BOSHAM LIMITED AND SHOPWYKE LIMITED

Chichester District Council (Tangmere) (No. 2) Compulsory Purchase Order 2023

Appendix MB2 to Rebuttal Statement of Evidence of

Matthew Bodley

5 December 2023

Ref: APP/PCU/CPOP/L3815/3321240

THE TOWN AND COUNTRY PLANNING ACT

1990 AND

THE ACQUISITION OF LAND ACT 1981

CHICHESTER DISTRICT COUNCIL

(TANGMERE) COMPULSORY PURCHASE

ORDER 2020

STATEMENT OF EVIDENCE OF

PETER ROBERTS FRICS CENV

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1. Qualifications and experience

1.1 My name is Peter Roberts.

1.2 I am a Fellow of the Royal Institution of Chartered Surveyors, a Chartered Environmentalist and a RICS Registered Valuer. I am also a member of the Compulsory Purchase Association.

1.3 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. I have 32 years' experience dealing with contentious and complex property matters including compulsory purchase matters.

1.4 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.
- Formal “Red Book” valuation advice.
- Project management and agency advice in respect of land development opportunities.

1.5 I advise a wide range of clients including Crest Nicholson Plc, Countryside Properties, SSE plc, 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. I also provide advice to private individuals and am regularly instructed directly by solicitors.

1.6 I am appointed by the RICS and accept direct approaches on a continuing basis 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.

1.7 I am also currently instructed to provide Expert evidence to the RICS in connection with Disciplinary Panel Hearing proceedings and investigations concerning RICS registered firms and members.

2. Introduction

2.1 I am instructed to provide expert witness evidence on behalf of the Council, and to provide advice to both it and Countryside.

2.2 My first involvement in this matter was in responding to an email from Mr Bodley dated 4 August 2021. At that point in time Mr Denning was on holiday but the Council and Countryside were keen not to lose momentum in their discussions with Mr Bodley's clients. I was therefore instructed to provide advice in respect of a response to Mr Bodley's email with particular regard to his stated desire to explore a compensation code approach.

2.3 Having taken instructions from both the Council and Countryside I responded to Mr Bodley by email on 10 August 2021 raising a number of queries as to his suggested Heads of Terms (i.e. the basis of a ransom argument) and requesting further information including, inter alia, a full unredacted copy of the Promotion and Option Agreement dated 21 December 2012 (2012 Option) between Mr and Mrs Heaver, Bloor Homes Limited and Bloor Holdings Limited in respect of Plot 16. I also confirmed the Council and Countryside's willingness to progress terms on a compensation basis.

2.4 Since that time, I have continued to engage with Mr Bodley in an effort to progress terms in exchange for his clients' withdrawal of their objections.

2.5 Mr Denning unfortunately become indisposed through illness on 3 September 2021 at which point it become clear that he would be unable to continue to present evidence to this Inquiry.

2.6 I have therefore been instructed to review Mr Denning's evidence and have been provided with access to all documents submitted to the Inquiry as at the date of this statement via the Council's dedicated webpage including the evidence submitted by

Mr Bodley on behalf of his clients.

2.7 For clarity, in preparing this statement I have been expressly instructed not to provide a document in the form of a 'rebuttal proof' which responds to Mr Bodley's proof of evidence. As such, my absence of comment in respect of Mr Bodley's evidence should not, therefore, be construed as agreement thereof. My comments regarding engagement with Mr Bodley relate solely to the email exchanges that have taken place between Mr Bodley and me.

2.8 In summary, my instructions are to provide my expert independent opinion as to whether the Council has fully discharged their requirements as set out in the Guidance on Compulsory purchase process and The Crichel Down Rules **(CD/9)** (the Guidance) with particular regard to paragraphs 2 and 3 thereof.

2.9 For clarity, my opinions and conclusions are solely my own and I am in no way beholden to the views expressed by Mr Denning. In this regard I would draw attention to the Statements of Truth set out at Section 6 below.

3. Updates to Mr Denning's Evidence

3.1 Mr Denning provided, at paragraph 5.10 to 5.15 of his evidence, a list of parties with whom Countryside was in advanced negotiations pending agreement. I am informed that, since then, agreement has been reached with the Church Commissioners for England, Pitts, Seaward Properties and Southern Gas Networks such that their objections have been withdrawn.

3.2 I am also informed that solicitors have been instructed to finalise agreements in respect of the interests held by Temple Bar Partnership LLP, Denton and Co Trustees Limited and Tangmere Medical Centre. These agreements also include the interests of Mr and Mrs Heaver insofar as they relate to these parties.

3.3 I understand that full completion is subject to a small number of remaining points which, following discussions with my instructing solicitor, appear to be capable of resolution such that it is anticipated that these objections will be withdrawn.

3.4 I therefore understand that the only likely remaining objections comprise those submitted on behalf of Bosham Limited, Shopwyke Limited, CS East Limited and

CS South Limited on whose behalf Mr Bodley has submitted a Proof of Evidence.

3.5 I have, for ease of reference, referred to these parties collectively as “the Heavers”.

4. Negotiations With Mr Bodley

4.1 As set out above, I have been involved in the negotiations with Mr Bodley since 4 August 2021. These negotiations have been by way of email exchanges and in each and every case I have taken clear instructions from both the Council and Countryside by way of conference call discussions and email advice before responding.

4.2 It is important to point out that Mr Bodley’s first contact was by way of letter to Countryside on 11 June 2021 and, prior to this, both the Council and Countryside understood that Mr Bodley’s clients were being represented by Mr Wilkins of Savills in respect of Plot 16 and Mr King of King and Co in respect of Tangmere Corner. Furthermore, detailed and substantive negotiations had taken place resulting in the drafting of the proposed Hybrid Option Agreement covering both Plot 16 and Tangmere Corner.

4.3 Ashurst had advised Davitt Jones Bould on the 8 December 2020 that the deal structure was agreed subject to a couple of points as mentioned in that letter and, as Mr Denning points out in his evidence, further adjustments were made in the Heads of Terms for the Hybrid Option Agreement to address these.

4.4 However, Mr Bodley advised on 11 June 2021 that the terms negotiated by Mr Wilkins understates, in his opinion, the true value of the Heavers’ freehold interests and that they would now prefer a full “compensation code” approach (his term).

4.5 Despite the fact that the terms previously offered 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.

4.6 It also appears, from my email exchanges with Mr Bodley, that he has not properly understood the provisions of the terms previously agreed with the Heavers hence I

am unclear as to whether he has correctly compared the value to his clients of the Hybrid Option Agreement to what he describes as a “compensation code” approach.

4.7 The current position therefore is that two alternative offers have been made to the Heavers and both remain open for acceptance:

1. A Hybrid Option Agreement having regard to commercial terms that follow the same principles as those agreed with the Church Commissioner for England, the Pitts, Seaward Properties and Bloor Homes Limited; or
2. A full “compensation code” approach.

4.8 It should be stressed that the Council have been engaging with Mr Wilkins since at least early 2016 as evidence by his letter to Mr Frost dated 22 February 2016. During this time. Mr Wilkins advised Mr Leaver of Knight Frank in his email dated 18 January 2017 that he had negotiated the terms of the 2012 Option which applies to Plot 16 together with further land located to the northwest. This is consistent with the minutes of the meeting dated 2 November 2011 between the Tangmere Consortium and the Council as prepared by Driver Jonas Deloitte where it was recorded that Mr Wilkins was acting on behalf of the Heavers.

4.9 In this regard, I note that the Council were seeking advice from the HCA in August 2013 as to how they might overcome a dispute between the various landowners regarding a claim for a ransom position. On the basis that Mr Wilkins was clearly advising the Heavers at this point in time it would unlikely that he would have been ignorant of the ransom arguments.

4.10 In any event, it is very clear that Mr Wilkins was fully cogent of his clients’ ransom position argument as confirmed, inter alia, by his letter to Mr Frost of the Council dated 2 June 2016.

4.11 It would therefore be reasonable to assume that Mr Wilkins has, throughout his discussions and negotiations with the Council, Knight Frank and Countryside been able to draw upon intimate understanding and deep knowledge of all matters affecting Plot 16 including the terms of the 2012 Option and the ransom arguments and would therefore have only entertained terms that he considered fully maximised the value of that land taking into account his expertise in advising in respect of strategic land and development opportunities.

4.12 Mr Wilkins was also fully aware of the intention by the Council to seek compulsory purchase powers in the event that agreement was not possible as illustrated by his email exchange with Ms Flitcroft of the Council and Mr Leaver of Knight Frank dated 10 February 2017, and he would therefore have been able, in his advice to the Heavers, to weigh up the benefits of the proposed terms against a compensation code approach that took full account of the 2012 Option and the potential for ransom payment.

4.13 In any event, I am informed that Countryside emailed Mr Wilkins a copy of the CPO procedural flowchart and procedural documents titled "Compensation to Agricultural Landowners and Occupiers" and "Compulsory Purchase Procedure" on 29 September 2019 hence this, together with the progress in respect of bring the Order forward, would have further reinforced the point.

4.14 It is possible that Mr Wilkins may not have felt comfortable advising on the specific details of a "compensation code" approach. However, Savills have a well-established and respected compulsory purchase department hence I would have expected him to have taken internal advice or offered his colleagues' services to his clients. Furthermore, the Heavers instructed Ashurst who would have been well aware of the compensation code provisions and well positioned to advise accordingly.

4.15 It would therefore be entirely reasonable to expect that Mr Wilkins negotiated in full knowledge of the alternatives available to his clients and would therefore have approached negotiations on the basis of securing terms that were at least as favourable as the alternative option of relying on the compensation code.

4.16 It is therefore concerning that Mr Bodley now considers that the terms negotiated by Mr Wilkins in full knowledge of the ransom position, compulsory purchase discussions and first-hand knowledge of the 2012 Option Agreement, which were fully reviewed by Ashurst are less favourable that his clients' compensation entitlement.

4.17 Notwithstanding this point, I understand that the terms negotiated by Mr Wilkins followed the same principles as those agreed with the adjoining landowners. These landowners were advised by, inter alia, Mr Gillington of Gerald Eve who has extensive development and compulsory purchase experience.

4.18 It is important to be clear as to the terms on offer. In this context I am advised that, in simple terms, the Hybrid Option Agreement commits Countryside to servicing the entirety of the Heaver land including Tangmere Corner. Regardless as to whether the remaining terms of the agreement were implemented the position would be that Countryside would be committed to servicing the entirety of the Heavers' land. This is a point that Mr Bodley has yet to acknowledge in our email exchanges as his express understanding, which is incorrect, is that there is no obligation on Countryside to do anything at all.

4.19 Countryside and Bloor would then have the ability to acquire up to 100% of Plot 16 at 90% of Market Value. If they decided for whatever reason not to exercise their option the Heavers would be able to step in and develop the land themselves and thereby benefit from the servicing work provided by Countryside, or the land could be sold as serviced plots.

4.20 In any event, the Heavers would also be able to sell or develop Tangmere corner free from the burden of any option restrictions and, by doing so, benefit from the works carried out on that land by Countryside.

4.21 In effect, Countryside would take the role of lead developer in respect of servicing the entirety of the land, but the development of the serviced plots would be implemented by a variety of potential developers subject to mutual obligations not to hinder the implementation of the overall master plan development. This is an entirely normal approach and indeed one that is taken on large sites regardless as to whether compulsory purchase powers are invoked.

4.22 A simple illustration of this strategy would be the development of the former Associated British Foods processing plant at York to provide 1,100 residential units together with ancillary commercial provision across circa 110 acres.

4.23 My colleagues and I advised in respect of the securing of all the necessary planning permissions and the overall development strategy whereby the client implemented demolition, remediation and construction of the spine road together with the installation of services. It was then intended that the site would be split into phases for disposal to various different developers including Registered Providers subject to mutual obligations to deliver each part of the development in accordance with the wider masterplan.

4.24 The point was that the land needed to be under single overall control in order to provide the infrastructure and coordinate otherwise unconnected developments to make sure that no-one could impede implementation of the development as a whole.

4.25 In the present case I am advised that the worst-case scenario from the Heaver's perspective, if they were to accept the proposed Hybrid Option Agreement terms, would be that Countryside would service all of their land including Tangmere Corner as part of a comprehensive scheme and the Heavers could then develop or market their land with the benefit of these works if Countryside and/or Bloor decided not to exercise their acquisition option.

4.26 It is important to stress that Countryside took the lead in negotiating these terms with Mr Wilkins as this is a commercial developer led approach rather than a technical statutory valuation negotiation. As such, whilst Mr Denning was aware of the terms under discussion and was involved in client liaison discussions in the background it would not have been necessary or appropriate for him to become directly involved in the negotiations other than advising the Council and Countryside as to the overall strategy.

4.27 Had Mr Wilkins advised at any point that the Heavers preferred a pure "compensation code" approach or even that they required an offer for comparison purposes, Mr Denning would have then stepped in and taken over the discussions. This is precisely what has happened following Mr Bodley's intervention whereby all discussions regarding a compensation code approach have been led by Mr Denning or me.

4.28 In my opinion this is entirely appropriate, and I have taken the same approach on other development schemes where the developer has taken the lead subject to liaising with me as the compensation specialist.

4.29 In any event, the Heavers gave no indication that they wanted a 'straight' compensation offer until Mr Bodley wrote to Countryside on 11 June 2021 advising that he was instructed to negotiate on the basis of a compensation entitlement. He explained that this was because he believed that this would release a higher payment to his clients having reviewed the offer terms.

4.30 However, it has become apparent, based on my discussions with Countryside in

light of his comments as expressed to me, that, in reaching this conclusion, he may have misunderstood the terms of the Hybrid Option Agreement negotiated by Mr Wilkins. I am therefore unclear as to whether his conclusion that his clients would be better served by a compensation code approach is based on a correct understanding of both the drafting and the intention of the proposed terms.

4.31 Notwithstanding this point, Mr Bodley also advised Mr Denning that he considered that the proposed terms did not include any recognition of what he and his client consider to be a ransom position. In effect, he is suggesting that Mr Wilkins disregarded the question of ransom in progressing the terms and/or took inadequate account thereof.

4.32 A ransom position can only be taken into account in assessing compensation if it would have existed in the "no scheme" world. However, whilst I am aware that the Heavers have long argued for a ransom share of any development proceeds, I am unclear as to the basis upon which Mr Bodley considers this to be appropriate.

4.33 I have discussed this point with the Council as this is primarily dependent upon the prospect of development which, in turn, is dependent upon the granting of planning consent and I have set out the advice provided to me in this regard within my email responses to Mr Bodley.

4.34 In this regard I note from a review of the exchanges between the various landowners, that whilst generic headlines have previously been agreed between the various landowners as set out in the MOU for collaborative delivery of development, the fundamental issue as to how development value following site assembly should be split and shared with the Heavers appears to comprise a fundamental block on development coming forward in the absence of site assembly through the exercise of statutory powers.

4.35 In any event these are compensation and valuation arguments which I consider should be dealt with by the Upper Tribunal Lands Chamber.

4.36 Mr Bodley issued Heads of Terms on 30 July 2021 and stated in his covering email that they reflected his client's entitlement to compensation and upon acceptance thereof his clients would withdraw their objection.

4.37 In simple terms a ‘compensation code’ offer allows for compensation to be paid in respect of each plot and interest listed within the Order calculated in accordance with the relevant statutes and key principles having regard to Market Value in the “no scheme” world.

4.38 However, whilst Mr Bodley presented his Heads of Terms as being in accordance with the code his approach was fundamentally flawed and in breach of code principles. In particular, the key issues were:

- Mr Bodley was seeking a non-refundable Minimum Land Payment in respect of Plot 16 of £30,000,000 no part of which would be refundable if the Upper Tribunal Lands Chamber subsequently determined a reduced amount.
- Tangmere Corner would be excluded in its entirety from the CPO.
- Tangmere Corner would be retained by the Heavers.
- Countryside would fully service Tangmere Corner at their own cost subject to a Project Management Fee.

4.39 Mr Bodley explained that his Minimum Land Payment of £30,000,000 was based upon the Minimum Price as set out in the 2012 Option but, as I have pointed out to Mr Bodley this price would only be paid if Bloor secured planning permission for an implementable planning permission and considered that market values warranted exercising the option. In addition, this price reflects the acquisition of an unencumbered freehold interest whereas, in the compensation scenario, the value of the Heavers’ interests would have to take into account the burden of the 2012 Option.

4.40 In reality, Bloor had the benefit of the 2012 Option and should have implemented certain actions well before proceedings to make the Order were commenced. The fact that no action was taken suggests to me that there is at the very least a possibility that Bloor considered that there was a real risk of not being able to obtain an implementable planning consent. Alternatively, they could have considered that the Minimum Price was too high such that any scheme would be unviable.

4.41 In this regard, there is no minimum price in the Heads of Terms agreed with Bloor and payment will be based on a straight percentage of Market Value. Similarly, the Minimum Price that has now been agreed with the Church Commissioners and the Pitts is significantly lower than the Minimum Land Payment as set out in the 2012

Option.

4.42 In addition, as Mr Bodley should be aware, Mr Wilkins negotiated a Minimum Price within the Hybrid Option Agreement of £175,000 per Gross Acre despite the fact that he had agreed a significantly higher value within the 2012 Option. Unless I have misunderstood the position, this clearly demonstrates to me that Mr Wilkins is of the clear opinion that the Minimum Price as negotiated by him and as set out in the 2012 Option is no longer credible. It is therefore concerning that Mr Bodley would continue to rely upon the 2012 Option terms for valuation evidence.

4.43 In any event, I am also aware that the Minimum Price as set out in the 2012 Option Agreement is subject to adjustments pursuant to redacted provisions hence even if I was incorrect with these comments, I would still be unable to have any regard to a Minimum Price where I do not have full details of the 2012 Option terms.

4.44 It should also be pointed out that the 2012 Option is now nearly 9 years old such that, even if the Minimum Price carried weight as evidence of value it would be in the capacity of 2012 rather than 2021 values.

4.45 For clarity, I have requested a full unredacted copy of the 2012 Option Agreement but have only been provided with a heavily redacted copy subject to a Non-Disclosure Agreement. In this regard, I am unable comment further.

4.46 I took instructions from the Council and Countryside in light of Mr Bodley's email and responded on 25 August 2021 setting out my proposed Heads of Terms having regard to a strict application of the compensation code to the entirety of the Heaver land including Tangmere Corner. I adopted initial considerations for each plot and interest based on my current opinion of value in the "no scheme" world.

4.47 Mr Bodley responded on 1 September 2021 raising a number of points. The vast majority of these points are capable of clarification/resolution and are relatively minor.

4.48 However, whilst he advised that his clients would be prepared to accept a reduced non-refundable minimum upfront payment the amount proposed is still way beyond anything I could recommend to the Council and Countryside. In addition, no explanation or justification has been provided to support the price contended for hence I am unclear as to whether this is simply a non-calculated price that his clients

require on the basis of a commercial deal or his genuine opinion of value in accordance with the compensation code.

4.49 Notwithstanding the basis upon which his clients' offer has been calculated it is clear to me that he and/or his clients still have an unrealistically high expectation of non-refundable value that is not, in my mind justifiable. It therefore appears to me that, unless Mr Bodley and/or his clients drastically temper their expectations, there is limited expectation of this matter being resolved by agreement such that the Council would have to rely on the securing and exercise of compulsory purchase powers to take the required interests and allow the matter of compensation to be determined by the Upper Tribunal Lands Chamber.

4.50 It is important to stress that I have offered voluntary terms whereby the quantum of compensation can be referred to the Upper Tribunal Lands Chamber should Mr Bodley and/or his clients maintain their current view on value.

4.51 As such, regardless as to whether my terms are accepted or the Heavers rely on their ability to submit a claim following confirmation of the Order, they will still be able to recover full value if Mr Bodley's opinion of value is preferred to my own by the Tribunal. As such, the Heavers would not, by entering into my proposed terms, prejudice their ability to continue their valuation arguments and seek resolution of the question as to compensation code value.

4.52 In essence, my terms offer the opportunity for the Heavers to receive payment of the Acquiring Authority's assessment of compensation upon the terms becoming unconditional, whereas, in the absence of agreement, the Heavers would have to wait for the Order to run its course before they could request and receive 90% of the Acquiring Authority's assessment ahead of final settlement or determination by the Upper Tribunal Lands Chamber. Other than this distinction, both options should result in the same ultimate answer.

4.53 I am therefore content that I have offered, on the instructions of the Council and Countryside, terms that are fully in line with the compensation code save that the Heavers would, by entering into those terms, receive payment of compensation much sooner than if they relied solely on the exercise of compulsory purchase powers.

4.54 Mr Bodley's proposed terms in respect of Tangmere Corner are not in accordance

with the compensation code which envisages that these plots would be acquired in full and compensation paid that took full account of the Market Value, as defined by the compensation code for the relevant interest. As such a compensation code offer would assess the compensation to be paid in exchange for the compulsory acquisition of an interest and does not assume that the interest in question would remain with the owner and the acquiring authority be required to carry out works to the relevant land.

4.55 With regard to matters other than the quantum of the price to be paid and the proposed retention by the Heavers of Tangmere Corner I do not believe that Mr Bodley and I are in significant disagreement in respect of the broad compensation code principles.

4.56 I am instructed that the Council and Countryside are content to proceed on either the Hybrid Option Agreement basis or a straight compensation code basis. Both options are subject to third party mechanisms by which the differing opinions of value can be independently resolved.

4.57 Either way I am content that every effort has been made to agree terms with Mr Bodley and/or his clients and the lack of agreement is primarily, albeit not exclusively, due to significantly differing opinions as to the price to be paid in exchange for the objections being withdrawn.

5. <u>The Guidance</u>

5.1 I have reviewed the submissions made by/on behalf of the Council in light of the following provisions as set out within the Guidance and provide my conclusions in respect of those matters falling within my instructions as follows.

5.2 **Paragraph 2** of the Guidance provides that " *The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement."*

5.3 Furthermore paragraph 2 also states " *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."*

5.4 In my opinion Mr Denning, the Council, Countryside and I have taken all reasonable steps to acquire all the land and rights required over an extensive and sustained period and the Council, as supported by Knight Frank, DWD and Countryside have consistently engaged with the Heavers. In this regard there is more than ample evidence of detailed discussions and negotiations having taken place.

5.5 However, it is clear to me that there is limited prospect of agreement being reached with Mr Bodley's clients mostly due, in my opinion, to Mr Bodley and/or his clients maintaining wholly unrealistic expectations as to the payment required in exchange for their withdrawal.

5.6 I am also of the opinion, having reviewed Mr Denning's evidence and from my negotiations with Mr Bodley, that there is limited prospect of agreement being reached in a timely manner due to the magnitude of difference between us in respect of the market value of his clients' interests. I do not believe, therefore, that further delay would be likely to lead to a resolution.

5.7 At the end of the day, there are two offers on the table for acceptance by Mr Bodley's clients. It is for them to decide which they prefer but, either way, they will have the right to refer disputes to an independent party whichever route is chosen. As such, even if it was assumed that my opinion of value was incorrect, Mr Bodley's clients would be protected by virtue of being able to refer disputes for determination.

5.8 **Paragraph 3** of the Guidance is entitled "*What should acquiring authorities consider when offering financial compensation in advance of a compulsory purchase order?".* This sets out that public sector organisations should consider value for money and "*…make reasonable initial offers…"*

5.9 I am satisfied that the offers made to Mr Bodley and his clients strike the correct balance and offer a clear choice between a market led commercial return or compensation assessed by reference to established compensation code valuation principles.

5.10 I fully understand that Mr Bodley does not accept that my proposed initial payment on a compensation code basis is reasonable, but I respectfully disagree. However, as I have explained to Mr Bodley, if I am provided with an unredacted copy of the

2012 Option and/or additional justification and evidence is provided to me that leads me to conclude that my valuation conclusions should be amended I will take further instructions.

5.11 In any event, my proposals provide his clients with the ability to have the matter independently determined by the Upper Tribunal Lands Chamber hence the acceptance of my proposed terms would not be prejudicial to their entitlement.

5.12 Overall, I am of the opinion that the Council and Countrywide have fully discharged the requirement of paragraphs 2 and 3 of the Guidance.

6. Statements of Truth

6.1 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.

6.2 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'.

6.3 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.

PETER ROBERTS FRICS CENV
6 September 2021

CHICHESTER DISTRICT COUNCIL (TANGMERE) COMPULSORY PURCHASE ORDER 2020

PINS Ref: APP/PCU/CPOP/L3815/3264148

CLOSING SUBMISSIONS OF THE ACQUIRING AUTHORITY

Preliminary

1. As was noted in opening, this Inquiry is being held to consider objections to the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 ('the Order'). As the Inquiry is aware, the Acquiring Authority is Chichester District Council ('the Council'), and the Order has been made pursuant to Section 226 of the Town and Country Planning Act 1990 ('the 1990 Act').

2. Now that all parties have had the opportunity to put evidence before the Inquiry, it falls to the Council to make submissions in support of the Order, demonstrating to the Inspector (and behind him the Secretary of State) that there is a compelling case justifying the confirmation of compulsory purchase powers.

3. In opposition to the Order, there are 8 remaining statutory objections. These can helpfully be grouped into three categories:

    - First, there are objections on behalf of four companies which have freehold interests in what the Inquiry has heard referred to as 'the Heaver Land'. These companies are Bosham Ltd and Shopwyke Ltd (Plots 2, 3, 4 and 16), CS East Ltd (Plot 17) and CS South Ltd (Plot 15) - 'the Heaver Objectors'. Notwithstanding they commissioned a surveyor, Mr Matt Bodley, to submit a proof of evidence to the Inquiry in support of their objections, the Heaver Objectors have not participated in the Inquiry itself, but instead their solicitor Mr Trevor Goode has attended as a "*non-participating observer*"[1].

[1] The Inspector's term, with which Mr Goode agreed. Mr Bodley attended the Inquiry in the same capacity.

- Second, there are four further parties which are 'controlled' by the Heaver Family and which also have interests in/rights over the Heaver Land, these being Denton & Co Trustees Ltd, Herbert & Shelagh Heaver, Temple Bar Partnership LLP and Dr Chishick of Tangmere Medical Centre ('the Other Heaver Objectors'). These parties did not submit any evidence to the Inquiry, and did not participate in it.

- Third, there is Mr Steve Murphy. Mr Murphy has not participated at all in these proceedings save to lodge an objection dated 29th November 2020 which asserts a right to walk his dogs from a gated entrance he created at the bottom of his garden onto the fields forming part of the Tangmere SDL. He has submitted no evidence to the Inquiry and did not participate in it. Indeed, notwithstanding the Council provided him with notice of the Inquiry and copies of the evidence on which it relies in support of the Order, it has heard nothing from Mr Murphy since his objection[2].

4. All other objections to the Order have been withdrawn. In particular, both the Church Commissioners and the Pitts Family, as the other two primary landowners in the Tangmere Strategic Development Location ('Tangmere SDL') aside from the Heaver Objectors, have withdrawn their objections[3]. Further, both Bloor Homes Ltd (who hold an option to develop part of the Heaver Land) and Seaward Properties Ltd (who hold such an option in respect of part of the Pitts Family land), have also withdrawn their objections.

5. It is in this context, and by way of preliminary observation, that the Inquiry can note the relative extent and heft of the evidence submitted in objection to, and in support of, the Order. In this regard the position can be summarised as follows:

    - In objection to the Order there is solely the proof of evidence of Mr Bodley[4]. Mr Bodley has not attended the Inquiry to face questions, either in XX or IX, upon the substance of

[2] The remainder of these submissions are concerned with objections raised in respect of the Heaver Land (whether by the Heaver Objectors or the Other Heaver Objectors). The position of Mr Murphy, and also of Mr Bryant, are addressed separately at the end of these submissions.

[3] As in the Council's opening submissions, the Church Commissioners, the Pitts Family and the Heaver Objectors are referred to as the 'Landowning Interests' in the Tangmere SDL.

[4] Mr Goode expressly confirmed at the outset of the Inquiry on behalf of the Heaver Objectors, the proofs of evidence of Mr Alex Gillington and Ms Pauline Roberts (for the Church Commissioners) and the proof of evidence of Mr Jonathan Stott (for Seaward) did not fall to be considered by the Inspector/Secretary of State,

that proof of evidence. Given that the evidence is wholly untested, the weight attaching to it must be significantly reduced.

- In support of the Order, the Council has called four witnesses[5], each of whom provided written testimony in the form of a proof of evidence, and each of whom attended the Inquiry to provide further oral evidence, and to submit to XX and by IX. That the Heaver Objectors (and indeed the Other Heaver Objectors) have elected not to participate in the Inquiry, and so have not availed themselves of the opportunity to XX, is nothing to the point. The evidence of the Council's witnesses has been tested by IX, and objectors have been given the opportunity to so test it. Accordingly, that evidence should attract full weight.

Common Ground

6. Next, and before moving to matters that remain in dispute, it is helpful to look at the extent of matters that are in fact common ground between the Council and those parties who maintain objection to the Order. These matters can be summarised relatively briefly, but they are no less significant for that. Indeed, the extent of common ground is extremely important.

- First, there is the 'principle' of development. Neither the Heaver Objectors nor the Other Heaver Objectors contest the proposition that the land in which they are interested should come forward for the purpose in respect of which the Council is promoting the Order. That is, none of them suggest that the land should not come forward for residential-led development. There is no opposition to the Scheme[6] as such.

- Second, it is not suggested by any of these objectors that, on confirmation of the Order, there would be any impediment to delivery of the Scheme. Crucially, the Council has resolved to grant planning permission in respect of the Scheme, and there is no

given that that those parties had withdrawn their objections to the Order. As such that evidence was not the subject of questions to the Council's witnesses by their advocate and is not addressed in these submissions.

[5] Mr Andrew Frost (Council), Mr Martin Leach (Countryside), Ms Hannah Chivers (Council) and Mr Peter Roberts (Dalton Warner Davis).

[6] The term 'the Scheme' was defined in the Council's Opening Submissions. It refers to the development in respect of which Countryside submitted its outline planning application, and in respect of which the Council has resolved to grant planning permission.

suggestion that the permission will not be granted on completion of the planning obligation pursuant to Section 106 TCPA 1990. Mr Frost and Ms Chivers have confirmed (XC) that such completion will take place once the Order has been confirmed, and the relevant interests in land have been transferred to Countryside following the exercise of compulsory purchase powers (so far as is necessary). That evidence is not contested. Thus all parties agree that the issue of planning consent does not comprise a bar to delivery of the Scheme, and no other potential barrier has been identified. Thus it is common ground that there is no impediment to delivery.

- Third, none of the objectors dispute the extent of the benefits which the Scheme would deliver. These submissions will rehearse these benefits shortly, but the point to note at this stage is that no party has contested the extent and nature of the benefits which the Scheme, facilitated by the Order, would deliver to Tangmere and to the District more generally.

- Fourth, no objector has suggested that Countryside, the Council's development partner, is not capable of delivering the Scheme. Any such contention would of course be wholly lacking in credibility – Countryside is, as Mr Leach has explained, a well-established developer of national repute. It has the track record and the resources to deliver the Scheme, just as it has delivered countless other such developments. Thus the Inquiry can note that all parties recognise Countryside is an entirely suitable development partner.

7. This then, is the context in which the more contentious matters fall to be considered. All this common ground weighs heavily in support of the Council's case, and in support of the Order's confirmation.

Grounds of Objection

8. The Heaver Objectors have advanced a wide-ranging case in seeking to contest the Order. In this regard they have made a myriad of allegations in respect of multiple targets. However, when the dust settles, there are only three strands to their argument which are potentially relevant to the question of whether the Order should be confirmed. These are as follows:

(i) Queries as to delivery of the Scheme,

(ii) Contentions as to the need for compulsory purchase, and

(iii) Dispute as to whether the Council has taken 'reasonable steps' to acquire their interests.

9. This next section of these submissions deals with each of these issues in turn.

Ground 1: Delivery

10. In giving his (written) evidence on behalf of the Heaver Objectors, Mr Bodley wisely declined to challenge the bona fides of Countryside, in terms of their ability to deliver the Scheme. Instead, his focus was on the development agreement, signed by the Council and Countryside on 5th February 2019 ('the Agreement')[7], and since supplemented by further agreements.

11. In paragraphs 4.14-4.16 of his proof of evidence he raised various matters in respect of the Agreement. No evidence was submitted in support of the contentions made, but it was essentially suggested that by reason of the drafting of the document, the Inspector and Secretary of State could not depend on Countryside delivering the Scheme; the Council had 'signed a bad deal'.

12. To the extent this argument ever had any merit (which the Council does not accept), it has been thoroughly and fundamentally disposed of by the evidence of Mr Frost and Mr Leach, and by the fact of the Council and Countryside having concluded the second supplemental agreement ('the Second Supplemental Agreement')[8].

13. Taking matters in turn

(i) Mr Bodley alleged the Agreement does not sufficiently obligate Countryside to build out the Scheme.

- This assertion is simply unsustainable. Clause 6 of the Agreement comprises a contractual obligation on Countryside to build out 'the Development'. Insofar as Mr Bodley points to the obligation only being to use '*reasonable endeavours'* to do so, there is nothing to the point. On behalf of Countryside Mr Leach confirmed (XC) that this level of obligation was entirely commonplace; indeed

[7] Appendix 6 to CD4.
[8] ID/9

two of the other Countryside developments cited at his Paragraph 3.4 were the subject of development agreements to the same effect. In this context Mr Leach also noted that *not once* in his 20 years with the company has Countryside walked away from a development that it has committed to deliver. Not once. Mr Frost, for the Council, confirmed that he was entirely content with the extent of the obligation, confirming that in entering into it the Council had benefitted both from internal legal advice and from advice given by specialist external solicitors.

(ii) Mr Bodley alleged there is no obligation on Countryside to deliver the Scheme on any particular timeframe; as such the company could simply sit back and do as they pleased

- Again, this position is simply not tenable. Quite apart from the fact that Mr Leach confirmed (XC) that Countryside do not enter into these type of agreements lightly – indeed that they only tender to be *considered* for such developments once they have satisfied themselves that they have the necessary resources available to see the project through – the current Programme and Phasing Strategy[9] legally bind Countryside in terms to delivery of development within a set timeframe (namely 31 December 2022 – 30 April 2034). Those documents are ones that must be agreed between the Council and Countryside, as such if the latter wanted to depart from the agreed timeframe it could only do so with the Council's consent. Both Mr Frost and Mr Leach, on behalf of the Council and Countryside respectively, confirmed (XC) that this was the agreed and understood position.

(iii) Mr Bodley pointed to Clause 4.6 of Schedule 3 to the Order, claiming that it allowed Countryside to dictate when (and if) the Council took possession of any land interests pursuant to powers conferred by the Order

- Again, this is simply not correct. Clause 1.1 of that Schedule commits the parties to delivering the Scheme in accordance with the Phasing Strategy, which in turn provides expressly for the Council to exercise its powers pursuant to the Order

[9] See ID/9

(to acquire the requisite land interests) within 6 months. This has been the understanding between the parties since 2019, but given issues of delivery were raised by Mr Bodley it was felt appropriate to address them definitively by means of the Second Supplemental Agreement, which expressly confirms the position.

(iv) Mr Bodley suggested that the viability provisions in the Agreement were such that Countryside had "considerable leeway" simply to declare the Scheme unviable, and walk away from it

- Again, the first point to note is perhaps Mr Leach's observation (IX) that in 20 years he had never known Countryside to walk away from a development. However, even aside from that Mr Bodley's position has no legs. Both Mr Leach and Mr Frost pointed out (XC) that whilst Mr Bodley had referred to the viability termination clause at Paragraph 5(2)(c) of the Agreement, he had neglected to note Paragraph 5.4 and the onerous technical appraisal for which it provides, and which Countryside would have to undertake before they could seek to walk away on grounds of viability. This is to say nothing of the Disputes Clause at Paragraph 15 of the Agreement (which Mr Bodley also omitted to mention), which would allow the Council to contest the position if Countryside did in fact claim the Scheme to be unviable. Of course, Countryside have no intention of doing any such thing (as Mr Leach confirmed XC), and the overwhelming likelihood is that the company will continue to abide by its obligations under the agreement as it has done to date (again, as confirmed by Mr Leach XC).

14. Mr Bodley raised other points in respect of the Agreement, but the reality is that none of them has any relevance to the proceedings of this Inquiry. By way of example, it was suggested (Paragraph 4.16) that in signing the Agreement the Council has compromised itself, in light of its potential liability to Countryside for its wasted costs, should the Council unilaterally walk away from promotion of the Order. That point goes absolutely nowhere; as Mr Frost confirmed (XC) the Council knew precisely what it was signing up to in this regard when it entered into the Agreement. At no time has the Council felt so 'compromised'; it is not promoting the Order out of any 'fear of liability', but because it feels that it is the right thing to do in order to secure strategic development on the Tangmere SDL.

15. Accordingly, that (and all other) criticism of the Agreement is unjustified. The document forms the basis of a strong and effective working relationship with an experienced and responsible developer. Since then the Agreement as delivered a masterplan, a planning application (which is now the subject of a resolution to grant) and agreements with two of the three Landowning Interests. The Scheme will be delivered.

Ground 2: Need for Compulsory Purchase

16. The Heaver Objectors' case in this regard was wide-ranging; however none of the points pursued had substantive merit.

17. The first such point taken in this context can be addressed shortly. This is the contention that the Heaver Family are perfectly willing to sell their interests to the Council, so instead of pursuing compulsory purchase powers the Council should simply conclude a negotiation with them.

18. In this regard the Council is clear as to the fact that the Heaver Family do not object to disposal of their interests; this has been confirmed expressly in the evidence of Mr Bodley (see for example Paragraph 1.12(c)). It is in fact for this reason that the Council has long understood the Family's objection to the Order to be misconceived. As Mr Roberts noted (XC), the Family do not oppose disposal, it is just a question of price. Matters of compensation are however, as the Inspector will well know, not a question for the Inquiry, but for the Upper Tribunal (Lands Chamber), in the event that agreement cannot be reached.

19. However, as will be discussed in further detail in a following section of these submissions, the Heaver Family apparently have an inflated idea of the compensation/price to which they are entitled, (Mr Roberts XC). In these circumstances there is no real prospect of the parties reaching agreement on a voluntary sale.

20. The second point taken by Mr Bodley concerns 'the acquiring authority's purposes' and whether they can be achieved by alternative means (such as by the landowner). Bosham and Shopwyke Ltd, it is said, will provide for development to be brought forward on Plot 16 as a first phase of the Tangmere SDL.

21. In making such assertion, Mr Bodley and the Heaver Objectors are mistaken on multiple grounds.

- Firstly, it is not within the powers of Bosham Ltd and Shopwyke Ltd to bring forward piecemeal development on Plot 16. There is no planning permission for such development, nor is there any planning evidence before the Inquiry that such permission will be forthcoming; on the contrary the expert planning evidence available (that of Ms Chivers) is firmly to the extent that no such permission would be granted.

- Secondly, even if such permission did exist (which it does not), the 'purposes of the authority' are not to secure development of Plot 16; rather they are to secure development of Tangmere SDL *as a whole*. There is absolutely no evidence that, left to their own devices, the Landowning Interests will be able to deliver such development. On the contrary, all the evidence as to the historic efforts to get development off the ground (of which more later) shows the Landowning Interests to be incapable of delivering this outcome. It is instructive in this regard to look to the Memorandum of Understanding ('the MoU') completed by the Landowning Interests on 30 July 2020[10]. This document promised the world in terms of what the parties were going to agree; masterplans, strategies, an equalisation agreement and so on. In fact however, as the Inquiry heard during the evidence of Mr Frost (XC), it produced absolutely nothing. The MoU took the parties *not one step* closer towards any actual resolution. It was an agreement to agree, pursuant to which in fact no agreement was actually reached.

22. The final point to note in this context concerns Tangmere Corner. It was said by Mr Bodley that there is no need for the Council to acquire that area, and that this much had been conceded by Countryside in the Heads of Terms that they had offered. This proposition was simply and comprehensively refuted by Mr Leach (XC).

23. Mr Leach explained that Countryside wanted to acquire the totality of the Tangmere SDL. However, given that Tangmere Corner represented a small and relatively self-contained part

[10] Appendix 5 to CD4

of the SDL, and mindful of the obligation on the Council (and consequently Countryside) to seek to reach voluntary agreements with landowners, Countryside had offered the Heaver Family's agents – as part of a binding legal agreement – to let Bosham Ltd and Shopwyke Ltd retain ownership of that parcel. Countryside would service the area, and then it could be sold/brought forward by the Heaver Family as part of the wider development over which Countryside would have overall control as 'master developer'. However as Mr Leach explained, crucially in this regard, any such agreement would be dependant on the Heaver Objectors withdrawing their objections to the Order so that it could be confirmed. In such scenario, critically, the Council would have compulsory purchase powers over Tangmere Corner, which it could then exercise in circumstances where the owners of that plot did not comply with their obligations under the agreement.

24. It would be imperative that the Council obtain those compulsory purchase powers, in order to be able to compel the owners of Tangmere Corner to 'fall in' with the wider development. Absent such powers, the owners could refuse to collaborate – such as by refusing to allow construction of the cycleway through Tangmere Corner which the Scheme provides for – and thereby frustrate the Scheme or hold the remainder of the development to ransom.

25. As such, it is wholly wrong for Mr Bodley to suggest, as he does, that the Council has conceded that there is no need for compulsory purchase powers to be confirmed in respect of Tangmere Corner. It has done nothing of the sort. Rather, given that the parties have not reached any agreement (and even if they had, for the reasons set out above, compulsory purchase powers would still be needed), it remains imperative that the Order be confirmed in respect of Tangmere Corner just as it must be confirmed in respect of the remainder of the Tangmere SDL.

Ground 3: Reasonable Steps

26. The final strand to the case for the Heaver Objectors (and indeed the case for the Other Heaver Objectors), concerns the obligation on the Council to take "…*reasonable steps to acquire all of the land and rights included in the Order by agreement*". This is an obligation imposed by national policy guidance, with which the Inspector will be very familiar[11]. It is

[11] Provided to the Inquiry as CD9.

said by the Objectors that the Council has failed to comply with this guidance. They are wrong.

27. The first point to be made in this regard is a general one. The efforts to reach voluntary agreement have been largely conducted on the Council's behalf by Countryside, advised by Dalton Warner Davis. As Mr Roberts confirmed (XC) there is nothing unusual or untoward in this; rather the position is entirely orthodox. Indeed, not even Mr Bodley contests this general point of principle.

28. The remainder of the matters to be addressed, can most helpfully be put by reference to the two categories of objector.

The Other Heaver Objectors

29. First, there is the case of the Other Heaver Objectors, these being Denton & Co Trustees Ltd, Herbert & Shelagh Heaver, Temple Bar Partnership LLP and Dr Chishick on behalf of Tangmere Medical Centre.

30. This category of objector can be taken shortly. The relevant parties did not submit evidence or appear at the Inquiry. However, letters were sent to the Inspectorate dated 17 August and 6 September 2021 on behalf of each of them ('the Ashurst Correspondence'). The letters were in very similar form. The first letter asserted that despite solicitors for the parties "…*making a number of requests and attempts to progress negotiations*", there had been "*no response from Countryside*". The second letter alluded to a template agreement only having been provided on 25 August.

31. As Mr Roberts noted (XC), referencing the correspondence which he had read, and also the proof of evidence of Mr Denning (at Paragraph 5.31 and following), this is simply not in any way a fair or accurate representation of the actual position. In fact, Heads of Terms were sent out to all of these parties in March this year, following which Countryside had to make repeated efforts to chase a response. It was only at the end of June/beginning of July that responses were received, since when Countryside has sought to progress matters further, and has produced further draft agreements in August. Genuine and concerted efforts have

been made (and are still being made) to reach agreement; the representation of events as set out in the Ashurst Correspondence are utterly rejected.

The Heaver Objectors

32. Turning to the Heaver Objectors, the position is more complex. The reasons for this were explained in Mr Roberts' evidence (both written and oral). It is not proposed to rehearse that evidence in the course of these submissions, however the position can be summarised as follows.

33. Countryside first offered terms to agents acting for the Heaver Family in November 2018. Two alternative mechanisms were proposed, both essentially forms of 'hybrid option agreement'. Mr Wilkins, of Savills, who was the longstanding agent for the Heaver Family (having acted since at least 2011, and having negotiated the 'Bloor Option' on their behalf in 2012) reverted in May 2019 with a 'counter-offer'. That counter-offer, as Mr Roberts explained, was in the same format as Countryside's 'Alternative 1'. Certain changes in detail were proposed – this was a negotiation – but the format of the Council's proposal was entirely accepted.

34. For the next two years and more, the parties' agents negotiated regarding the terms of this hybrid option agreement. Substantial progress was made (see for example Mr King's letter of 30/12/19 to the Council – "*We are in positive negotiations*"[12]), and ultimately the Council issued revised Heads of Terms in April 2021 which it understood met all the outstanding requirements of Mr Wilkins (see Mr Denning's proof at Paragraph 5.26). However, at this point the Council heard nothing more until Mr Bodley, with whom neither the Council nor Countryside had dealt previously in relation to this matter, notified them of his involvement, indicating that he had advised his clients (essentially the Heaver Objectors) that the Council's offer was not acceptable and undervalued their interests.

35. Nothing substantive was then heard from Mr Bodley until 7 weeks later – one month before the Inquiry - when he sent Mr Denning his own Heads of Terms. As Mr Roberts explained, those terms were in a wholly different form to those which had been the subject of negotiation over the previous two years. They represented a fundamental change in

[12] ID/5 at Document 73 – copied to both Mr Heaver, Mr Wilkins and Ashurst

approach and entirely different methodology; no longer a hybrid option agreement but instead a 'strict compensation code valuation'.

36. It goes without saying that the Council/Countryside have no difficulty whatsoever in negotiations being conducted on the basis of such 'compensation code' approach as opposed to commercial terms. However, what they do resist – robustly and with some degree of indignation – is the suggestion by Mr Bodley that in the absence of their agreeing to the Heads of Terms he proposes (as set out in his Appendix 2) they have failed to comply with the national guidance and take 'reasonable steps' to acquire.

37. The Inquiry will recall the firm evidence that Mr Roberts gave on this point (XC). Countryside had, for more than two years, negotiated a style of agreement with the Heaver Family's agent Mr Wilkins – a Director with Savills – that he was wholly content with. Indeed, the evidence before the Inquiry is to the effect that by April 2021 the content of that agreement was also acceptable to Mr Wilkins. In those circumstances, it simply cannot reasonably be argued by Mr Bodley that the Council has not discharged its obligations.

38. That Mr Bodley has decided to enter the fray at the 11th hour with a different approach does not, in any way, put the Council/Countryside in the wrong. Quite the reverse in fact; it is instead wholly unreasonable for the Heaver Family to discard the basis on which they had had the Council/Countryside negotiate for so long, when their own agent had effectively concluded an agreement, and then move the goalposts. Further, for Mr Bodley to have been instructed in January 2021 (his proof at Paragraph 1.11), not approach the Council/Countryside until 11th June 2021 (Mr Denning's proof at Paragraph 5.27), and then not to reveal his alternative approach until 30th July (proof at Paragraph 4.26) is extremely unfortunate. It certainly provides a wholly inadequate basis for Mr Bodley to criticise the Council's conduct; the ice he is skating on is thin indeed.

39. As Mr Roberts explained (XC), since receiving Mr Bodley's Heads of Terms on 30th July he has reverted with – to use Mr Bodley's term – a "compensation code" offer. Thus there are two offers now on the table; the hybrid agreement and the 'code offer'.

40. Mr Roberts was definitive that the hybrid agreement represented a fair offer for the Heaver Family interests; in fact his evidence was that it was "*better than fair*" (XC), as in his opinion

it offered greater value than the compensation to which they were entitled. As such there can be no question that the Council, through Countryside, has offered the Heaver Objectors fair compensation and thus taken 'reasonable steps' to acquire the relevant interests by agreement.

41. However, Mr Roberts has also advanced the 'code offer'. This, in his view represents the sum to which the Heaver Objectors are entitled to on strict application of the compensation code. This too then, is a fair offer, and on this basis also the Council, through Countryside, has offered the Heaver Objectors fair compensation and thus taken 'reasonable steps' to acquire the relevant interests by agreement.

42. It appears that Mr Bodley disagrees with Mr Roberts as to value. However, it is unclear on what basis he does so. In this regard the following points may be noted:

- First, the freehold land held by his clients is subject to an option held by Bloor Homes (concluded in 2012 – 'the Bloor Option'). The Bloor Option runs until at least 2025[13], and until that time the Heaver Objectors cannot look to develop their land. The Council has not been provided with a working copy of the Bloor Option; despite requesting it they have only been provided with a heavily redacted version under a non-disclosure agreement. As Mr Roberts explained (XC), until such time as they are provided with this it is difficult to assess the value of the reversionary interest.

- Second, it appears that Mr Bodley is assuming significant development value in respect of his clients' land; he certainly asserts that planning permission would be forthcoming for freestanding development on it. However there is no planning permission for freestanding development, and there is no planning evidence to suggest it would be forthcoming. As is the subject of later comment, Mr Bodley has no planning qualifications; there is no basis on which the Inquiry should accept his judgement.

- Third, it appears that Mr Bodley is assuming significant value by way of 'ransom'; the issue which caused stalemate on the Tangmere SDL this past decade. However, there is no basis on which to support his approach; the planning evidence is rather to the effect

[13] The Council has not yet been provided with an un-redacted copy of the document, and cannot confirm whether the option period in fact will extend beyond this date.

that all three of the Landowning Interests must work together for any of them to develop (none holds the whip hand over the other). Further, Mr Wilkins was well aware of all the issues raised as regards ransom; they did not lead him to the destination which Mr Bodley seems to have arrived at.

Concluding remarks on 'Reasonable Steps'

43. For all these reasons, the suggestion that the Council has failed to discharge the obligation placed on it by national guidance, namely to take reasonable steps to acquire interests voluntarily, is misconceived. The Council has taken such steps; indeed it has gone a good deal further than is required. That it has not reached agreement with the Heaver Objectors or the Other Heaver Objectors does not change that. Rather, that outcome is only indicative of the positions and strategies which those parties have adopted. A far better indicator of the Council's genuine and concerted efforts to negotiate than its failure to agree with 'Heaver', is its achievement in succeeding in agreeing with almost everybody else.

Compelling Case to justify Compulsory Purchase Powers

44. The Council noted in opening that there are essentially two limbs to the 'compelling case', being:
    (a) The public benefit that will be delivered; and
    (b) The historic failure on the part of the Landowning Interests to bring forward development and so deliver that public benefit.

45. In closing the Inquiry, the Council reiterates this position.

Benefits

46. In terms of the benefits which the Order will secure, these comprise all those associated with delivery of a high quality, sustainable, residential-led development. However, those benefits will only be delivered in circumstances where development of the Tangmere SDL comes forward comprehensively. As Ms Chivers explained, both in her proof and (XC), fundamental to delivery of the benefits, and ensuring that development is optimised both qualitatively and quantatively, is that the development comes forward as a single 'whole'. It

is only on that basis that the extensive infrastructure – north/south link road, school, open space, drainage, and so on – will be delivered, and only on that basis that housing will be maximised.

47. Beginning with the issue of housing need, the evidence of Mr Frost (Paragraphs 4.1 – 4.11) and Ms Chivers (Paragraphs 3.15 – 3.17) has explained both the significant role played by the Council's identified 'strategic development locations' ('SDLs') in delivering housing targets within the Local Plan area, and the fact that the Council cannot currently demonstrate a five year housing land supply as required by national planning policy (NPPF/PPG).

48. As was stated in opening, it is all too easy for decision-makers to treat matters of housing delivery as academic questions relating to policy compliance, as opposed 'real' issues, with 'real-world' implications for families in need of housing. In facilitating delivery of some 1300 dwellings, on the only SDL in the Local Plan which has yet to commence development, the Order will clearly and demonstrably contribute to the social well-being of the local area.

49. Turning to economic matters, as Mr Frost explained (XC), quite apart from the very significant economic activity which the construction of the proposed dwellings and supporting infrastructure will generate in terms of construction jobs, the residents of such a significant number of new dwellings will of course generate substantial economic activity once they have taken up occupation. This will support both existing services in Tangmere, and also the new facilities to be provided as part of the Scheme.

50. Finally as regards environmental matters, benefits here too will be significant. The 1,300 homes to be constructed will all be built to modern, energy efficient standards. Further they will be constructed in a sustainable location, where public transport options are fully integrated, minimising the need for travel by private car.

51. Thus, the Inquiry can note that very substantial benefits will be realised by delivery of the Scheme which the Order will facilitate. Without the Order, those benefits will not be realized; the failure by the Landowning Interests to deliver development of the Tangmere SDL in the past decade (of which more later) is clear evidence to that effect.

52. The Inquiry can also note in this context that the statutory requirements of Section 226(1A) TCPA 1990 are satisfied. The exercise of compulsory purchase powers will promote and improve the economic, social and environmental well-being of the Council's area.

Failure to Develop

53. The Council has promoted the Order having regard to the failure of the Landowning Interests to bring forward development themselves. That the Landowning Interests failed to bring forward development is indisputable. In this regard the Inquiry can note that despite discussions regarding development having commenced in 2010/2011,
    - No masterplan for development of the Tangmere SDL was ever produced by the Landowning Interests for endorsement by the Council[14],
    - No planning application was ever submitted in relation to development of the Tangmere SDL for comprehensive development, and
    - No agreement was reached between the Landowning Interests as to development economics.

54. What appears to be disputed by the Heaver Objectors is the reason for this failure. Put shortly their contention is that it is the Council that has frustrated development, by reason of its meddling; the talk of compulsory purchase, the selection of a development partner, the lack of enthusiasm for piecemeal development.

55. Such contentions are utterly lacking in credibility, and entirely divorced from reality. In this regard it is unsurprising that Mr Bodley did not attend the Inquiry to face XX on the topic. There are three main points to note in this context; one regarding the actual reason why development did not proceed, and two concerning the erroneous reasons advanced by Mr Bodley.

56. Firstly, as regards the *real* reason for lack of progress in developing the Tangmere SDL, the position is clear. Any objective appraisal of the evidence before the Inquiry leads inexorably to the conclusion that the problem was the stance adopted by the Heaver Family claiming 'ransom' over the other two Landowning Interests. This is apparent from the following:

[14] The only plan prepared was a draft which did not have the support of the Heaver family.

- The contemporaneous correspondence in ID/5, by way of illustration see Documents 7, 8, 10, 12, 33
- Mr Bodley's own proof, in which he expressly maintains a 'ransom' position on behalf of his clients (by way of illustration see Paragraphs 4.22 and 5. 11)

57. It is for this reason that the parties were unable to make any progress, and why Tangmere SDL remained undeveloped.

58. Secondly, as regards the first of Mr Bodley's protestations (Paragraph 4.3 of his proof), namely that it was the Council that proved the obstacle, by raising the spectre of compulsory acquisition and appointing a developer partner, such contention is simply not credible. In this regard the Inquiry can note the following:

    - For one thing, the Council only invited tenders for a development partner in 2018. Further, the Order was only made in 2020 – there was a *decade* before this during which Tangmere SDL stood still.

    - For another, what Mr Bodley forgets is that his clients were not opposed to compulsory purchase; on the contrary they positively *encouraged* the Council in this respect. By way of illustration see ID/5, Documents 46, 55 and 57. For Mr Bodley to complain about compulsory purchase now, when at the relevant point in time his clients were facing entirely the opposite direction, is – again – simply not a credible position.

    - Finally, the evidence before the Inquiry is clearly to the effect that the Council was at pains to *avoid* compulsory purchase. Time and again it exhorted the Landowning Interests to work together, and expressed its reluctance to have to resort to compulsory purchase powers. Again, by way of illustration see ID/5, Documents 8, 26, 44 and 57.

59. Moving to the third of the three matters to address, there is Mr Bodley's suggestion (also Paragraph 4.3) that it was the Council's lack of enthusiasm for piecemeal development on

Plot 16, and its preference for comprehensive development of the entirety of the Tangmere SDL, which proved the stumbling block.

- The first point to note here is Mr Bodley's fundamental misconception of what this Inquiry is concerned with. Development of Plot 16 would have led to precisely that; development of Plot 16. There is no evidence to suggest that it would have delivered the Council's longstanding objective, as set out in the Local Plan, of development of Tangmere SDL *as a whole*.

- The second point to note is that for all that Mr Bodley (who has no planning qualifications, experience or expertise) asserts that such piecemeal development would have been consistent with planning policy, his view is not shared by Ms Chivers (who is an experienced and qualified planner). Further, whilst Mr Bodley suggests that it is the Council's stance that deterred Bloor from submitting such a planning application, his assertion does not bear scrutiny. For one thing, it does not appear that Mr Bodley has been told by anyone at Bloor that this is the case (there is certainly no evidence to this effect). For another, and as Ms Chivers observed (XC) Bloor are obviously very familiar with the right of appeal to the Secretary of State from planning decisions of a local planning authority (pursuant to Section 78 TCPA 1990). To suggest otherwise would be plain silly. Thus it appears the reason why no planning application was submitted was not due to the Council being 'obstructive', but was instead due to the fact of Bloor recognising that piecemeal development was indeed contrary to planning policy.

60. As such the Inquiry can note the following

- That of all the SDLs in the District, the only one not to have come forward for development is the Tangmere SDL.

- That the reason why development of the Tangmere SDL has not progressed is not the fault of the Council (as Mr Bodley has vainly tried to suggest), but is instead the result of the Landowning Interests having failed to reach commercial terms amongst themselves, on account of the Heaver Family asserting ransom.

Conclusions on Compelling case

61. Powers of compulsory purchase are not authorised lightly. This is rightly the case, given the draconian nature of what is entailed. However, the fact is that in the present instance there is a Scheme which would deliver real and substantial public benefits. That Scheme, or indeed another like it (delivering equivalent benefits, over the entirety of the Tangmere SDL), will not come forward – certainly not on any reasonable timeframe – unless the Order is confirmed. The fractured relationship between the Landowning Interests and their inability to agree development economics over a decade, are clear evidence to that effect.

62. In these circumstances, there is undoubtedly a compelling case justifying compulsory purchase powers.

63. In so concluding, the Council has had full regard to human rights issues, and the public sector equality duty ('PSED'), which matters the Inspector asked be addressed in the Council's closing submissions. As was stated in the body of the Inquiry, the Council maintains that no human rights or PSED issues bear on the Order. The Council asserts that insofar as there is any interference with rights protected under the Human Rights Act 1998, those rights are confined to that concerning respect for private property under Article 1 of the First Protocol. Interference with such rights may be justified where it is in the public interest (as it manifestly is in the present instance). Further in circumstances where – as here – a landowner has the opportunity to contest a proposed compulsory acquisition through an independent public inquiry, and where – as here – that landowner is entitled to recover compensation in respect of any dispossession, that landowner's rights are suitably protected.

64. Lastly in this context, the Council turns to consider those matters which national guidance identifies as factors to which the Secretary of State will have regard when deciding whether or not to confirm a compulsory purchase order under Section 226(1)(a) TCPA 1990. Four such matters are identified:

    - *First, whether the purpose for which the land is to be acquired is consistent with planning policy.*

- Ms Chivers has expressly confirmed that this is the case. No objector argues to the contrary. The position is clear.

- *Second the extent to which the proposed purpose will contribute to the promotion/improvement of the economic, social or environmental well-being of the area*
    - Mr Frost explained that the Scheme will make a very substantial contribution to all three objectives, in particular the social well-being of the area. No objector has contested the benefits of the Scheme as asserted by the Council; again the position is undisputed.

- *Third, whether the Council's purpose in acquiring land could be achieved by other means, or in another location*
    - Issues of location do not arise, and none of the Landowning Interests has suggested that development should not come forward at Tangmere SDL. It is right to note that the Heaver Objectors do maintain that they could bring forward development on Plot 16, but that proposition is not based on evidence. No planning permission exists for such piecemeal development and there is no planning evidence before the Inquiry to the effect that it would be granted. Further, the Council's purpose is to see the *entirety* of the Tangmere SDL developed; not just Plot 16. The evidence before the Inquiry is manifestly and unequivocally to the effect that the Landowning Interests are incapable of delivering such development; crucially they have failed to reach agreement over a period of more than 10 years as to how/on what basis development should come forward. They have not even agreed a masterplan, still less submitted a planning application or resolved development economics issues. Thus there is no prospect that the Council's purpose could be achieved by alternative means.

- *Fourth, the financial viability of the Scheme*
    - Both the Council and Countryside have taken viability advice from expert consultants (Knight Frank and Dalton Warner Davis), and both parties confirm the Scheme is viable. Guidance stipulates that "*A general indication of funding intentions…will usually suffice to reassure the Secretary of State that there is a*

reasonable prospect that the scheme will proceed". In this regard Mr Leach has explained in terms the very significant funding and resource that Countryside will bring to bear to deliver the Scheme. That evidence is not contested.

65. Accordingly, the Inspector can robustly conclude that in respect of all four of the matters cited by the guidance as being necessarily of significance to the Secretary of State in reaching his decision, the evidence points firmly in favour of confirmation of the Order.

Further Matters

Mr Steve Murphy

66. Mr Murphy, of 113 Cheshire Crescent, Tangmere, lodged objection to the Order by way of email dated 29 November 2020. Mr Murphy claims to have enjoyed a right of access from his property onto the land at the rear since 1997, through a gate that he constructed in the boundary wall. The land directly adjacent to Mr Murphy's home comprises Plot 6 of the Order Land.

67. The Council contacted Mr Murphy by way of email dated 15 March 2021, explaining that the Scheme envisaged use of the area in question as a principal area of public open space, comprising sports pitches and an associated sports pavilion[15]. It further explained that the design of the boundary treatment for the area would need to have regard to safety, security and visual amenity considerations, and that for security reasons it would be necessary to discontinue private entrances and accesses.

68. The Council served its evidence in support of the Order on Mr Murphy on 17 August 2021, but has heard nothing further from him since his objection. Further, he has not attended the Inquiry or submitted any materials to it. The Council has not seen any evidence to support the creation of the private access as claimed, and there is no suggestion that it has been secured by any legal agreement.

[15] See ID/21 and ID/21a

69. In these circumstances, the Council does not accept that the claimed right of access has accrued. However, in the event that Mr Murphy were to establish that such right did exist, it would be extinguished by the exercise of powers under the Order. In such circumstances Mr Murphy would of course be entitled to seek compensation and the Council would negotiate with a view to reaching a financial settlement. In the unlikely event that settlement were not reached, then Mr Murphy would of course have recourse to the Upper Tribunal (Lands Chamber).

The Medical Centre

70. In the course of the Inquiry the Inspector raised the issue of the rights held by Tangmere Medical Centre ('the Centre') over plots 15, 16 and 17; these rights being passage of services and right of entry for maintaining boundary features. The Centre will lose those rights when powers under the Order are exercised. However, the position is of course not as dramatic as might be initially supposed.

71. The first point to note in this context is that Countryside, negotiating on behalf of the Council, has repeatedly offered to 're-grant' the Centre precisely the same rights as those which it now enjoys. Such offer was made most recently in the form of the suggested agreement provided to the Centre's solicitors on 25 August 2021.

72. Agreement with the Centre has not been reached. Perhaps more pertinently, the Centre has not 'accepted' the offer of the rights which it supposedly seeks. In these circumstances the Council is at somewhat of a loss. The Centre has not participated in this Inquiry, and has submitted no evidence to demonstrate that it will be in any way prejudiced by confirmation of the Order. Nevertheless the Council *has offered to re-grant the relevant rights*. The Council cannot 'compel' the Centre to accept those rights; it is a matter for the Centre and its advisors as to whether they take them up or not. All the Council can do is offer them.

73. What it has determined to do, in order to meet the position, is to prepare an undertaking ('the New Undertaking'[16]) by which it commits to *continue* to offer to re-grant the rights currently held by the Centre (and by the rest of the Other Heaver Objectors), following

[16] ID/22

confirmation of the Order. The Council has already offered to re-grant the rights, but in concluding that undertaking, the Council has bound itself to *continue* doing so, even when the Order has been confirmed.

74. The Council's position is that it cannot sensibly do more than this; the position of the Centre (and indeed the Other Heaver Objectors more broadly) has been fairly and reasonably addressed.

Mr Richard Bryant

75. Mr Bryant objected to the Order by email dated 15 November 2020. His objection was worded in general terms, essentially complaining about the extent of development in and around Chichester, and the traffic implications associated with it.

76. The Council has engaged with Mr Bryant, as well as providing him with all relevant documentation (the Statement of Case was provided on 12th March 2021 and the Council's evidential package on 17th August). In particular, on 23rd April 2021 the Council's solicitors offered to set up a meeting to discuss the obligations on both the Council and Countryside to manage construction impacts and the wider impacts of the Scheme once developed.

77. However, the Council respectfully submits that Mr Bryant's representations are not directly relevant to the scope of these proceedings in any event. Mr Bryant is not a statutory objector (a position which he himself has recognised) and his concerns are not directly relevant to the questions before this Inquiry. It is evident from his objection that what concerns Mr Bryant is a wider query as to the location and extent of development proposed in the District, as opposed to whether or not it is appropriate to confirm the Order.

78. Such matters do not go to whether or not the Order should be confirmed; they are instead relevant to planning more broadly.

79. The first point to note is that insofar as Mr Bryant raises concerns regarding traffic and highway capacity, he has advanced no evidence in support of them. It is sufficient that the Inquiry recognise that Highways England does not object to the Scheme; there are no

traffic/highways issues which need concern the Secretary of State. The second and broader point to address, is that regarding Mr Bryant's complaints about development generally. Here however, it is important to note that allocation of the Tangmere SDL for development was a strategic planning decision, which was endorsed by the planning inspector who examined the Local Plan. Opposition to the allocation would have been considered by the inspector in the context of that examination. Further and alternatively, to the extent Mr Bryant wished to resist the development of Tangmere SDL he should have opposed the outline planning application submitted by Countryside. If he had lodged such an objection, it would have been taken into account by the Council's planning committee when resolving to grant planning permission in March this year, but Mr Bryant neither lodged an objection nor made any comments to the Council about the outline planning application. Mr Bryant's concerns have therefore been addressed.

80. For all these reasons Mr Bryant's objection to the Order, whilst noted, should not bear materially on the Inspector's deliberations at this Inquiry.

Saxon Meadow Tangmere Ltd

81. The Inquiry is aware that the Council has held discussions with Saxon Meadow Tangmere Ltd ('Saxon') regarding its interest in Plot 8. Saxon had formerly objected to the Order but withdrew its objection following agreement with the Council as to a reduction in land-take. The proposed reduction is identified on the plan attached to the Council's Statement of Case[17].

82. In the course of the Inquiry the Council has provided a note addressing this issue ('the Plot 8 Note'[18]), and suggesting wording for incorporation into the Inspector's report, should he be minded to recommend confirmation of the Order. Accordingly, the Council now formally requests that the Secretary of State reduce the extent of the land subject to the Order, as set out in the Plot 8 Note, and as agreed with Saxon.

[17] Appendix 8 of CD4
[18] ID/18

Concluding Remarks

83. The Inquiry has heard evidence and submissions from all parties who have chosen to engage with it. On the basis of that evidence, and those submissions, it is further respectfully submitted that there is manifestly a compelling case in support of the confirmation of compulsory purchase powers.

84. It is on this basis that the Council asks that the Order be confirmed.

Alexander Booth QC

9th September 2021

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