed interests in land within the CPO. That is a private matter for SMTL/residents and any adjoining land owners.**⁶⁹”*

⁶⁹ My emphasis

7.149 Countryside emailed Mr Olden on 2 June 2023 to advise that they had drafted some Heads of Terms which they needed to discuss with the Council, prior to issue, in light of the meeting on 19th May 2023 and proposed a further meeting onsite to discuss.

7.150 Mr Olden responded on 5 June 2023 welcoming these proposals but advising that he needed a further undertaking on fees albeit he did not specify an amount.

7.151 Mr Denning issued Heads of Terms on 13 June 2023 which included an undertaking to provide for SMTL's reasonable professional fees (with a cap to be agreed) to complete the agreement.

7.152 These terms provided that SMTL and all the Saxon Meadow residents would withdraw their withdrawals upon entering into the agreement. The Council, developer and I all understood that Mr Olden was clear that the Heads of Terms comprised the agreement and, as such, the objections would be withdrawn at the same time that the Heads of Terms were signed.

7.153 I have attached a copy of these Heads of Terms at **Appendix 11**.

7.154 It was not possible at this stage for the Council to undertake to remove Plots 9, 9A and 9B from the Order Map as it was still consulting internally as to the potential success or otherwise of any the necessary variation being acceptable in planning terms.

7.155 The Council emailed Mr Olden on 14 June 2023 to provide a further fee undertaking as follows:

"I confirm that Chichester District Council acting as Acquiring Authority provide a fee undertaking of up to £6,750 + VAT for Olden Property professional fees to provide advice to Saxon Meadows Tangmere Limited in respect of the compulsory purchase process and the latest proposal by the Acquiring Authority to acquire interests within the boundary of the Chichester District Council (Tangmere) (No 2) Compulsory Purchase Order 2023.

*The Acquiring Authority also provide a fee undertaking for the reasonable legal fees of Keystone Law advising Saxon Meadows Tangmere Limited in respect of the same matter. **Please provide an estimate of those fees.**⁷⁰*

Further undertakings for reasonable professional fees can be provided thereafter should this be required.

The above is conditional on the following:

⁷⁰ My emphasis

*Reasonable Professional Fees for Olden Property as compulsory purchase adviser and Keystone Law as legal adviser will be considered, **excluding any time relating the preparation of advice in respect of objections to the above CPO**⁷¹*

Provision of time records”

7.156 No response was received on this point until an email was sent by SMTL on 10 July 2023 direct to the Council advising that SMTL had incurred £11,226 of legal fees from Keystone Law.

7.157 Following a series of exchanges Mr Olden emailed the Council on 14 July 2023 advising that:

*“The requirement is that these **fees are capped, evidenced, reasonable and do not relate to objecting to the CPO.**⁷²If you are now saying SMTL will only be reimbursed when ‘the final signing of an agreement withdrawing the objection’ then I would recommend I immediately stop working on this case. You are essentially putting SMTL in a ransom position to professional costs. I am working on dozens of cases in advance of a CPO and my reasonable evidenced fees are paid directly by the acquiring authority or development partner and they are not linked to removing an objection or reaching a settlement, they are linked to reasonably incurred fees to get to that position. Sometimes you get there sometimes you don’t.*

*Please confirm **reasonable fees,**⁷³ both legal and surveying will be paid by the Council on receipt of the invoice either from the solicitor or surveyor directly or from SMTL.*

7.158 The Council and I interpreted this as meaning that Mr Olden accepted the principles of reimbursable fees being reasonable. However, despite his reference to fees being evidenced, no evidence was provided.

7.159 There then followed a series of exchanges before Mr Denning spoke direct to Mr Olden on 17 July 2023 and followed up with an email in which he stated:

*“The current undertaking (attached) provided by CDC stated that such information must be presented which is perfectly normal practice as I am sure you will agree. The undertaking also **requested a fee estimate from Keystone Law which is yet to be received**⁷⁴as I understand. All of the above would be helpful if you could please liaise with SMTL.*

⁷¹ ibid

⁷² ibid

⁷³ ibid

⁷⁴ ibid

Once we are in receipt of that information, these costs will then be considered against the undertakings offered.”

7.160 In effect, SMTL and Mr Olden were asking for a fee undertaking from the Council in respect of legal fees, which the Council were prepared to provide, but Keystone Law had still not provided any evidence to assist the Council in providing a specific figure.

7.161 Mr Denning emailed revised Heads of Terms on 26 July 2023 to Tom Olden. These Heads of Terms reflected that the Council had submitted a revised planning application on 26 June 2023 seeking the relocation of the proposed Community Orchard such that the acquisition of Plots 9, 9A and 9B would no longer be required.

7.162 I have attached a copy of these Heads of Terms at **Appendix 12**.

7.163 To my surprise Keystone Law, rather than Mr Olden, responded on behalf of SMTL on 8 August 2023 and made wholesale changes to the proposed Heads of Terms that went against the principles of agreement reached with Mr Olden and against the core principles of what had been discussed. Mr Denning and I were unclear as to why Keystone Law were involved at the Heads of Terms stage rather than Mr Olden who should have been capable of dealing with such matters and was actively involved in the negotiations.

7.164 In this regard, Mr Denning was contacted by Ms Harper of SMTL who appeared to be concerned at the level of cost being incurred by SMTL.

7.165 Mr Denning informed Ms Harper that such an amount was grossly excessive relative to the work that ought to have been undertaken at this stage. He then followed up with an email on 15 August 2023 to Ms Harper as follows:

“Further to our chat yesterday I said I would follow up with an email.

As you know Tom Olden received an undertaking for his reasonable professional fees to assist SMTL with its dealings with the Acquiring Authority (CDC). This is good practice and a recommendation in Government guidance in these situations when there is the threat of CPO over interests in land. The purpose of that arrangement is facilitate discussions around the impact of CPO and to attempt to reach a voluntary agreement for the acquisition of land and interests in advance of any CPO being confirmed and executed.

To date that undertaking has been for stages of work and Tom has submitted one invoice for payment. Tom, as an experienced CPO surveyor, understands the usual requirement as part of the same professional good practice to provide supporting information along with any invoices,

recording time/activity to be reviewed by the Acquiring Authority. His invoice was approved for payment that exercise having been completed and CDC satisfying themselves those professional fees were reasonable and proportionate.

A separate fee undertaking was also set out by the CDC for legal fees to support SMTL (see attached email). It was made clear that this undertaking had conditions as follows:

- Reasonable Professional Fees for Olden Property as compulsory purchase adviser and Keystone Law as legal adviser will be considered, excluding any time relating the preparation of advice in respect of objections to the above CPO*
- Provision of time records*

The email also requested an estimate of fees to be provided in each case and Mr Olden provided his own interim estimate. We have not had the same from Keystone Law.

To date you have provided two invoices in the name of SMTL for professional fees that can only be assumed to be related to advice from Keystone Law, which you confirmed in our call. Following the first invoice I made contact with Tom Olden to ask that SMTL/Keystone were made aware of the same protocols as he was, in accordance with the undertaking.

Please therefore can you provide copy invoices from Keystone Law including time recordings/narrative as to how those fees have accrued. By way of an example I have included a copy of Mr Olden's invoice for reference. CDC will then be able to undertake their review to ensure those fees are reasonable and proportionate. Could I highlight in particular that CDC have not provided an undertaking for any support that SMTL may be getting in relation to objecting and maintaining an objection to the CPO or preparation of any arguments/submissions/evidence for any subsequent CPO Public Inquiry.

If you or the Directors of SMTL would like to discuss any of the above then please do not hesitate to contact me."

7.166 Planning permission in respect of application ref: 20/02893/OUT was granted on 16 August 2023 enabling the relocation of community orchard off Plots 9, 9A and 9B. As such, the main issue identified by SMTL was now addressed.

7.167 Ms Harper of SMTL emailed Mr Denning on 17 August 2023 enclosing invoices from Keystone Law that had been requested in his email of 15th August 2023.

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- 7.168 Invoice 172222/23/BBG was dated 3 July 2023 and amounted to £3,726.00. It was stated to relate to *“Legal services provided during the period from 04/05/2023 to 27/06/2023 in connection with advice and assistance to progress objection to the Chichester District Council (Tangmere) (No 2) Compulsory Purchase Order 2023; liaising with you and other re-negotiations with developer and acquiring authority.”*
- 7.169 Whilst all the time was incurred by Mr Garbett, his charge out rates varied from £450 p/h to £485 p/h with no explanation or obvious reason for these variations.
- 7.170 Invoice 173564/23/NDB was dated 25 July 2023 and amounted to £10,837.14. It was stated to relate to *“Legal services provided by Nicholas Brown and Ben Garbett from 5th June to 25 July 2023 in connection with a review of documentation provided in respect of the CPO. A review of relevant titles. On site meeting to review site layout and access issues and providing initial views on access position. Review of initial draft heads of terms and discussion of potential amendments to the same.”*
- 7.171 Unlike the previous invoice (172222/23/BBG) both Mr Garbett and Mr Brown were charged at a flat rate of £450p/h.
- 7.172 I notice from the timesheet entries that Mr Garbett provided advice to Mr Olden on 18 July 2023 described as *“Email exchanges with you and TO to clarify legal position on fee recoverability.”*
- 7.173 It is therefore reasonable to assume that when Mr Olden then emailed Mr Denning on 23 August 2023 stating *“Please disregard invoice no 172222/23/BBG ref SAX9/1. This invoice is for objection costs and therefore is not covered by the fee undertaking and should not have been sent through”* he did so in light of the advice provided by Mr Garbett on, inter alia, 18 July 2023. This is notable bearing in mind that Keystone Law are now arguing that all fees are reimbursable contrary to the previous understanding.
- 7.174 Mr Denning emailed Keystone Law on 31 August 2023 in response to their amendments to the Heads of Terms. This email was marked *“without prejudice”* hence it would be inappropriate for me to comment further.
- 7.175 Mr Olden emailed Mr Denning on 8 September 2023 with another invoice from Keystone Law. This invoice (ref: 176076/23/NDB) was dated 29 August 2023 and amounted to £3,594. It was stated to relate to *“Legal services provided by Nicholas Brown and Ben Garbett from 25 July 2023 to 29 August in connection with ongoing advice and assistance in respect of the proposed CPO. To include a*

review of additional titles and liaising with you in respect of amendments to the draft Heads of Terms and thereafter sending the same to Ged Denning. “

7.176 Mr Olden advised that:

*“Further to our telephone conversation two weeks ago, I have attached copies of the invoices that have been submitted to date in respect of the legal advice relating to the property aspects of the issues at Saxon Meadow. **To be clear, these exclude any costs associated with the objection to the CPO.**⁷⁵*

In terms of further fees, Keystone has confirmed that the time that will be required to agree the final Heads of Terms and then to incorporate that into an acceptable agreement will depend to a large extent on the approach taken by CDC and the developer. Provided people proceed on a reasonable basis, they would hope that the Heads of Terms can be agreed within a further five hours and the agreement itself should also be capable of being agreed within another five hours. An indication of further fees is in the region of £4,500 & VAT based on further time to be incurred by Keystone at a rate of £450 & VAT per hour. This should not be considered as a cap but as a reasonable estimate of the likely further fees on the basis that a reasonable approach is taken to the further negotiations.”

7.177 At this stage, therefore, Keystone Law had raised £18,157.14 in invoices of which £14,431.14 was being claimed from the Council together with a further estimate of £4,500 + VAT.

7.178 In my opinion, this was all work that could and should have been carried out by Mr Olden/a surveyor at considerably less than £450 p/h and there was still no need to involve a solicitor at this stage as Heads of Terms had not been agreed.

7.179 Mr Denning responded to Mr Olden on 8 September 2023 stating:

“There is very limited merit in labouring on points of negotiation, that is unless we are assured that objections will be withdrawn comprehensively. I have asked for clarification on that point as a priority, before much further fees are incurred, as my client would need to then confirm its position on fee undertakings. It is not reasonable to expect my client to pay for further professional fees if there is limited benefit in the watered-down agreement.”

7.180 The problem that had arisen was that SMTL were trying to separate out SMTL as an entity from the individual leaseholder and shareholders in order to create a situation that would allow SMTL to

⁷⁵ My emphasis

agree terms with the Council whilst individual residents maintained their individual objections. My point in response to this was that the terms being proposed are ultimately for the benefit of the residents and there was little point in agreeing terms that allowed individual residents to step away from their position as shareholders in SMTL simply to carry on with their objections bearing in mind that the grounds of those objections would be met by the terms being proposed.

7.181 In this regard, Mr Denning wrote to the resident objectors individually on 26 September 2023, providing an update on discussions with SMTL and the proposed Heads of Terms. This confirmed that, having secured an amended planning permission removing the proposed community orchard from SMTL land, the Council would seek a modification to CPO 2, removing Plot 9. The letters also confirmed that the Council considered satisfactory proposals had been made to resolve issues raised concerning access rights to Saxon Meadows from Church Lane.

7.182 I have attached an example copy of this letter at **Appendix 13**.

7.183 I had a Teams meeting with Mr Olden and Mr Rees on 27 September 2023 together with Mr Callcutt as the representative of the developer. We discussed the need for all objections to be withdrawn and I explained that I would be advising the Council not to sign the Heads of Terms until and unless all the residents agreed to withdraw their objections. This was to encourage the withdrawal of objections in order to avoid incurring Inquiry time discussing matters which had already been resolved. As such, it was my understanding at the end of that meeting that both Mr Olden and Mr Rees fully understood my position and that I had their agreement.

7.184 In this regard, I was aware that SMTL had arranged an Extraordinary General Meeting for the residents/leaseholders/shareholder of SMTL to be held on 23 October 2023 to discuss the proposed terms. I therefore redrafted and reissued Heads of Terms for SMTL to discuss with the Saxon Meadows residents/SMTL shareholders on 28 September 2023. Mr Rees responded stating *“Many thanks for this, and a very useful discussion yesterday. Will review this and discuss with neighbours.”*

7.185 I have attached a copy of these Heads of Terms at **Appendix 14**.

7.186 It is important to stress that clause 15 (2) of the Heads of Terms provided that the agreement was conditional upon the *“Withdrawal of all CPO Objections made by SMTL and residents/leaseholders.”* This phrase was drafted in light of my meeting with Mr Rees and Mr Olden where it was made plain, and I had assumed properly understood by them, that the reference to *“agreement”* was to the Heads of Terms and not a formal Deed of Agreement and this was the understanding that Mr Rees took away with him.

7.187 This point was reinforced in a subsequent email exchange dated 5 October 2023 where I confirmed to Mr Olden, Mr Wolfenden, Mr Pickering and Mr Rees that: *“As we have discussed at length, my advice to the Council remains that they will only sign the agreement when SMTL have signed and all remaining objections have been withdrawn. A conditional withdrawal is not a withdrawal and the Inspector will still be forced to deal with them so that is of no assistance. The withdrawals must be unconditional.”* A copy of this email is attached at **Appendix 18**.

7.188 In the meantime, Mr Olden had emailed the developer on the 28 September 2023 enclosing three invoices the third of which was invoice ref:178198/23/NDB which was dated 25 September 2023 and amounted to £3,168. It was stated to relate to *“Legal services provided during the period from 30/08/2023 to 25/09/2023 in connection with ongoing advice and assistance in respect of the proposed CPO. To include further review and amendment of the draft Heads of Terms.”*

7.189 The total amount charged by Keystone Law was now therefore £21,325.14.

7.190 However, Mr Wolfenden then emailed the Council on 5 October 2023 enclosing an additional invoice ref:1716418/23/BBG dated 28 June 2023 for the amount of £21,921. This was stated to be in respect of *“Legal services provided during the period from 11/04/2023 to 27/04/2023 in connection with advice and assistance in preparing an objection to the Chichester District Council (Tangmere) (No 2) Compulsory Purchase Order 2023.”*

7.191 It was clear from the attached timesheets that this related to the drafting of the objection letter. In this regard, there is no reason why Mr Olden could not have drafted this objection and typical fees for the preparation and submission of objections whether drafted by a solicitor or a surveyor are in the region of £3 to £4,000 +VAT maximum.

7.192 The total amount outstanding and due to Keystone Law (disregarding Mr Olden’s fees) was therefore £39,617.64 despite the fact that the Heads of Terms had still not been agreed in a form suitable for passing over to a solicitor. In this regard, Mr Olden emailed on the 9 October 2023 advising that he had *been “...instructed at this point to claim only...”* £14,781.45 + VAT in respect of Keystone Law’s costs.

7.193 However, Keystone Law advised Countryside’s solicitor on 17 October 2023 that, completely contrary to all the previous discussions and Mr Olden’s emails, SMTL required reimbursement of all fees howsoever incurred and regardless as to what they related to.

7.194 Bearing in mind that Head of Terms had still not been agreed such that it was questionable as to why Keystone Law were involved at all and Mr Olden had, in writing and orally, agreed an entirely

different position, this was completely unexpected even before the quantum of fees charged by Keystone Law was taken into account.

7.195 I responded by writing to Mr Olden on 18 October 2023 stating:

“I understand from conversations between CPUK’s solicitors and Keystone Law that the structure set out in the attached email and Heads of Terms is acceptable to SMTL. These address the key points of your client’s concerns regarding the withdrawal of the objections by both SMTL and the leaseholders and the timing thereof together with the payment of costs.

It is therefore extremely disappointing that, having reached a common position on all other matters, your client’s solicitor has indicated to CPUK’s solicitor that, despite this, your client will not sign the Heads of Terms and withdraw their objection unless all fees are recovered, howsoever incurred and including those for objecting to the CPO. It is even more disappointing that this change of direction, which directly contradicts the position as agreed with you, has been raised by your client at the very last minute.

I have seen invoices that amount to £12,596.06 + VAT for you and £33,073.95+ VAT for KL⁷⁶ giving a current total of £54,745.06 + VAT but KL have told us that they are seeking in excess of £40K+VAT for their fees and I have no doubt that you will have racked up further costs such that the total cost, at you current trajectory, is going to be over £70,000 + VAT.

I have previously commented in respect of fees and made the point that, in addition to being excessive, it is clear from the timesheets that they also include significant objection costs and costs relating to other matters that are nothing to do with CPO 2. I would remind you that you explicitly maintained that you were instructed that these costs did not form part of your client’s cost claim”

7.196 I have attached a copy of this letter at **Appendix 15** and an email from Mr Webster explaining the mechanism for payment and withdrawals as attached to that Letter at **Appendix 16** together with the remaining appendices to that letter at **Appendix 17**.

7.197 Point 3 of the email from Mr Webster was clear in stating that the Council would sign the Heads of Terms after SMTL and the Saxon Meadows residents had withdrawn their objections. This was fully in accordance with the agreement that had been reached between Mr Rees, Mr Olden and me during our Teams call on 27 September 2023 and as reflected in the Heads of Terms issued on 28 September 2023.

⁷⁶ As set out in the preceding paragraph the correct figure is £39,617.64.

7.198 Later that same day, Keystone Law wrote to Countryside’s solicitor stating:

*“Further to our telephone call yesterday I note that your client’s position on costs is unchanged. My client insists, however, that **all professional fees will need to be cleared as the price for completion of the agreement simultaneously with the withdrawal of the CPO objections.**⁷⁷ The amount of costs recovered should not be subject to a cap, nor is it appropriate to exclude the CPO objection fees from the overall reckoning.”*

7.199 I interpreted this as meaning that SMTL would not withdraw their objection unless the Council paid the entirety of Keystone Law’s fees contrary to everything that had been discussed and agreed up to that point with Mr Olden and Mr Rees. In my opinion this is not a reasonable approach.

7.200 I have attached a copy of this letter at **Appendix 8**.

7.201 The SMTL shareholders/residents/leaseholders meeting took place on 23 October 2023. I then received an email, as attached at **Appendix 20**, from Mr Olden on 24 October 2023 wherein he stated:

*“**My client will sign the Heads of Terms⁷⁸ circulated by yourself on 18th October⁷⁹**, subject to an increase on the fees offered. Could you please come back with an improved offer on the fees incurred by SMTL in getting to this position?*

I can confirm that SMTL has convinced the 11 residents to sign the attached agreement which can be held in escrow as per your suggestion.

*I look forward to hearing from you on the fee position and trust wer (sic) **can exchange signed Heads of Terms be (sic) the end of this week.**⁸⁰*

7.202 However, I also received an email from Mr Wolfenden on the same day wherein he advised that SMTL had signed the Head of Terms but SMTL had not withdrawn their objection and would not do so until a formal Deed of Agreement had been completed. I have attached a copy of this email at **Appendix 21**.

7.203 SMTL have not released a copy of the signed Heads of Terms for completion by the Council nor have they released a copy of the EGM minutes despite being asked to do so.

⁷⁷ My emphasis

⁷⁸ These are the Heads of Terms attached at Appendix 17

⁷⁹ My emphasis

⁸⁰ My emphasis

7.204 Again, I must stress that the Heads of Terms that were presented to the EGM were drafted in light of my discussions with Mr Rees and Mr Olden on the basis that SMTL and the Saxon Meadows residents would withdraw their objection(s) prior to the Council signing the Heads of Terms.

7.205 It would appear that Keystone Law are advising SMTL that the Council would not honour the Heads of Terms and need to be tied to a formal Deed, which of course requires further legal fees for drafting and agreement, but, in any event, keeping negotiations going as long as possible in the belief, contrary to the advice of their Counsel, that all costs are claimable such that the Council will have to pay whatever is demanded of them. This is not reasonable behaviour and completely out of proportion to the complexity of this matter.

7.206 I made a “without prejudice” offer on fees to Mr Olden on 26 October 2023. This has been rejected out of hand by SMTL, presumably on the advice of Keystone Law. In this regard Mr Olden has advised me that SMTL will not withdraw their objection under any circumstances unless the Council reimburse all of SMTL’s legal and surveying fees and clearly implied that they are not prepared to consider anything less than full reimbursement. In this context, he has been unable to confirm exactly what fees SMTL are seeking but he has not denied that they are likely to be significantly in excess of £70,000 + VAT.

7.207 Mr Olden wrote to me on 10 November 2023 making various points and attaching a formal opinion from Counsel in respect to the recovery of costs. Rather than repeat the entire contents of this letter I have attached this letter at **Appendix 23** and the Counsel opinion at **Appendix 24**.

7.208 I responded by email on 13 November 2023⁸¹ wherein I pointed Mr Olden back to his Counsel’s advice stating:

*“SMTL also appears, instead of seeking to respond on the Council’s “without prejudice” offer (for engaging and seeking to progress matters as outlined by Mr Wolfenden); to have spent time since our “without prejudice” offer **incurring yet more costs instructing Counsel** for an opinion as to SMTL’s costs position. The Council was not informed of your intention to incur this cost and we do not believe this was reasonable when SMTL are already being advised by Keystone Law within whose capability such advice should lie. In any event, **SMTL’s Counsel’s advice contradicts your stance in respect of costs.**”*

⁸¹ See Appendix 25

On this, we note you have not provided a copy of your Counsel's instructions or set out the information provided to him hence it is impossible for me to know whether he was provided with full details of the issues.

Notwithstanding this, I note that, even though Mr Byass's role is to put the best possible case forward for SMTL as an advocate, he does not state anywhere that SMTL are entitled to their full costs, and he does not comment at all on the amount of costs offered to SMTL. In fact, he is totally aligned with my stance that claimable costs must be reasonable, are subject to negotiation and are open to detailed assessment. He even states, at paragraph 15 that **"It remains the case that *even when costs are ordered, they must have be (sic) reasonable in amount*⁸². That is, even if costs are in principle payable, i.e., they have been reasonably incurred and meet the principles in Gibson, *costs which cannot be reasonably justified are not required to be paid*⁸³."** Whilst I am grateful for his confirmation of the position, I am surprised that you have provided his advice to me as this is an emphatic endorsement of the Council's position and demonstrates that the Council has acted entirely appropriately and fairly in the offers that have been made. **The fact that you are still maintaining your position in light of this advice is further evidence of unreasonable behaviour.**

The Council has considered what level of cost is reasonable for the work that has needed to be undertaken to secure the proposed terms and offers have been made are "reasonable in amount". In this regard, Mr Byass is clear that the Council is entirely correct to take the stance that costs over and above this are not claimable regardless as to whether they have been reasonably incurred and will be rejected by the courts. **As such, your argument that the Council should pay whatever SMTL demand is fatally undermined by your Counsel and does not stand scrutiny.**

I should also point out that you have, in any case, declined to provide any confirmation of the currently claimed amounts despite being asked repeatedly, by me, to do so. The Council has no idea what SMTL has actually incurred and yet you are asking the Council to reimburse in full. This is unreasonable.⁸⁴

I trust that you and SMTL will now reconsider your position and seriously consider the Council's offer of costs that they consider are "reasonable in amount".

7.209 I have attached a copy of this email at **Appendix 25**.

⁸² My emphasis

⁸³ My emphasis

⁸⁴ My emphasis

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- 7.210 I received an email from Keystone Law on 13 November 2023 to which was attached revised Heads of Terms. No explanation was provided as to why the Heads of Terms were being revised yet again bearing in mind that the previous Heads of Terms had already been signed by SMTL and were therefore agreed.
- 7.211 On the 14th November 2023, the Council wrote comprehensively to both SMTL and all leaseholder residents of Saxon Meadows setting out its understanding of the latest position with the proposed Heads of Terms. This clearly stated that its preference was to reach an agreement to the satisfaction of the parties but that both resident objectors and SMTL would need to compromise on its stated position and comprehensively withdraw objections ahead of the public inquiry, this being the principal benefit to the acquiring authority in offering the terms it proposed.
- 7.212 The Council also provided a full Deed to SMTL ready for signature. I have provided a copy of the Deed at **Appendix 26** and a sample copy of the covering letter to the objector residents at **Appendix 27**.
- 7.213 The main reason for this was that the Council are extremely concerned that residents do not appear to be being provided with accurate information as to the Council's proposals and the implications thereof to them as shareholders of SMTL particularly in respect of their cost exposure.
- 7.214 Now that the Council has addressed Keystone's concerns as to the intention of the Council to honour the Heads of Terms by issuing a formal Deed, I had hoped that this matter could be resolved. However, despite SMTL having commissioned Counsel advice which supports the Council's approach to fees, Keystone Law are persisting with the argument that the entirety of SMTL's fees are reimbursable in direct contradiction to the advice from Mr Byass.
- 7.215 In this regard, the Council has, to date, paid Mr Olden £6,660.02 and provided a fee undertaking for a further £4,230 to Mr Olden and £17,737.70 for Keystone Law amounting to £28,627.70. By any measure, this is a generous offer and fulfils the test of reasonableness. As confirmed by the barrister advising SMTL *“It remains the case that even when costs are ordered, they **must** have be (sic) **reasonable in amount**. That is, **even if costs are in principle payable**, i.e., they have been reasonably incurred and meet the principles in Gibson, **costs which cannot be reasonably justified are not required to be paid**”⁸⁵*
- 7.216 Bearing in mind that SMTL have not provided full detail as their fee liability and no satisfactory explanation or justification has been provided for the level of fees claimed, I have discussed this

⁸⁵ See paragraph 15 of the advice by Mr Byass at Appendix 24.

matter with the Council and am satisfied that the offers made to SMTL in respect of fees are entirely reasonable having regard to the complexity and nature of the work undertaken including the fact that SMTL comprises 28 shareholders all of whom are presumed to have voting rights and stand to benefit from the proposed terms.

7.217 However, Keystone Law wrote to the Council's solicitors at 11:38AM on the 20 November 2011 stating "Thank you for sending through a draft agreement but before I deal with that, I do need to make it very clear **that any suggestion that the Heads of Terms were agreed is strongly denied. In particular, the assertion that the terms of John Webster's email of 16 October were agreed by us is also strongly denied**⁸⁶. That said, I do not think there is anything particularly useful in continuing to debate the status of the Heads (from a time and indeed a costs point of view) particularly now a draft agreement has been prepared and sent through and in respect of which, we can hopefully manage to move forward."

7.218 I have attached a copy of this email at **Appendix 30** and a copy of the tracked Agreement at **Appendix 31**.

7.219 It is notable that Keystone Law have struck out, within the proposed agreement, the costs set out in the agreed Heads of Terms and state that "a reference will need to be inserted to the effect that there is no agreement on costs, clause 15.4 will need to be deleted and there would need to be an acknowledgement that costs will be resolved at a later date."

7.220 In addition, Keystone Law are also seeking to delay the withdrawal of objections to an unspecified point beyond the completion of the formal agreement.

7.221 It appears that Keystone Law are now advising SMTL to withhold their withdrawal of objections for the sole purpose of arguing for full reimbursement of fees, including those they are currently incurring in doing so despite of the advice they have received from their Counsel that supports the Council's position and contrary to all principles of reasonableness and proportionality.

7.222 It is clear to me that as long as SMTL and Keystone Law continue to request that the Council provides an open-cheque book for their use, there remains, despite the best endeavours of the Council to bring this matter to a close, limited prospect of these objections being withdrawn despite the fact that the Council has already removed the field from the Order and has undertaken to assist the residents of Saxon Meadows to rectify and regularise access and title issues that pre-existed the Order.

⁸⁶ My emphasis.

Non-Statutory Objectors

7.223 The Council has contacted the individual objectors direct and invited discussions to allay their concerns and enable the potential withdrawal of their objections.

7.224 The Council has not received any response from the objectors and, although it has taken serious account of the points raised, does not consider that it can offer terms or justifiably amend the proposed scheme in a manner that would satisfy their concerns.

8.0 VIABILITY AND DELIVERABILITY MATTERS

8.1 Paragraph 106 of the Guidance sets out that the Secretary of State can be expected to consider:

“the potential viability of the scheme for which the land is being acquired” and that “A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.”

8.2 It is my understanding that the intention of the Guidance is to ensure that a scheme for which compulsory purchase powers are sought will be delivered. As such, the issue is not whether the scheme is viable in planning terms such that it is fully compliant with planning policy requirements, but whether the appointed developer will deliver the scheme.

8.3 Notwithstanding the distinction between the meaning of “viable” from a planning as opposed to a compulsory purchase perspective, it is the case that Countryside have secured a resolution to grant planning permission that delivers policy requirements in respect of affordable housing and section 106 contributions in full. It was not therefore necessary for Countryside to submit any viability reports or testing as part of the planning application.

8.4 Notwithstanding this point, the Council commissioned the Tangmere Viability Assessment dated 3 March 2023 from Knight Frank **(CD/23)**.

8.5 I have prepared Viability Reports and present evidence as part of planning appeal proceedings on behalf of house buildings and developers. In addition, I have provided evidence to the RICS in respect of disciplinary proceedings concerning viability practitioners. I therefore consider that I am able to provide independent expert opinion as to whether the Inquiry can rely upon this report’s conclusions.

8.6 Any viability assessment is only as good as its inputs and future changes in values and/or costs will impact upon the potential viability of a scheme. In this regard, the following matters are particularly relevant:

- The Base Rate as at the date of the Knight Frank Report was 4% and has since risen to 5.25%
- According to the Land Registry, the average price in Chichester has increased from £462,013 to £467,905 (as of August 2023) (1.2%)
- The BCIS Regional TPI (build costs) has increased by 2.1%

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- 8.7 It is therefore the case that the residual land value as calculated by Knight Frank of £30,600,000 may have fallen but, this is unlikely to be significant and market commentators expect residential values to recover and grow such that, by the time Countryside will be able to take possession of the land from the Council and commence residential construction, the viability will further improve.
- 8.8 Notwithstanding these points, I am of the opinion that the calculated residual land of the land with the benefit of planning permission is not unrealistic at £30,600,000. The question therefore arises as to whether this amount would be sufficient to incentivise the various landowners to release their land for the purposes of delivering the development. This amount is referred to by viability and planning practitioners as the “Benchmark Land Value”.
- 8.9 In this case, none of the major landowners benefit from planning permission for alternative development. It is therefore entirely appropriate that the Benchmark Land Value is assessed by reference to the current use of the land which is for farming.
- 8.10 However, planning policy makes an artificial assumption that that the landowners would require a premium over and above the Market Value of the land for its existing use. In this regard, the Council instructed Knight Frank to assume £250,000 per hectare equating to ten times paddock land value. On this basis, it was assumed that the entire TSDL site could be assembled for a cost of £19,000,000 of which the Heaver family land contributed circa £5,925,000.
- 8.11 This approach has no regard whatsoever to actual Market Values. Whilst it is therefore accepted as being helpful in calculating the viability of the scheme from the perspective of deliverability in planning terms and calculating the affordable housing provision and section 106 contributions, it is of limited, if any, assistance in calculating the compensation that would be paid to the various landowners.
- 8.12 I have therefore provided the Council with my assessment as to the amount of compensation that would be likely to be awarded by the Upper Tribunal Lands Chamber and have concluded that the compensation liability is significantly below the assumed Benchmark Land Value adopted by Knight Frank.
- 8.13 This advice is, by necessity, confidential not least as I have considered a wide range of possibilities. I have been hampered in this exercise as Mr Bodley and the Heaver Objectors have failed to engage in any discussions regarding planning and valuation matters hence, I do not know what their true assessment of value actually is or the assumptions that lie behind it and have therefore needed to make various assumptions as to what I think they might argue. However, I am satisfied that my advice is correct, and provides a robust basis of assessment for the Council. In particular, I have

provided a worst-case assessment to the Council and Countryside as to the extent to which there is a risk that the Upper Tribunal (Lands Chamber) takes a contrary view to my own.

- 8.14 I have therefore provided the Council and, as their appointed development partners, Countryside with a wide range of possible scenarios on alternative bases including taking a hypothetical approach to Mr Bodley's arguments and am content that, even if Mr Bodley could persuade the Upper Tribunal (Lands Chamber) that a hypothetical purchaser would consider it to be a certainty that development of the Heaver Objectors' land could be secured without any requirement to provide physical linkage to the adjoining landowners, the Market Value of the Heaver Objectors' land would be significantly below that assumed in calculating the overall Benchmark Land Value as adopted by Knight Frank.
- 8.15 In summary, it is my assessment that Knight Frank has taken a conservative approach to assessing the viability of the proposed scheme and, once account is taken of my assessment that the Benchmark Land Value is significantly in excess of the Council's liability to compensation, it is clear that there is significant headroom. There is therefore more than sufficient surplus available to deliver the scheme and settle a claim from the Heaver Objectors in accordance with the Compensation Code such that it is clearly viable.
- 8.16 However, my understanding of paragraph 106 of the Guidance is that it is primarily concerned with deliverability rather than viability. As such, a scheme may be unviable in planning and/or commercial terms but the developer may still fully intend to deliver the scheme. Conversely, a scheme may be viable in all senses of the word but still be unattractive to the appointed developer.
- 8.17 In this regard I have fully reviewed the evidence of Mr Leach and am aware from my dealings with this project that, if agreement had been reached with the Heaver Objectors, development would have already commenced and be well advanced. The fact that Countryside have been unable to take possession and commence development is solely due to the actions of the Heaver Objectors withholding agreement in respect of their land and preventing National Highways from transferring their land.
- 8.18 In summary, the proposed scheme is viable from both a planning policy and commercial perspective. Furthermore, I am more than satisfied from my dealings with Countryside that they fully intend to implement the scheme as soon as they are able to secure possession of the land required from National Highways and the Heaver Objectors.

9.0 THE HEAVER OBJECTORS

9.1 I have set out below my comments in respect of the objection submitted by the Heaver Objectors and then summarised the current position.

The Objection

9.2 The grounds of objection are set out in the Ashurst letter dated 5 May 2023 and summarised at paragraph 3 of that letter. I have had regard to that summary and make the following observations.

Summary Grounds of Objection

9.3 I have addressed the summary grounds as set out at section 3 of the objection.

(a) the Order is unnecessary;

9.4 The Order is necessary primarily due to the fact that, despite negotiating with the Heaver Objectors for a significant period of time since no agreement has been reached and it is clear that the Heaver family have been advised that they are entitled to receive compensation far in excess of anything that can rationally be considered to be credible.

9.5 Paragraph 2.13 of the objection states that the “...Council now appears to be resiling from the terms it previously offered.” I assume that Ashurst are referring in this comment to the offer made by the Council on 25 August 2021.

9.6 I have already set out the circumstances that informed the making of that offer including the fact that it was made by Countryside, not the Council⁸⁷, and was intended to incentivise agreement. In any event, it was dismissed out of hand by the Heaver Objectors who proceeded to force the First Inquiry which resulted in significant cost and delay to the project.

9.7 I have explained, at length, the Council’s position in respect of compensation assessments and both Ashurst and Mr Bodley are more than familiar with my position. As such, Ashurst would be aware that paragraph 2.13 of their client’s objection is both incorrect and misleading.

9.8 The actual position is that both the Council and Countryside have tried to reach agreement with the Heaver Objectors and proposed terms that have either been rejected or made subject to conditions that the Heaver Objectors’ advisors would know could not be accepted by the Council. In this context I have summarised the various offers made to the Heaver Objectors as follows:

- Heads of Terms offered by Countryside dated 7 November 2018

⁸⁷ See Appendix 3

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- Heads of Terms as agreed with Heaver Objectors' agent issued by Countryside dated 20 October 2020
 - Compensation Code Heads of Terms offered by Countryside dated 25 August 2021
 - Three alternative proposals for acquisition by the Council issued 16 December 2022
 - Heads of Terms for acquisition of plot 19E only by the Council dated 5 May 2023
 - New Heads of Terms for acquisition by Countryside issued 16 August 2023
 - New Heads of Terms for acquisition by the Council issued 21 August 2023
 - Revisited proposals⁸⁸ for the Council to voluntarily acquire Plot 19E and service GVD in respect of the retained Heaver Objector plots pursuant to the Original CPO issued 24 October 2023

9.9 This list does not include the various counterproposals made by Mr Bodley and Ashurst on behalf of their client.

9.10 In addition, the Council had agreed terms to acquire the necessary land from National Highways but, as I have already set out, the Heaver Objectors frustrated the transfer by alleging, incorrectly, that the Council was seeking to prevent them accessing their land and then issued proceedings preventing the transfer.

9.11 It may or may not have been the case that the proceedings were intended to improve their negotiating position but, having been engaged in negotiations since before the First Inquiry proceedings, and bearing in mind the history of the TSDL site, I have little, if any, confidence that voluntary terms will be finalised with the Heaver family without the Council being granted the ability to exercise compulsory purchase powers to be exercised as a matter of last resort.

(b) the Order fails to comply with the Guidance and should not be confirmed by the Secretary of State;

9.12 I consider this point at sections 5 and 14 and conclude that the Council has fully complied with the Guidance. In this regard, Ashurst have not explained the manner in which they consider that the Order fails to comply with the Guidance hence it is impossible for me to directly consider the basis for their claim.

⁸⁸ See Option 1 in the letter attached at Appendix 5

(c) the purpose of the Order could be achieved by other means – including amending the Order so that it only includes the Additional Land;

- 9.13 There is a significant risk that the Original CPO will be timed out before the Order is confirmed. If this scenario was to arise, the Council would have to consider serving GVDs in respect of those plots included in the Original CPO in the hope that this Order is confirmed and then separately issuing GVDs in respect of the additional land included in this Order. This is a high-risk strategy and not one that I consider appropriate for a public body such as the Council to take.
- 9.14 There would therefore be different valuation dates for different parcels of land leading to further potential disputes between the parties as to what should be assumed at each date. I understand that a consequence of such timetabling might be to artificially inflate the compensation payable to the Heaver family.
- 9.15 There would be real practical difficulties and risks to the Council in the scenario being suggested by Ashurst, and the Secretary of State would not have certainty that the Scheme could be delivered.
- 9.16 In any event, the Heaver family had advised that they require their land to be acquired through the exercise of compulsory purchase powers for tax reasons. They appear to have changed their position on this⁸⁹ but, until formal agreement is secured, I cannot be certain that they will not change their position again.
- 9.17 In the event that the Original Order was timed out and the Council had followed the approach advocated by Ashurst, the scheme would not be implementable as the track record of negotiations is clear that, regardless as to statements made by Ashurst, there is, in reality, little, if any, prospect of the Heaver Objectors making their land available on a voluntary basis

(d) the Council has failed to demonstrate that the Scheme is viable and free from impediments;

- 9.18 The Heaver family will have had sight of the Viability Evidence provided in respect of the Original CPO prior to submitting this objection.
- 9.19 Since that time, the viability of the scheme, which was accepted by the previous Inspector, has further improved. In this regard, the updated Viability Report, which is the subject of Section 8 of this evidence, was attached to the Council's Statement of Case.
- 9.20 As I set out, it is clear to me that significant headroom has been built into the scheme such that it is both viable from a planning policy perspective and deliverable in commercial terms.

⁸⁹ See letter attached at Appendix 7

9.21 The only impediment to the delivery of the TSDL scheme comprises the unwillingness of the Heaver Objectors to agree realistic terms with the Council and allow National Highways to transfer their land interests. Both of these would be overcome by confirmation of the Order.

(e) the Council has failed to demonstrate that the purposes of the Order cannot be achieved by other means and without the use of compulsory purchase powers additional to those in CPO 1;

9.22 As I have set out within this evidence, the proposed development cannot be implemented unless land is acquired from the Heaver Objectors and National Highways.

9.23 Despite extensive and prolonged attempts to agree terms it has not been possible to finalise agreement with the Heaver Objectors primarily due to their inflated expectations in respect of what the Council and/or Countryside should pay as the cost of agreement.

9.24 Whilst agreement has been reached with National Highways, the Heaver Objectors have brought proceedings preventing National Highways from transferring their land to the Council by voluntary transfer.

9.25 The letter from Ashurst dated 17 November 2023⁹⁰ proposes terms by which the exercise of compulsory purchase powers may be avoided. However, the Heaver Objectors have only changed their position very late in the day and it remains to be seen whether a formal agreement can be concluded.

9.26 It is therefore self-evident that the Council requires the ability to exercise compulsory purchase powers in order to avoid further delay and bring certainty.

(f) the Council has failed to demonstrate any attempts to acquire those parts of the Order Land which comprise the Original CPO Land by agreement;

9.27 This statement is not credible.

9.28 It is clear both the Council and Countryside have made repeated attempts to unlock the impasse that exists in reaching agreement. I have set this out in detail in Sections 6 and 7.

9.29 Whilst there are a number of issues preventing agreement the key issues are:

- The Heaver Objectors' expectations in respect of the amount of any initial payment as the price for entering into an agreement

⁹⁰ See Appendix 7

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- The Heaver Objectors' demands for the Council to agree to underwrite their costs without being prepared to provide any information as to what those costs might be or what they relate to.
 - The unwillingness on the part of the Heaver Objectors to allow National Highways to transfer their land to the Council.

(g) the Council has failed to demonstrate that there is a compelling case in the public interest for the Order and in particular that compulsory acquisition of the Additional Land would be a last resort;

9.30 I consider it to be clear that there is a compelling case in the public interest for the delivery of the TSDL scheme in a comprehensive manner and that the Heaver Objectors are forcing the Council to exercise compulsory purchase powers in order to assemble the land interests.

9.31 Given that the Heaver Objectors want development to come forward on their land, bearing in mind the existence of the Bloor Option and their stated position it is apparent that the exercise of compulsory purchase powers is in both the public benefit and also benefits the Heaver Objector. It is therefore illogical for them to argue otherwise.

(h) confirmation of the Order would amount to an unjustified and disproportionate interference with our Clients' rights under Article 1 of the First Protocol to the European Convention on Human Rights.

9.32 The Heaver Objectors have repeatedly confirmed that they are happy to divest themselves of their interests (at a price acceptable to them), and indeed evidently wish to see the land come forward for residential development. In such circumstances and given the right of the parties to resolve compensation issues before the Upper Tribunal, the interference with property rights is entirely justified as a means to achieving a Third-Party determination.

9.33 It is apparent that development of the Heaver Objector's land can only come forward as part of a comprehensive scheme and that, without the intervention of the Council exercising compulsory purchase powers, there would be no development at all.

Additional Grounds

9.34 The objection raises additional points that are not included within the summary as set out at section 3 of the objection. I have therefore set out my comments in respect of issues not already covered as follows.

Paragraph 2.13

9.35 The Objection states:

*“...In December 2022, the Council offered terms to our Clients for the acquisition of Plot 19E on the basis that the transfer would take place simultaneously with the vesting of our Clients' other land interests within the CPO 1 Land under CPO 1. Our Clients accepted these terms in principle in February 2023, including the financial consideration proposed by the Council, subject to contract **and a number of additional terms seeking assurances on the timing of the acquisition, an assurance that our Clients can continue to farm their land until this year's harvest in August 2023, the payment of an advance payment of 90 per cent of the Council's estimated compensation and the right to pursue a compensation claim.** However, the Council now appears to be resiling from the terms it previously offered...”*

9.36 The terms proposed by me in the letter referred to by Ashurst which was dated 16 December 2022 were simply that the Council and the Heaver Objectors would voluntarily agree that Plot 19E formed part of Plot 17 for the purposes of assessing compensation. I did not consider it necessary to consider any other matters such as the making of Advance Payments as the Heaver Objectors would be able to rely upon the statutory procedure.

9.37 As can be seen from a review of the December 2022 letter⁹¹ there was no reference therein to the “additional terms”⁹² referred to by Ashurst. I am therefore unclear as to how the Council can resile from terms that were not offered.

9.38 It is possible that Ashurst have confused themselves with other offers made by different entities at different times and in different circumstances that no longer apply which were previously rejected by the Heaver Objectors.

9.39 The Council has never withdrawn the offers set out in the letter dated 16 December 2022 and the terms thereof remain on the table. In this regard, the latest offer⁹³ comprises Option 1 as set out in the same letter. It is therefore incorrect for Ashurst to state that the Council has resiled from terms when those exact terms, whether Option 1 or Option 2, remain on the table.

9.40 The reality is that the Heaver Objectors have consistently responded with a number of conditions and additions that are either no longer relevant and/or could not be accepted by the Council.

⁹¹ Which is attached at Appendix 5

⁹² As highlighted in bold in paragraph 9.36

⁹³ See Appendix 10

9.41 If it is the case that the Objection is intended to repeat the mantra that the Council has “resiled” from the consideration offered by Countryside prior to the First Inquiry then I can do no more than repeat the points made at paragraph 6.38, 7.34 and 7.96 to 7.99 and point out that this offer was not made by the Council but by Countryside in the lead up to the First Inquiry against the background of Countryside having secured commercial agreements with the other landowners and a “resolution to grant” planning permission. None of these matters apply in assessing compensation.

9.42 With regard to the email attached to the objection which is referenced at paragraph 2.13 thereof I should point out that I responded at 3.02 PM on 5 May 2023 rebutting the points raised by proposing the following terms:

- *“£10,000 paid on completion of the agreement*
- *Agreement that the compensation entitlement in respect of Plot 16 (under CPO 1) assumes the inclusion of the additional land abutting the NH land*
- *Payment of the Council’s estimate of advance payment within three months of the date of the agreement or the Council being satisfied that they have been provided with full disclosure of the various Heaver entities interest in the land, whichever is the latest. The standard of disclosure will be as set out in the legislation.*
- *Service of GVDs in respect of all Heaver interests (albeit presumably excluding SMFP as they have no interest) at the earliest practical date after the completion of the agreement having regard to statutory timetables.*
- *Reimbursement of reasonable legal fees for the drafting and completion of the agreement (to be agreed by the solicitors)*
- *Reimbursement of reasonable surveying fees for the negotiation of this agreement (on production of timesheets etc) – My feeling is that £3,500 + VAT is reasonable based on what has been agreed with the agents for other parties. “*

9.43 I note that this was not attached to Mr Bodley’s email.

9.44 It is therefore the case that the statement made by Ashurst together with the email attached to the objection in support of this statement is factually incorrect and misleading.

Paragraph 2.14

9.45 The Objection states:

“In respect of the rest of the Additional Land, although our Clients are not directly concerned with this land other than their right of access over plot 19D, we would make the following observations:

(a) the Council's Statement of Reasons states that heads of terms have been agreed with National Highways to purchase plots 19C and 19D (as well as 19B, which was included in CPO 1) and that legal agreements are being negotiated. It appears therefore that this land will imminently be secured by way of private treaty. Within this context, it is unclear, and the Council has not demonstrated, why there is a need for this land to be included in the Order; and

(b) plots 19A and 19F are highway land owned by National Highways. The Council's Statement of Reasons does not refer to any attempt by the Council to acquire this land by private treaty. The Council has not demonstrated that this land can be acquired through other means and without the use of compulsory purchase powers.”

9.46 The context of these comments is that Ashurst, on behalf of the Heaver Objectors, commenced legal action against National Highways on 5 January 2023 preventing the sale of these plots to the Council. Bearing in mind that this objection is dated 5 May 2023, Ashurst and their client were fully aware, and had been since July 2022, that I was in direct negotiations with National Highways and it was this that had resulted in the Heaver Objectors instructing Ashurst to commence legal action to block the transfer.

9.47 This paragraph is therefore disingenuous and misleading.

Conclusions

9.48 I do not consider that any of the points raised within this objection are credible or sustainable. The Council and Countryside have made serious attempts over a sustained period of time but it has become apparent that there is a significant difference of opinion between Mr Bodley and me in respect of the assessment of compensation that is holding up voluntary agreement such that the Council requires the ability to exercise compulsory purchase powers to enable these differences to be addressed in the context of potential Upper Tribunal Lands Chamber proceedings.

The Current Position

9.49 The Heaver Objectors have been provided with a formal Agreement⁹⁴ that enables the voluntary purchase of Plot 19E and the acquisition of the remaining plots controlled by the Heaver Objectors utilising the existing compulsory purchase powers. This Agreement has been deliberately drafted to address all of their known concerns.

⁹⁴ See Appendix 10

9.50 Ashurst responded on the 17 November 2023 and, in a complete about change of direction, now propose a voluntary acquisition of the entirety of their land on similar terms to those previously suggested by me. This has transpired very late in the day and it remains to be seen whether this will lead to a formal agreement.

9.51 In this regard, it is my opinion that the Council has done everything possible to agree terms in a reasonable timescale and has fully complied with the Guidance.

10.0 THE OTHER HEAVY OBJECTORS – TANGMERE MEDICAL CENTRE

- 10.1 I understand that all matters have been agreed and that electronic engrossments have been issued and are awaiting signing.
- 10.2 I am unaware of any issues likely to prevent formal completion of the agreed terms.
- 10.3 It is therefore my opinion that the Council has fully complied with the Guidance in negotiating the removal of these objections.

11.0 THE SMTL OBJECTION

- 11.1 This objection was submitted by Keystone Law and is undated.
- 11.2 I note that the objection advises in the section headed “Background” on page 1 of the objection that SMTL is the freeholder and management company for the 28 leasehold properties at Saxon Meadow. Furthermore, it is stated that:
- “SMTL is currently authorised to represent the entire group of 28 residential leaseholders⁹⁵ who comprise its individual shareholders, and therefore references to SMT (as objector) in this objection below should be taken to include each of those individual leasehold interests. SMT notes, however, that some leaseholders may submit objections.”***
- 11.3 I have interpreted this as meaning that agreement with SMTL requires the agreement of shareholders/leaseholder/residents. However, I do not know what proportion of shareholders are required to approve decisions. Furthermore, whilst I have requested a copy of the EGM minutes where the shareholders/leaseholders/residents voted on the offer made by the Council I have yet to receive this and hence am unaware as to the extent to which they were all in favour of SMTL completing these terms.
- 11.4 However, Mr Olden, the agent representing SMTL, has been adamant that Keystone Law and he only represents SMTL and they do not represent the residents although the residents are the shareholder of SMTL and would therefore be directly involved. In addition, he has been assisted in his discussions by Mr Rees and Mr Wolfenden, neither of whom are officers of SMTL.
- 11.5 I am therefore unclear as to who Mr Olden and Keystone Law actually represent and there is a disconnect between Mr Olden’s stated position and that stated by Keystone Law within the objection.
- 11.6 It is even more confusing to me that Mr Olden has insisted that the costs incurred by SMTL would only be borne by those residents who have submitted individual objections in support of SMTL’s objection whereas it would normally be the case that SMTL would charge the costs back to all the shareholders/leaseholders/residents through a service charge.
- 11.7 There is therefore considerable confusion as to who Mr Olden and Keystone Law act for and whether their fees will be paid for by the resident objectors who presumably would therefore have the benefit of their advice, or whether such fees will be shared by the 28 leaseholders who would,

⁹⁵ My emphasis

I presume, therefore also gain the benefit of being able to rely upon Mr Olden's and Keystone Law's advice.

11.8 Ultimately this is a matter for SMTL and its shareholders/lead holders but, bearing in mind that the level of costs incurred by SMTL is the central reason why this objection has not been withdrawn it is important to set this issue in its proper and correct context.

11.9 I have set out my comments in respect of each detailed ground of objection as follows.

CDC and its development partner have made no meaningful attempt to acquire the Order land by agreement.

11.10 It is apparent that Keystone Law are either unaware of, or have deliberately failed to mention, the extensive negotiations that took place with SMTL in respect of the Original CPO and, more latterly, the Order. Further, it is of course important to note that the Council is now not seeking to acquire any part of Plots 9, 9A or 9B, notwithstanding that acquisition is authorised by the Original CPO.

11.11 In this context, Keystone Law have, within the objection, provided only selected highlights of the Council's direct engagement with SMTL and have completely disregarded the fact that SMTL initially refused to engage with Mr Denning or myself. They have also disregarded the meetings that had previously taken place between Mr Denning and Mr Thomas⁹⁶ and the exchanges that have taken place since his appointment with Mr Olden.

11.12 As such, whilst the impression given by Keystone Law is that there has been limited engagement by the Council and none at all by Mr Denning and myself, it is self-evident from the evidence that I have set out in sections 6 and 7 that there have in fact been extensive negotiations and detailed attempts to engage with SMTL even before the submission of this objection such that all matters except for the reimbursement of fees have been provisionally agreed.

2. In relation to plots 7 & 8, CDC has failed to show why the land is required and how important rights and easements currently used in connection with the Property (including rights of access) would be preserved if the Order is confirmed.

11.13 Plot 7 is owned by the Pitts entity whilst West Sussex County Council are the highway authority in respect of the footpath.

11.14 I am instructed that SMTL may have a right of access over part of Plot 7 pursuant to a conveyance dated 26 October 1984 but:

⁹⁶ The previous agent for SMTL

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- The right of access does not extend to the leaseholders
 - The land over which the right runs is not contiguous to the land comprising the Saxon Meadows development
 - The land to which the right relates to is too small to enable vehicular access
 - SMTL are required to contribute towards the cost of repair and maintenance of the access land but there is no evidence that any payments have been made such that the rights may have expired
 - The land over which the right runs is not contiguous to the adopted highway. As such use of the access way is ransomed by the owner of the intervening land.

11.15 There is no public right of way over this land and SMTL has no ability to grant rights over any part of this land for either public or private use.

11.16 Keystone Law dispute this understanding but, nevertheless, SMTL has been keen to regularise the position and secure explicit access. To this end, the Council has proposed that, having constructed a cycle pathway, the freehold of the land be passed to SMTL such that the land would be available for use by the residents of Saxon Meadows and that, prior to construction of the cycle path, SMTL be afforded rights of access to and egress from the Property and rights equivalent to all existing rights set out in the Conveyance over under or through the land.

11.17 Neither the Council nor Countryside can deliver these terms unless this Order is confirmed. It is therefore ironically the case that SMTL and the residents would be significantly worse off if the status quo was maintained in respect of their existing rights, or lack of, and their objection was to succeed.

11.18 As such if, as Keystone persist with their request that Plot 7 is to be removed from the Order, the result would be that the Council could not comply with the terms that have been agreed with SMTL. There is therefore a contradiction between what SMTL have requested in their negotiations with the Council and what their solicitors are arguing in maintaining this objection.

11.19 Plot 8 is claimed by both SMTL and the Pitts entities. However, it is accepted that there may be grounds for the individual residents of Saxon Meadows to claim prescriptive rights of access.

11.20 Whilst Keystone Law make various comments in respect of the current use of Plot 8, the reality is that SMTL have only a partial claim to title and no rights have been granted to the individual shareholders/leaseholders/residents. I do not know whether SMTL have attempted to grant rights

or why this has not been previously addressed but, if the Order is confirmed, the Council would be able to deliver the means for the residents to secure explicit rights.

11.21 Regardless as to the extent to which my understanding of the legal position is correct, the Council has proposed terms whereby they would acquire Plot 8 with the benefit of compulsory purchase powers and transfer the freehold thereof to SMTL thereby removing all potential for SMTL and the residents to be ransomed.

11.22 As with Plot 7, the reality is that SMTL and the residents would be significantly better off by having any potential threat to their site access addressed but this can only take place if the scheme is implemented which, in turn, is dependent upon full site assembly.

In relation to plots 9, 9a & 9b, the draft Order proposes acquisition of more land than is necessary or justified having regard to the creation of a community orchard on land which is open meadow.

11.23 These plots were included in the Order because SMTL had previously agreed to their inclusion and expressed a desire for the creation of an orchard by the Council to provide a buffer zone to the residential development.

11.24 The point was that the meadow would be converted into an orchard and maintained by and at the expense of the Council but it would remain available for full use and occupation by Saxon Meadow residents.

11.25 The Order therefore precisely followed the terms of the agreement reached with SMTL in respect of the Original CPO such that SMTL and the residential objectors are all objecting to the arrangement they requested and the terms of the agreement they freely and willingly entered into.

11.26 In this regard, this Order only differs from the Original CPO in that it accommodates the previous agreement reached with SMTL and includes new plots known as 19C, 19D which comprise unadopted land owned by National Highways, plots 19A and 19F which are owned by National Highways and comprise adopted highway and 19E which is owned by the Heaver Objectors. Apart from these amendments, the scheme is exactly the same as that previously discussed with SMTL.

11.27 I appreciate that people can change their mind and it may be the case that there was disagreement between the SMTL shareholders last time round as to whether they should agree the terms proposed to them. In this regard, Mr Rees and Mr Wolfenden have taken the lead in these latest discussions between the Council and SMTL rather than the SMTL officers.

11.28 The Council has responded to this change of direction by SMTL by removing Plots 9, 9A and 9B from the Order and securing planning permission ref: 20/02893/OUT. It is therefore the case that, if SMTL

still want to create a buffer zone, it will now be solely down to SMTL to fund and arrange this and the Council will have no ongoing obligations or liabilities in this regard.

In relation to plot 6, the draft Order and SOR do not explain how the boundary between Saxon Meadow and new properties to the south will be managed to address flood risk / surface water issues

11.29 There have been onsite meetings where these issues have been discussed and explained by the Council and Countryside.

11.30 Furthermore, as set out in the Council's Statement of Case:

"The Scheme is subject to a resolution to grant for planning permission. Concerns regarding drainage and ecological mitigation are planning issues, in respect of which planning conditions will be imposed in the planning permission requiring that the development shall be carried out only in full accordance with the submitted Flood Risk Assessment, Environmental Impact Assessment and that surface water from the development shall be disposed of using a Sustainable Urban Drainage System (SUDS) providing that the system shall be designed to ensure that the pre-existing rate of run-off from the site is not increased. This includes development over Plot 6."

Overall, the absence of a compelling case for compulsory acquisition in the public interest and failure to comply with the ECHR

11.31 These objections may be the subject of legal submissions. However, for present purposes I consider it sufficient to say that for the reasons set out in this proof of evidence, I consider that there is indeed a compelling case in the public interest to justify compulsory acquisition, and that the confirmation of the Order would not amount to a breach of any relevant human rights legislation or convention.

11.32 I note that the objection questions the need for the Order and questions the extent to which there is a compelling case for the acquisitions.

11.33 As Keystone Law appear to be aware, the Council already has compulsory purchase powers in respect of all the plots within which SMTL have an interest. The principle of there being a compelling case for their inclusion is therefore already established.

11.34 As such, if the Heaver Objectors agreed terms for the transfer of Plot 19E and lifted their restriction on National Highways transferring their freehold interest in accordance with the agreed terms, there would be no requirement for the Order and, ironically, the Council could proceed without having to agree terms with SMTL.

11.35 I understand the point made by Keystone Law in respect of the need for two compulsory purchase orders to deliver the same scheme and this was all explained to SMTL at the outset of proceedings as set out in section 7.

11.36 However, for clarity, the decision by the Council to include all the land within the Order that was previously included in the Original CPO had regard to paragraph 15 of the Guidance which requires the acquiring authority to show that the scheme is unlikely to be blocked by legal impediments.

11.37 The Original CPO expires in December 2024 such that, following the close of the Inquiry, which is currently scheduled for 25 January 2024, there are potentially only 10 months available for the Secretary of State to issue an Order Decision and any Judicial Review proceedings to be completed.

11.38 There would therefore be a significant risk that, if the Order only included plots 19A, C, D, E and F the Council could find themselves faced with a scenario whereby the Original CPO expires and the Council is left unable to compulsorily assemble all the required land interests in deliver the scheme. It would therefore have been extremely cavalier for the Council to exclude interests without which the scheme cannot be delivered.

11.39 It is therefore imperative that, if the Council are to fully satisfy the requirements of paragraph 15 of the Guidance that the significant potential risk of an impediment arising from the timing out of the Original CPO is removed.

The Current Position

11.40 SMTL have signed but not returned the Heads of Terms⁹⁷ but the Council has, in any event issued a formal agreement for signature by SMTL. SMTL have advised that they will not complete terms until and unless the Council agreed full reimbursement of their fees. In this regard, Mr Olden has informed me that, regardless as to what he set out in his emails and conversations with Mr Denning and me, it was always his intention to secure full fee recovery.

11.41 In this regard, Keystone Law have issued the following invoices:

Date	Reference	Amount
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⁹⁷ As attached at Appendix 14

28 June 2023	1716418/23/BBG	£21,921.00
3 July 2023	172222/23/BBG	£3,726.00
25 July 2023	173564/23/NDB	£10,837.14
29 August 2023	176076/23/NDB	£3,594.00
25 September 2023	178198/23/NDB	£3,168.00
Total		£43,246.14

11.42 I anticipate that Keystone Law have further fees for time incurred since 25 September 2023 but the Council has not been made aware of these.

11.43 In addition, Mr Olden has probably generated additional fees of his own but, again, I have not been provided with a current position.

11.44 The Council has offered a total of £24,000 toward legal fees and £10,890.03 towards surveying fees giving a total of £34,890.03. This is entirely reasonable and commensurate to the nature of the work undertaken and follows the principles set out in the Counsel advice⁹⁸ commissioned by SMTL.

11.45 In simple terms, SMTL has proceeded in the mistaken belief that the Council would be liable for all their fees howsoever incurred and irrespective as to whether the quantum of those fees is reasonable and proportionate. This is despite Mr Denning, the Council and me being clear on the basis of fee recovery.

11.46 In any event, disputes in respect of fees are not a matter for the Inquiry to consider within these proceedings and would be dealt with by way of separate proceedings in accordance with the National Planning Guidance should it be appropriate to do so.

11.47 Keystone Law emailed the Council's solicitors on 20 November 2023 advising that, contrary to the emails of Mr Olden and Mr Wolfenden, *"any suggestion that the Heads of Terms were agreed is strongly denied."*

11.48 It therefore appears that agreement remains as elusive as ever and that Keystone Law are deliberately frustrating an agreement in order to pursue a cost claim against the Council for their fees incurred on behalf of SMTL.

⁹⁸ See Appendix 20

11.49 This email is attached at **Appendix 30** together with the tracked agreement at **Appendix 31**.

12.0 THE SAXON MEADOW RESIDENTS' OBJECTIONS

12.1 There is a certain amount of duplication between these objections and that submitted by SMTL which is not surprising bearing in mind that these objections have primarily been submitted in support of the SMTL objection. I have therefore sought to avoid repetition and only addressed new points.

12.2 However, before I address the individual objections, I consider that it might be helpful to bring clarity, to the extent that I am able to as a valuer rather than as a legal expert, to the various access and ownership issues.

Existing Access Rights

12.3 The land that comprises the Saxon Meadows development⁹⁹ was acquired by Federated Homes Limited from Mr and Mrs Pitts by way of a conveyance dated 26 October 1984. This land was provided together with the rights set out in the first schedule attached thereto over part of the vendor's retained land as coloured brown on plan No1 as also attached thereto. In broad terms, this land comprises Plot 9 as shown on the Order Map (CD/2).

12.4 Paragraphs 2, 3 and 4 of the first schedule provided the right to lay utilities in, over or under the land.

12.5 In addition, paragraph 5 provided:

"The rights to enter upon the brown land for the purpose of constructing thereon a right of way and thereafter at all times for the owners and occupiers of the land hereby conveyed to pass and repass on foot and with motor cars motor cycles and private motor vans and other vehicles for the purpose of access to and egress from the land hereby conveyed subject to the payment of a fair proportion according to user of the cost of repairing and maintaining and keeping the same in good repair provided always that in the vent of there being any dispute as to the payment to be made the Vendor's Surveyor's decision shall be final."

12.6 I am instructed in respect of these rights that:

- The rights are expressed to be granted in favour of the purchaser or the person owning the freehold property but does not reference any ability for those rights to be passed down to the leaseholders.

⁹⁹ As located directly north-east of Plot 9

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- The brown land does not adjoin Saxon Meadows edged red on Plan 1 and there appears to be a gap.
 - It is questionable as to whether the brown land is wide enough for the access actually used.
 - There is no evidence that SMTL has been contributing towards the cost of repair and maintenance of the road as required by paragraph 5 which begs the question as to whether these rights still exist
 - The brown land stops short of the extent of the adopted highway on Church Lane
 - The leaseholders have not previously attempted to register or claim prescriptive rights.

12.7 It therefore appears to me that SMTL have certain rights but these are not sufficient to provide physical capacity and unbroken access to the adopted road but, in any event, SMTL do not have the ability to share the benefits of these rights with the leaseholders of Saxon Meadows.

12.8 I understand from Mr Olden that the leaseholders consider that they have been granted rights by SMTL (successors in title to Federated Homes Limited) by way of side letters with the Pitts Family. However, no evidence has been provided of this and I understand that SMTL would need to be a party to any agreement. In any event, these rights are not registered on title and the fact that the leaseholders consider that side letters are necessary suggests that the position is, at best, uncertain.

12.9 There are no explicit rights in favour of the residents over Plot 8 which is owned jointly by SMTL and the Pitts Family albeit the Council accepts that the residents may individually claim prescriptive rights bearing in mind the effluxion of time since the Saxon Meadows development was completed. However, none of the residents have registered access rights over this land and it is unclear as to whether the Pitts Family, or a successor in title, could take enforcement action or refuse consent should they so wish and thereby try to secure a ransom position.

12.10 The Council has confirmed to SMTL and the residents that, to the extent that they are able to demonstrate the existence of rights, they will be reinstated following the service of compulsory acquisition notices in lieu of which a statutory right to compensation for the loss of such rights would arise. In addition, there would be no reason for the Council to, having taken ownership of Plot 8, seek to frustrate the residents from taking access over said plot or asserting prescriptive rights.

12.11 However, the Council has gone one step further than this and agreed with the Pitts Family that, having acquired the freehold interest from the Pitts Family, the relevant land in Plot 7 and the

entirety of Plot 8 could be transferred to SMTL whereupon SMTL could grant formal explicit rights to each of the residents thereby ensuring that they have clear unequivocal rights.

12.12 I appreciate that Keystone Law has argued, on behalf of SMTL that the Council's proposals to rectify title issues do not benefit SMTL and to a certain extent I take the point in that it doesn't really matter to SMTL whether or not they have the rights.

12.13 However, it is the Council's belief that such proposals are of considerable benefit to the individual leaseholders who, in the absence of explicit rights, would be unable to legally access their properties. The rectification and clear provision of such rights will therefore enhance the value of their individual properties. Bearing in mind that Keystone Law have confirmed that **"SMTL is currently authorised to represent the entire group of 28 residential leaseholders¹⁰⁰"** it would appear that SMTL is therefore required to take account of the benefits received by the leaseholders hence I do not follow how this does not benefit SMTL.

12.14 It is therefore the case that, by regularising the access issues over Plots 7 and 8, the Council is facilitating the delivery of significant benefits to the Saxon Meadows residents that, absentia the exercise of compulsory purchase powers, could only be secured by the individual residents incurring time and cost in negotiating with the Pitts Family who may take the view that the payment of consideration and reimbursement of their fees by the residents was appropriate.

12.15 As such, I understand that SMTL as an entity might not benefit but the shareholders of SMTL clearly do benefit and, as SMTL have informed me that they represent the 28 shareholders/leaseholders, Keystone Law's stance is surprising.

Objection by Mr and Mrs Wolfenden of 28 Saxon Meadow

12.16 I have addressed each of the grounds of objection below.

Plot 7

12.17 This land is owned by the Pitts Family and the Land Registry does not record any interests or rights in favour of Mr and Mrs Wolfenden.

12.18 As set out above, the Council has proposed terms by which Plot 7 would be compulsorily acquired and, on completion of the cycleway works, be transferred to SMTL who would then be able to grant rights to Mr and Mrs Wolfenden.

¹⁰⁰ See paragraph 11.2.

Boundary Issues

- 12.19 The land in dispute is owned by the Pitts Family and the Land Registry does not record any interests or rights in favour of Mr and Mrs Wolfenden.
- 12.20 Mr and Mrs Wolfenden confirm that the Pitts Family do not accept that Mr and Mrs Wolfenden have a claim to ownership or explicit rights over the disputed land but, instead, rely on a verbal arrangement with Mrs Pitts. I am advised that such an arrangement is, at best, tenuous and there is no evidence to suggest that Mrs Pitts had capacity to make such an offer without the consent of the other family members. Mr and Mrs Wolfenden are therefore exposed to the potential for the Pitts Family successfully taking back occupation and control of this land.
- 12.21 The Council has proposed terms whereby this strip of land would be compulsorily acquired and, on completion of the cycleway works, be transferred to SMTL who would then be able to address the boundary issue directly with Mr and Mrs Wolfenden.

Surface Water Drainage

- 12.22 The Scheme is subject to a resolution to grant for planning permission. Concerns regarding drainage are planning issues, to which planning conditions will be imposed in the planning permission requiring that the development shall be carried out only in full accordance with the submitted Flood Risk Assessment and that surface water from the development shall be disposed of using a Sustainable Urban Drainage System (SUDS) providing that the system shall be designed to ensure that the pre-existing rate of run-off from the site is not increased.

Conclusion

- 12.23 The Council is under no obligation under the Guidance to transfer any of the required land to SMTL or Mr and Mrs Wolfenden. However, the Council has facilitated agreement with the current owners, who pursuant to the Guidance would have first right of refusal, that this land can be transferred to SMTL for the benefit of Mr and Mrs Wolfenden and the other landowners.
- 12.24 It is therefore my opinion that the Council has addressed the entirety of the grounds of this objection. In the event that the Order was refused or modified to exclude the land identified by Mr and Mrs Wolfenden, the Council would be unable to deliver control of this land to SMTL for Mr and Mrs Wolfenden's benefit.

Objection by Mr Rees of 4 Saxon Meadow

- 12.25 Mr Rees has raised a number of points but he confirms that his concerns mainly relate to Plots 6, 7, 8, 9, 9a and 9b. I have therefore addressed these in turn.

12.26 However, I would make the point that the proposed acquisition and transfer of the freehold interest of land in Plot 7 and 8 to SMTL would place Mr Rees in a much superior position to that currently existing absentia the Order for the reasons set out in paragraphs 12.1 to 12.15 above.

Plot 6

12.27 Mr Rees refers to the current ponding/flooding on Plot 6 but does not explain how, if at all, this affects his property. In addition, Plot 6 is owned by Mr Pitts and the Woodhorn Group Limited and Mr Rees has not demonstrated that he has any legal interest in this land.

12.28 Mr Rees's concerns do not relate to any impact on his property but the securing of funding for remedial works. In this regard, the scheme is subject to a "resolution to grant" for planning permission.

12.29 Planning conditions will be imposed in the planning permission requiring that the development shall be carried out only in full accordance with the submitted Flood Risk Assessment and that surface water from the development shall be disposed of using a Sustainable Urban Drainage System (SUDS) providing that the system shall be designed to ensure that the pre-existing rate of run-off from the site is not increased.

Plot 7

12.30 This land is owned by the Pitts Family and the Land Registry does not record any interests or rights in favour of Mr Rees.

12.31 The Council has proposed terms by which Plot 7 would be compulsorily acquired and, on completion of the cycleway works, be transferred to SMTL who would then be able to grant rights back to Mr Rees should he so require. It is therefore the case that the objector would have clear explicit rights over the relevant land whereas, at present, I am advised that the claimed rights are challengeable.

Plot 8

12.32 This land is owned by SMTL and the Pitts Family. Mr Rees has not provided any evidence of having been granted explicit rights over this land. There may be an argument for prescriptive rights but that is a matter between SMTL, the Pitts Family and Mr Rees.

12.33 The Council has proposed terms whereby this land will be acquired and, on completion of the cycle way works, the freehold interest will be transferred solely to SMTL who will then have the ability to grant explicit rights to Mr Rees.

Plots 9, 9A and 9B

12.34 Plot 9 is owned by SMTL but plots 9A and 9B are also owned by the Pitts Family. Mr Rees is a leaseholder and shareholder of SMTL and thereby benefits from leaseholder rights to the extent that they exist (which is unclear) and can be asserted.

12.35 The Council has proposed terms to remove Plots 9, 9A and 9B from the Order thereby fully addressing Mr Rees's concerns. It will then be up to him to secure whatever rights he requires from SMTL over the remaining land and, without compulsory acquisition powers, the Council would be unable to assist him in this regard.

Other Matters

12.36 Mr Rees raises a number of generic points in opposition to the Order as follows.

12.37 The principle of equivalence as cited by Mr Rees relates to the calculation of compensation and is not relevant to the decision as to whether or not to confirm, modify or refuse the Order.

12.38 Nevertheless, if the Order is confirmed in the manner requested by the Council and the terms proposed by the Council to SMTL are accepted, Mr Rees will have the ability to deal with SMTL direct to secure the explicit rights he requires. At present, there is no obligation on the actual freeholders of the land in question to grant him these rights. As such, Mr Rees stands to be left in a much-improved position which will add value to his property.

12.39 In effect, Mr Rees receives betterment if SMTL accept the proposed terms and, in turn, grant Mr Rees the rights he requires. It is therefore the case that, rather than suffering an alleged negative impact on his individual property rights, Mr Rees will, at worst, benefit from a regrant of the existing rights and, if SMTL complete the agreed terms, benefit from the terms of that agreement on implementation of the Order.

12.40 I do not accept that there has been, as Mr Rees puts it, an *"...inadequate approach to communication in respect of the CPO and the scheme to which it relates."*

12.41 In the first instance, Mr Rees has owned his property since 5 January 2021 and would therefore have been made aware by his conveyancing solicitor of the Council's planning application. Furthermore, he would have been made aware, as a shareholder of SMTL of the agreement for the Council to acquire part of the meadow for the purposes of an orchard as reached with SMTL's previous agent.

12.42 In addition, Mr Denning had attempted to pursue negotiations with SMTL's previous agent and it was reasonable for Mr Denning to assume that Mr Thomas would be reporting back to SMTL and Mr Rees in his capacity as a shareholder. In the absence of any response, Mr Denning contacted Mrs Harper and an onsite meeting was held on 3 December 2022 attended by Mr Pickering and Mrs Harper. Again, it is reasonable for the Council to expect that SMTL would report back to the individual shareholders including Mr Rees.

12.43 Since that time, Mr Denning and myself, together with the Council and the developer have met and discussed matters with SMTL and Mr Rees on a regular basis as set out in section 7 of this evidence. I therefore do not consider Mr Rees characterisation of matters to be accurate or representative of the extensive attempts to reach agreement.

Objection by Ms Riches of 25 Saxon Meadow

12.44 The original agreement with SMTL was reached in 2021 not 2015 and SMTL were advised by a fully qualified and experienced surveyor who presumably provided full advice to SMTL. Nevertheless, the Council has now agreed to remove Plots 9, 9A and 9B in their entirety.

12.45 I have set out the position in respect of access rights at paragraphs 12.1 to 12.15 above.

Objection by Ms Ayton of 18 Saxon Meadow

12.46 The first four paragraphs of the objection relate to access rights to Saxon Meadow. I have addressed these points at paragraphs 12.1 to 12.15 above.

12.47 The fourth paragraph relates to Plots 9, 9A and 9B. The Council has offered terms to exclude these plots from the Order such that Ms Ayton's concerns would be fully addressed.

12.48 I am not entirely clear as to what Ms Ayton is referring to in respect of flooding issues but, to the extent that the land she has in mind is within the Order Map, the developer will be subject to planning conditions requiring compliance with the Flood Risk Assessment and that surface water from the development shall be disposed of using a Sustainable Urban Drainage System such that the pre-existing rate of run-off from the site is not increased.

12.49 The same points as made in my response to Mr and Mrs Wolfenden at paragraph 12.22 therefore apply.

Objection by Ms Craig of 9 Saxon Meadow

12.50 This objection relates to the proposed acquisition of the meadow. In this regard, the Council has proposed terms to remove Plots 9, 9A and 9B from the Order thereby maintaining the current position.

12.51 In addition, the Council has, as set out above at paragraphs 12.1 to 12.15 offered to regularise the land ownership position for the benefit of all residents.

Objection by Ms Davey of 18 Saxon Meadow

12.52 Ms Davey's concerns relate to the risk of flooding of Plot 6. The same comments as set out at paragraph 12.22 in my response to Mr and Mrs Wolfenden therefore apply.

Objection by Ms John of 2 Saxon Meadow

12.53 Ms John states:

"I wish to add my objection to the proposed (sic) compulsory purchase order against Saxon Meadow Tangmere by the Chichester District Council. I agree with the objection lodged by Saxon Meadow Tangmere Ltd, in that the CPO undermines right of access for residents and destroys the peaceful entrance and environs surrounding Saxon Meadow Tangmere".

12.54 I have addressed these points at paragraph 12.1 to 12.15 above.

Objection by Ms Gale of 5 Saxon Meadow

12.55 I note that Ms Gale acknowledges that the ownership of the access land is unclear. In this regard, the Council have proposed terms that regularise the position as set out at paragraph 12.1 to 12.15 above.

12.56 Ms Gale is also concerned with the setting of her property. In this regard, the Council has proposed terms to remove Plots 9, 9A and 9B from the Order and planning permission has been secured in this regard.

Objection by Ms Mills of 15 Saxon Meadow

12.57 I have set out the full extent of engagement with SMTL at sections 6 and 7 above.

12.58 Plots 6, 7 and 8 are required for the Scheme as set out within the Statement of Case.

12.59 The Council has proposed terms to remove Plots 9, 9A and 9B from the Order and secured planning permission in this regard.

12.60 Concerns regarding the Tangmere Conservation Area, biodiversity and Local Plan requirements are addressed within the planning application which is subject to a resolution to grant.

Objection by Ms Ternan of 19 Saxon Meadow

12.61 I have set out the full extent of engagement with SMTL at sections 6 and 7 above.

12.62 The Council has proposed terms to remove Plots 9, 9A and 9B from the Order and secured planning permission in this regard.

12.63 The position in respect of access rights is addressed at paragraphs 12.1 to 12.15 above.

12.64 I have addressed flooding matters and surface drainage at paragraph 12.22 above in my response to Mr and Mrs Wolfenden.

Objection by Ms Rendall and Mr Hutchinson of 20 Saxon Meadow

12.65 I have set out the full extent of engagement with SMTL at sections 6 and 7 above.

12.66 The reference to the Crichel Downs rules is misconceived as neither Ms Rendall, Mr Hutchinson nor SMTL qualify to have land offered back to them in accordance with Crichel Downs.

12.67 A resolution to grant planning permission has been secured in accordance with the relevant allocations. In this regard, the Local Plan has been adopted.

12.68 The Order does not propose to remove any access. In actual fact the proposed terms as negotiated with SMTL would, as set out at paragraphs 12.1 to 12.15 above, enhance the rights benefitting the property.

12.69 I have addressed drainage issues at paragraph 12.22 above in my response to the objection of Mr and Mrs Wolfenden.

Conclusions

12.70 All the issues raised by the residents of Saxon Meadows have been addressed in the Agreement as provided to SMTL (i.e., land rights) or will be addressed by planning conditions (i.e., drainage issues). The proposed scheme has been granted planning permission and, therefore, the question as to whether or not the scheme is in accordance with local and national planning regulations and guidance has already been settled.

12.71 I have seen nothing within these objections that would lead me to conclude that the Council has done anything other than fully comply with the requirements of the Guidance.

13.0 NON-STATUTORY OBJECTORS

13.1 I Have set out below commentary in respect of the non-statutory objectors.

Objection of Julie Warwick of 97 Cheshire Crescent

13.2 I understand that Ms Warwick is a tenant of 97 Cheshire Crescent, Tangmere.

13.3 Her objection is as follows:

"I have lived at 97 Cheshire Crescent since October 2008 and the garden has always been the size it is today. Previous tenants had extended the garden and it has remained this size for at least 20 years. My shed and apple tree are on the site for the Order and the area is small in comparison to the development. I would therefore ask you to consider allowing me to keep my garden the size it is now so I can continue to enjoy it".

13.4 The property 97 Cheshire Crescent is part of a row of terraced houses whose gardens back onto Plot 7. The Council understands from land registry records that the registered extent of 97 Cheshire Crescent ends on the edge of Plot 7. The land over which the garden has extended and encroaches is in the ownership of the Pitts family.

13.5 The land on which the garden extension is located is part of one of the principal areas of public open space within the Scheme, including sports pitches and an associated sports pavilion. The detailed layout and design of this area will be sensitively considered to reflect the proximity of the Grade 1 listed St Andrew's Church to the south. Development on this land will also include new boundary treatments for safety, security and visual amenity reasons as well as significant new landscaping.

13.6 It is therefore necessary to acquire this land in order to deliver the scheme as permitted by the relevant planning permission.

13.7 To the extent that Ms Warwick is able to demonstrate an interest in the land she will have a statutory right to compensation.

Objection of Laura Plain, 17 Bayley Road

13.8 Ms Plain is the resident of 17 Bayley Road who also objects on behalf of Mr Plain. The property 17 Bayley Road does not form any part of the Order Land. The objector does not appear within the Schedule to the Order and is not considered to be a qualifying objector. Her objection is concerning the development of the TSDL from a planning perspective, rather than a specific objection relating to the Order land.

13.9 The proposed scheme is the subject of a resolution to grant planning permission and, as such, the principle of compliance with national and local planning policy and guidance has been established.

Objection of Thelma Stone, 107 Cheshire Crescent 12.56

13.10 Ms Stone is the tenant of 107 Cheshire Crescent, Tangmere.

13.11 Her objection is as follows:

"I am a tenant at the above address and have used my rear gate to use my right of way around Saxon Meadow. I leave foliage [sic] down over winter to house the many slowworms that make their winter to home there. From April to October I use this path to the church with a cut pathway. I lodged my feelings about this field 18 months ago, with many letters and confirmation of all the wildlife out there, with a letter with over 100 people signing. I have left a voicemail with Tony Whitty confirming that I want to lodge my right of way from my rear garden to the Church. And that the disruption to the wildlife is not within the interest of the eco system."

13.12 The land onto which Ms Stone's gate access leads is proposed to form one of the principal areas of public open space within the Scheme, including sports pitches and an associated sports pavilion. The detailed layout and design of this area will be sensitively considered to reflect the proximity of the Grade 1 listed St Andrew's Church to the south. Development on this land will also include new boundary treatments for safety, security and visual amenity reasons as well as significant new landscaping.

13.13 The gated access onto Plot 7 and any alleged right onto the Order land is not compatible with the Scheme and consequently any right of access must be acquired by the Order. The Council is actively engaging with the objector to provide further information about access and ecological mitigation included the Scheme.

13.14 It is therefore necessary to acquire this land in order to deliver the scheme as permitted by the relevant planning permission.

13.15 To the extent that Ms Warwick is able to demonstrate an interest in the land she will have a statutory right to compensation.

14.0 CONCLUSIONS BY REFERENCE TO THE GUIDANCE

14.1 I have reviewed all the submissions made by/on behalf of the Council in light of the Guidance and provide my conclusions as follows:

Paragraph 2

14.2 This is a long-standing project and numerous attempts have been made to acquire the various land interests on a variety of terms as set out at sections 6 and 7.

14.3 It is clear from the context of the negotiations that have taken place with Mr Bodley that there is only a remote possibility of the Heaver Objectors agreeing terms for a voluntary acquisition. This is mostly due to a belief, on the part of Mr Bodley, that an equalisation approach, as would apply in the real world, does not apply where compulsory purchase powers are invoked and the value of his clients' land is significantly in excess of the land value of the entire TSDL scheme.

14.4 As such, he has sought to use the Inquiry proceedings as a basis for trying to secure concessions from the Council with a view to improving his clients' prospects of arguing for a ransom position at the Upper Tribunal (Lands Chamber). Whilst I have no issue with anyone seeking to secure improved terms, it has, unfortunately, been the case that the parties are simply too far apart in respect of valuation principles and the value of the land.

14.5 The assessment of compensation is not a relevant issue for determining the confirmation of the Order and jurisdiction, in this regard, lies with the Upper Tribunal (Lands Chamber).

14.6 The Council is unable to acquire land from National Highways due to legal action by the Heaver Objectors. The Council is therefore unable to acquire this land through voluntary agreement and, in the absence of compulsory purchase powers, the entire scheme cannot proceed.

14.7 I have provided a number of alternative proposals to the Heaver Objectors and have forwarded a formal agreement that preserves all their compensation rights in full.

14.8 At the end of the day, I am of the opinion that negotiations with the Heaver Objectors have been long, extensive and exhaustive but, agreement is to be reached, it will require the ability on the part of the Council to exercise compulsory purchase powers.

14.9 Agreement had previously been reached with SMTL in respect of the Original Order but, despite this, the Council has willingly engaged with SMTL and not only agreed further modifications to that agreement but also secured planning permission to enable the removal of Plots 9, 9A and 9B from the Order.

14.10 I understand that SMTL have signed the Heads of Terms and they have been provided with a formal agreement for completion.

14.11 However, I understand that SMTL require full reimbursement of all their fees but are yet to provide full details thereof to the Council. IN contrast, the Council has made offers that are reasonable and proportionate to the complexity of the work undertaken and believe that they have acted in full accordance with all the relent provisions.

14.12 Overall, I am of the opinion that the Council has more than fully complied with and satisfied Paragraph 2.

Paragraph 3

14.13 The Council has made offers that take into account the considerable cost and time savings that would be secured by avoiding these proceedings. Conversely, the Council has also been very clear that it cannot be held to ransom by the threat of these proceedings in agreeing terms whilst pointing out that this is not the forum for valuation disputes and that costs should be reasonable, proportionate and reflect the complexity of the work undertaken.

14.14 It is my opinion that the Council has been more than prepared to have full regard to “value for money” and take a view on matters where it can but the conditions being attached to agreements with, for example, the Heaver Objectors and SMTL or beyond what the Council considers reasonable have regard to the overall project delivery.

14.15 The Council cannot agree to the approach being taken by Mr Bodley in respect of his client’s entitlement to compensation as it does not reflect reality or take proper consideration of the Compensation Code. In this regard, the Council does not accept that the Heaver Objectors benefit from a ransom position and are unable to agree to the levels of value being contended for even in light of the provisions of Paragraph 3.

14.16 With regard to SMTL, the Council has taken a generous approach to the reimbursement of fees but the level of fees being demanded are excessive and unwarranted even when having regard to the potential cost savings that may be secured by not having to deal with their objection as part of the Inquiry proceedings.

14.17 There are separate procedures available to SMTL to address this dispute and it is my understanding that this dispute as to the level of fee recovery is not relevant to the issue of whether the Order should be confirmed as proposed, amended in some way or refused.

Paragraph 13

14.18 The Council is clear that the Order is required in order to deliver the TSDL scheme which will be funded by Countryside from its own resources.

14.19 I have been provided with and reviewed the Viability Assessment (**CD/23**) and have considered the extent to which the TSDL scheme is viability in both planning and commercial terms. I have also considered the extent to which the compensation liabilities can be met.

14.20 It is my conclusion that the Council is very clear as to how it intends to use the land identified within the Order Map (CD/2) and there is no credible reason to consider that Countryside will not deliver once it has full control of all the required land.

Paragraph 14

14.21 I have had sight of the evidence of Mr Leach and, since my involvement with this project, have worked closely with Countryside.

14.22 It is apparent that Countryside had every intention of delivering the project and, indeed would have done so already had the Original Order included all the National Highways interests.

14.23 In addition, Countryside actively attempted to agree terms with the Heaver Objectors in order to commence site surveys but, unfortunately, the Heaver Objectors responded by demanding financial terms that were unreasonable even when taking a commercial view.

14.24 I have confidence, therefore, that there is both intention and capacity to implement development at the earliest opportunity and there are no funding issues that would lead to a delay in proceeding.

Paragraph 15

14.25 The only current impediments to delivery comprise the need to agree terms with the Heaver Objectors and National Highways in respect of the access to the A27. Once either voluntary agreement is reached and/or this Order is confirmed, the development can proceed.

Paragraph 17

14.26 As evidenced within sections 6 and 7, there have been extensive negotiations with the Heaver Objectors and National Highways and the Order was only brought forward once it became apparent that these negotiations were likely to be unsuccessful.

14.27 Whilst Mr Bodley has maintained that his clients do not wish to force another Inquiry, the reality is that his clients have rejected all offers made by the Council and Developer and have responded by putting forward terms which they would have known could not be accepted by the Council.

14.28 In this regard, the formal agreement drafted by Ashurst provided that their clients' objection would not be withdrawn until a General Vesting Declaration came into force. This would mean that their client's objection would remain until after the closure of the Inquiry.

14.29 Whilst agreement had previously been reached with SMTL, the Council have sought to negotiate further terms with SMTL and the only matter preventing full agreement concerns the payment of fees. The Council considers that it has acted entirely reasonable in this regard.

14.30 I am hopeful that the latest proposal made by Ashurst on 17 November 2023 may assist in unlocking agreement but there remains a number of points that could yet prevent full agreement or delay progress indefinitely.

14.31 In my opinion, both the Council and Countryside have gone beyond the requirements of Paragraph 17 in trying to agree terms with the Heaver Objectors, SMTL and the Saxon Meadows residents but, in the absence of any current prospect of agreements being reached, it has been necessary to pursue the Order.

Paragraph 18

14.32 The Council has proposed voluntary ADR to the Heaver Objectors by way of a voluntary reference to the Upper Tribunal (Lands Chamber) but they require, for tax purposes, the exercise of compulsory purchase powers.

14.33 There is no dispute with SMTL or the Other Heaver Objectors in respect of any entitlement to compensation. The only dispute concerns the amount of fees to be reimbursed to SMTL where SMTL are claiming an unspecified amount that is significantly in excess of what the Council considers to be reasonable. I understand that SMTL wants to raise these concerns as part of these proceedings.

Paragraph 106

14.34 It is clear from the grant of planning permission and the evidence before this Inquiry that the proposed scheme is in accordance with the Local Plan and will contribute to the social, economic and environmental wellbeing of the area.

14.35 As I have set out within this evidence, there is little, if any, prospect of the various landowners working together to deliver the TSDL scheme and planning permission for development has only been secured as a result of Countryside taking the lead and working with the Council. It is therefore clear from both a historical and practical perspective that the delivery of the TSDL is dependent upon the securing of compulsory purchase powers that can be exercised as a matter of last resort

in the event that voluntary agreement with the Heaver Objectors and/or National Highways cannot be achieved in a timely manner.

14.36 I have already considered viability and deliverability matters in my consideration of Paragraph 13 but, in brief, it is clear to me that the scheme is fully viable and there is every intention on the part of Countryside to deliver.

Conclusions

14.37 In my opinion, the Council and Countryside, as the Council's appointed developer, have more than fully applied with all the relevant provisions of the Guidance and the grant of compulsory purchase powers to unlock the delivery of the TSDL.

14.38 I have and will continue to engage with the Heaver Objectors, National Highways and SMTL to try and reach agreement but the evidence of negotiations, as set out in sections 6 and 7 do not give me confidence that there would not be further significant delay in the absence of the confirmation of the Order.

15.0 PROFESSIONAL STATEMENTS

15.1 In accordance with the requirements set out at PS 5.4 (P) (i) RICS Practice Statement and Guidance Notice entitled “Surveyors acting as expert witnesses 4th edition” and paragraph 3.3 of Practice Direction 35, 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.
- I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

15.2 In accordance with the requirements set out at PS 5.4 (P) (ii) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm as follows:

- I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 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.
- I confirm that I am not instructed under any conditional or other success-based fee arrangement
- I confirm that I have no conflicts of interest.
- I confirm that I am aware of and have complied with the requirements of the rules, protocols, and directions of the Inquiry.
- I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses’.

15.3 In accordance with rules 35.10 (1) and (2) of the Civil Procedure Rules I can confirm that I understand and have complied with my duty to the Inquiry and also confirm that I am aware of the

requirements of CPR Part 35, the Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims 2014.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines, likely representing the name Peter Roberts.

PETER ROBERTS FRICS CENV