

BOSHAM LIMITED AND SHOPWYKE LIMITED

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

Appendix MB3 to Rebuttal Statement of Evidence of

Matthew Bodley

5 December 2023

Ref: APP/PCU/CPOP/L3815/3321240

Matthew Bodley

From: Matthew Bodley
Sent: 21 December 2022 14:30
To: Patrick.Blake@nationalhighways.co.uk
Cc: jonathan.mcgrael@nationalhighways.co.uk;
helen.galloway@nationalhighways.co.uk; PlanningSE@nationalhighways.co.uk
Subject: Enquiry Regarding Access to Shore's Meadow, Tangmere from the A27
Attachments: 7. Heaver Official Copy (Title Plan) - WSX217492.pdf; Official Copy (Deed of exchange) 31.03.1998 - WSX222639 (002).pdf

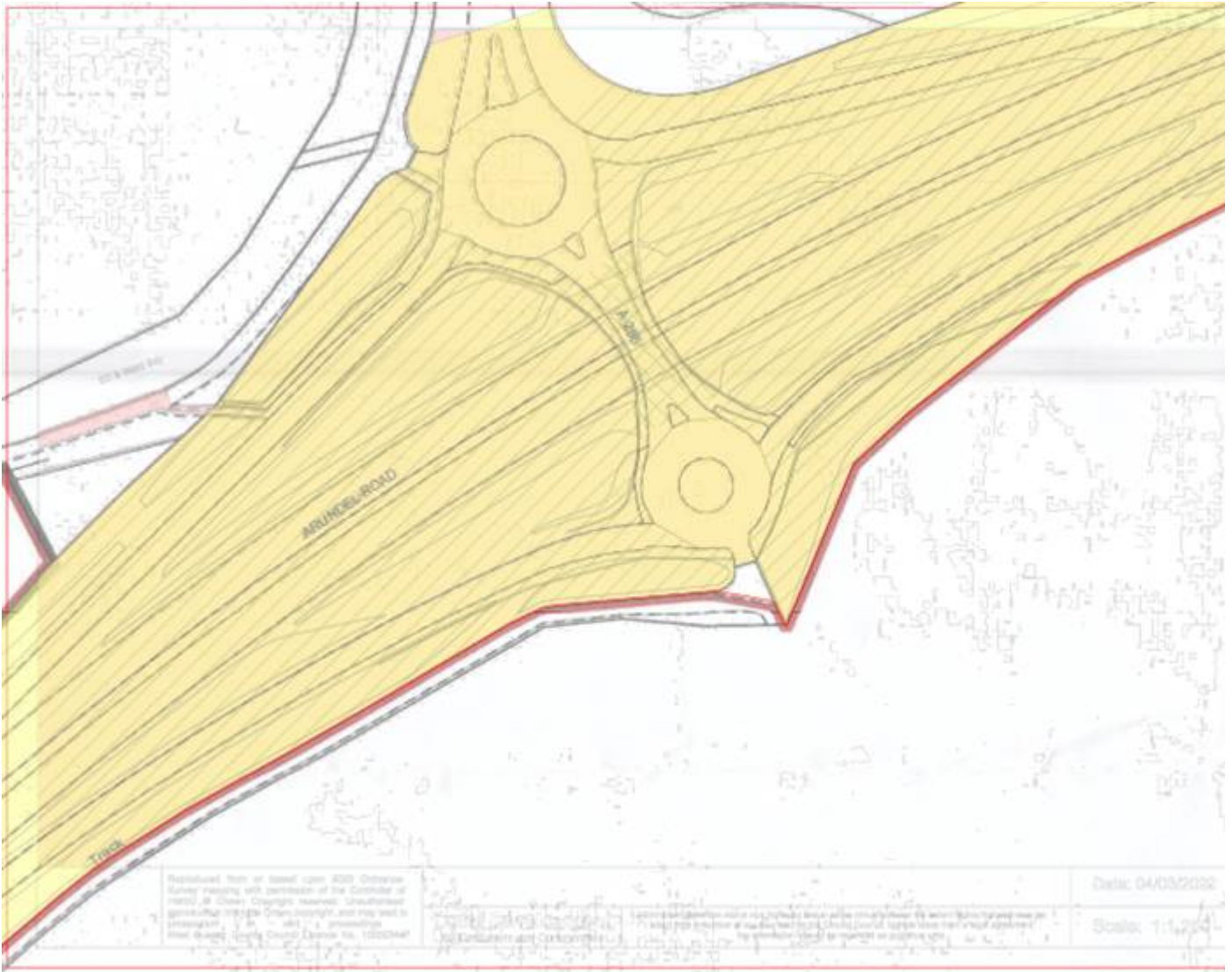
Dear Mr Blake

I am a chartered surveyor acting on behalf of Bosham Ltd and Shopwyke Ltd, two companies which are owned and controlled by John Heaver. I am contacting you as I have a query relating to a small parcel of land owned by National Highways ("NH") which is described below. I would like to speak to the appropriate person in NH regarding this parcel of land. I obtained your contact details from my client's transport consultant who felt that you may be able to help me. I have also copied this email to Jonathan McGrael and Helen Galloway at NH in the hope that one of you will be able to assist or point me in the right direction.

My client owns land known as Shore's Meadow, Tangmere, Chichester, West Sussex, as shown on the attached title plan. The land lies to the south of the A27 and is accessed via the A27/A285 junction. I understand from Chichester District Council's agent, Peter Roberts of DWD, that the Council has agreed terms with National Highways ("NH") to acquire all or part of a parcel of land that provides access from this junction to Shore's Meadow, as shown in the drawing below. I am writing in order to understand from NH directly what its position is.

Shore's Meadow was previously owned by John Heaver's father, George Heaver. A27 improvement works were undertaken by the Secretary of State for the Environment Transport and the Regions in the late 1990s. In order to undertake these works, parts of Shore's Meadow were acquired from George Heaver under a Deed of Exchange, a copy of which is attached. This agreement was agreed in the shadow of a compulsory purchase order. As part of this agreement access to Shore's Meadow was maintained via a new access from the new A27/A285 junction roundabout. This access is shown on the drawing below and has been used continuously by my client, and prior to that his father, since the 1998 transfer.

For a number of years my client has had ambitions to develop Shore's Meadow. Shore's Meadow was included in the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 which was confirmed in November 2021 but has not yet been implemented. In discussions with the Council's agent, Mr Roberts, he has suggested that Shore's Meadow does not have access to the public highway on the basis that there is a small gap between my client's title and the adopted public highway. The land in question is said to be owned by NH. It forms the area in white between the adopted highway boundary in yellow and the red title boundary on the drawing below.



The position as described by Mr Roberts does not accord with my client's understanding of the position. My client's understanding of the position is that my client has retained rights of access from the A27/A285 junction to Shore's Meadow. This was agreed at the time of the 1998 transfer, and my client and its predecessor has continuously used this access since then. My client is keen to understand NH's position regarding this matter so that my client can determine what steps, if any, it needs to take to protect its position. In the first instance, I would like to speak with the relevant person at NH in order to understand the position. I have asked Mr Roberts to advise me of NH's position and to provide contact details of the relevant person that he is dealing with at NH but he has refused, hence why I am sending this email.

Furthermore, if NH has agreed terms with Chichester District Council to dispose of the relevant land, this indicates that the land is surplus to NH's requirements. If so, the Criche Down Rules require NH to offer the land back to my client before NH may dispose of the land to any third party, including the Council.

Please could the relevant person at NH contact me by telephone or email to discuss the position.

I look forward to hearing from you.

Yours sincerely

Matthew Bodley MRICS
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22 December 2022

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BY SPECIAL DELIVERY

National Highways
Bridge House
1 Walnut Tree Close
Guildford
Surrey
GU1 4LZ

For the attention of Tim Reardon, General
Counsel

Dear Sir/Madam

Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 (the "A27 Land")

We act for John Philip Heaver ("**our Client**"). Our Client owns and controls Bosham Limited and Shopwyke Limited, which own land registered under title number WSX217492 that lies immediately south of the A27 Land.

We understand that National Highways has agreed terms with Chichester District Council (the "**Council**") to transfer part of the A27 Land (the "**Surplus Land**") to the Council. We are writing to seek an assurance that the transfer will not be completed unless and until National Highways has afforded our Client an opportunity to acquire the Surplus Land under the Crichel Down Rules.

The A27 Land was acquired by the Secretary of State for the Environment, Transport and the Regions under a deed of exchange dated 31 March 1998 from our Client's father, Herbert George Heaver, under the threat of compulsion. The Secretary of State had the power to acquire the A27 Land compulsorily under the Highways Act 1980 and made the A27 Trunk Road (Westhampnett Bypass) Compulsory Purchase Order (No SE 4) 1991, which included the A27 Land.

Mr Herbert Heaver transferred the A27 Land to the Secretary of State on the understanding that all of the land was required to improve and extend the A27 and would therefore be dedicated and adopted as highway. Our Client has recently become aware that the Surplus Land is not adopted highway and that National Highways have been in negotiations with the Council to dispose of the Surplus Land. Both these facts demonstrate that the Surplus Land has become surplus to National Highways' requirements.

In the light of this, National Highways is obliged under the Crichel Down Rules to offer the Surplus Land back to our Client before any disposal to a third party.

Our Client's surveyor has written separately to National Highways setting out more background information and asking to discuss this matter with the officer who is dealing with this matter opposite the Council. His email, dated 21 December 2022, is enclosed.

Notwithstanding the separate discussions sought by our Client's surveyor, we would be grateful if you could provide an assurance within 10 working days that the Surplus Land will not be transferred to the Council without our Client first being offered an opportunity to acquire the Surplus Land on reasonable commercial terms. Our Client reserves all rights to take steps to protect his position, including issuing proceedings in the absence of the requested assurance.

We look forward to hearing from you.

Yours faithfully

Ashurst LLP

Ashurst LLP

Enc

Copy to: Company Secretary, National Highways

info@nationalhighways.co.uk

Matthew Bodley

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>
Sent: 17 January 2023 10:11
To: Brian.Cheung@ashurst.com; Matthew Bodley
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]
Attachments: HALD_A27_(WESTHAMPNETT_BYPASS)_SIDE_ROADS_ORDER_1991_PT_1_tmpFEE0.pdf

Dear Brian

Thank you for your further email. I'm providing this full response to you and also to Mr Bodley to avoid any further confusion. Please note I have removed Tim Reardon from this communication trail. I'm aware that there is a separate acquisition of land from Mr Heaver being dealt with by our General Counsel team, but that team have not been involved in any part of this transaction or sale preparation. We primarily use external contracted legal representation in our property sales. As previously confirmed, this correspondence has been passed to me for response on behalf of the Property Sales team who have prepared and are managing this transaction.

In response to your most recent email, our transaction with the Council has not yet completed, but providing an answer to your request for an undertaking to offer our land to Mr Heaver required the full response. I must advise that we are not obliged to offer the property to your client. Our sale to the Council is under the threat of the current Compulsory Purchase Order and therefore is exempt from obligation under the Crichel Down Rules ('the Rules') relating to the former Compulsory Purchase Order under Rule 15(2). This allows for disposal to an acquiring authority holding compulsory purchase powers for a different function. new function.

However, from the additional information within Mr Bodley's email dated 21 December 2022, it appears that the primary concern is whether the title WSX217492 owned by Bosham Ltd is entitled to a right of access over our land in order to access the public highway. Mr Bodley has set out that the Council have disputed this right.

I can confirm that as part of the A27 Trunk Road (Westhampnett Bypass) scheme, OS plot 4656 (which comprises the land within title WSX217492) was provided with a replacement private means of access pursuant to the scheme Side Roads Order. This is shown as new means of access '9' within the Order schedule, and also labelled as '9' on Plan 2. I've attached a copy of the Order and plans for your information. While provision of rights are often not completed and registered to titles as part of the scheme, the Order provides the entitlement to private rights of access.

Following your correspondence and the claim that the Council were not recognising the right of access over our land, I have liaised with Peter Roberts as representative of the Council. This is on the basis that the Council as current acquiring authority should take such rights into account, whether registered onto title or not. Peter has assured me that the Council are complying with this obligation and do recognise this private right of access granted by the A27 scheme Order. This will be taken into account when assessing any claim made by your client for the value of his land and within related negotiations. I understand that Peter has also reconfirmed this directly to Mr Bodley. We are progressing our transaction with the Council, and understand that doing so will facilitate completion of the necessary compulsory purchase processes so that Mr Heaver is able to take his claim and negotiation forward as soon as possible.

I trust that this clarification resolves the matter and hope that correspondence is able to recommence directly between you.

Kind regards

Mary

Mary Oakaby

Technical Estates Advisor, Financial and Business Services Directorate

National Highways | Ash House | Falcon Road, Sowton Ind. Estate | Exeter | EX2 7LB

Telephone 0300 470 4359 **Mobile** 07925371551

Web: nationalhighways.co.uk

I utilise flexible working and do not expect a response from you outside your own working pattern

From: Brian.Cheung@ashurst.com <Brian.Cheung@ashurst.com>

Sent: 10 January 2023 11:35

To: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>

Cc: Tim Reardon <tim.reardon@highwaysengland.co.uk>; Trevor.Goode@ashurst.com

Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mary

Thank you for acknowledging receipt of our letter.

We understand from Chichester District Council's agent, Peter Roberts of DWD, that National Highways have made the Council aware of our correspondence. Furthermore, in your email, you refer to an "active property sale" being progressed. Please could you provide an immediate undertaking that the land in question will not be transferred by National Highways until the points in our letter have been addressed and our client has been given an opportunity to acquire the land.

Kind regards

Brian

Brian Cheung

Senior Associate

brian.cheung@ashurst.com

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From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>

Sent: 10 January 2023 09:56

To: Cheung, Brian 12732 <Brian.Cheung@ashurst.com>

Cc: Goode, Trevor 11114 <Trevor.Goode@ashurst.com>

Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mr Cheung

Thank you for your below email to Tim Reardon, and for your original correspondence dated 22 December 2022, which was received on 30 December 2022. I'm sorry you have not previously received an acknowledgement.

This correspondence has been passed to the Property Sales team because it relates to an active property sale which we are progressing, and has been allocated to me for response. I will provide you with a full response as requested by 16 January.

Kind regards

Mary

Mary Oakaby

Technical Estates Advisor, Financial and Business Services Directorate

National Highways | Ash House | Falcon Road, Sowton Ind. Estate | Exeter | EX2 7LB

Telephone 0300 470 4359 **Mobile** 07925371551

Web: nationalhighways.co.uk

I utilise flexible working and do not expect a response from you outside your own working pattern

From: Brian.Cheung@ashurst.com <Brian.Cheung@ashurst.com>

Sent: 09 January 2023 13:38

To: Tim Reardon <tim.reardon@highwaysengland.co.uk>

Cc: National Highways <info@nationalhighways.co.uk>;

Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mr Reardon

Further to the attached letter, which was sent on 22 December 2022, we would be grateful if you could acknowledge receipt and confirm that you will respond by 16 January 2023.

Kind regards

Brian Cheung

Brian Cheung

Senior Associate

brian.cheung@ashurst.com

Ashurst

D: +44 20 7859 2732 | M: +44 7795 467 107

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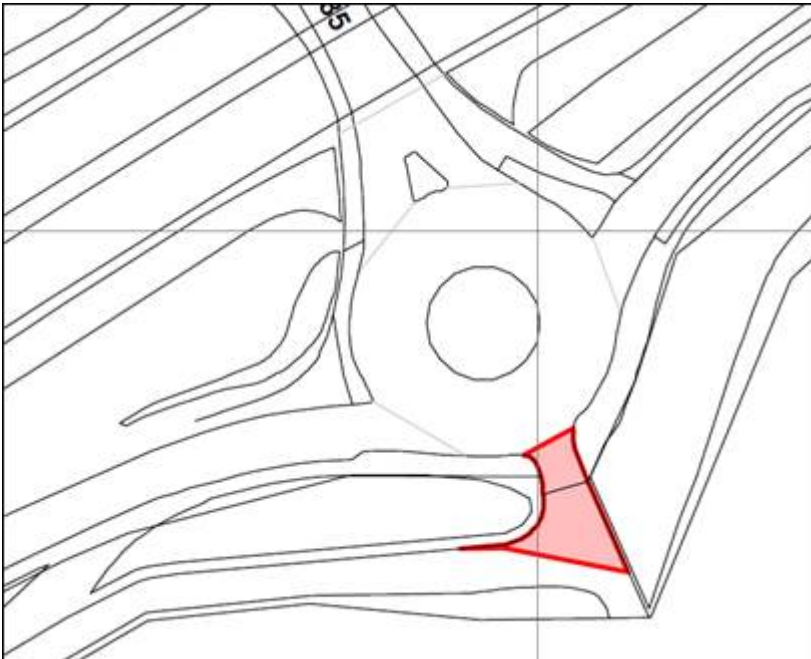
Matthew Bodley

From: Matthew Bodley
Sent: 30 January 2023 08:07
To: Mary Oakaby; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mary

Thank you for your email of 17 January (below) which we discussed during our phone call on 23 January. I'm just dropping you a line to follow up on our call.

Our discussions relate to the small parcel of land forming part of title number WSX220808 as shown below (the "**NH Land**") which Chichester District Council (the "**Council**") is seeking to acquire from National Highways ("**NH**") for an agreed purchase price of £10,000.



The NH Land previously formed part of a larger parcel of land owned by my client's father, Mr George Heaver, which was acquired by the Department for Transport ("**DfT**") by private agreement under the shadow of compulsory purchase powers and following confirmation of the A27 Trunk Road (Westhampnett Bypass) Compulsory Purchase Order 1991. My client is George Heaver's successor.

Thank you for confirming that the transfer of the NH Land to the Council has not yet completed.

You are correct that my client's primary concern is to ensure that its land held under title number WSX217492 (the "**Heaver Land**") has an unrestricted right of access to the A27, which my client had always believed to be the case until informed otherwise by the Council last year. The reason for this, and my client's objective, is to ensure that the value of the Heaver Land (and therefore the compensation payable if it is compulsorily acquired) is not prejudiced by the disposal of the NH Land to the Council.

My client is grateful for your confirmation that the 1991 Side Roads Order granted a private right of access between the A27 and the Heaver Land. It is clear from the Side Roads Order that the right was granted to replace the access that the Heaver Land previously had to the A27. This previous access had been unrestricted by virtue of the fact that the Heaver Land had directly abutted the old A27. It follows that the new right of access is also unrestricted, and the

Side Roads Order does not contain any restrictions on user. I should be grateful for your confirmation that this understanding is correct.

I should also be grateful if you would confirm that this unrestricted right of access will be recorded on the transfer to the Council.

Notwithstanding the right of access, my client is of the opinion that the Crichel Down Rules should apply to the NH Land. The exception in Rule 15(2) which you refer to only applies if there has been a formal decision on specific ministerial authority that, for reasons of public interest, the land is disposed of to the Council. In the absence of this authority, our client remains of the view that the NH Land should be offered back. I understand from our conversation that the ministerial authority has not been obtained but that you consider it unnecessary.

My client disagrees but, as I explained, has no interest in frustrating the sale of the NH Land to the Council, provided it does not prejudice my client's primary objective of preserving the value of the Heaver Land. As such, my client would be content with a formal written confirmation from NH that the NH Land is surplus to NH's requirements and that it would have been offered back to my client at market value under the Crichel Down Rules in the absence of the Council's proposed acquisition.

Therefore, in summary please could you provide written confirmation of the following:

- The Heaver Land benefits from an unrestricted private right of access over the NH Land which is equivalent to the means of access which benefited the Heaver Land prior to the acquisition of the NH Land by DfT.
- The private right of access will be recorded on the transfer of the NH Land to the Council.
- The NH Land is surplus to NH's requirements and it would have been offered back to my client at market value under the Crichel Down Rules in the absence of the Council's proposed acquisition pursuant to compulsory purchase powers.

I look forward to hearing from you.

Regards

Matt

Matthew Bodley MRICS

Matthew Bodley Consulting

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E: matthew@matthewbodleyconsulting.com

www.matthewbodleyconsulting.com

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>

Sent: 17 January 2023 10:11

To: Brian.Cheung@ashurst.com; Matthew Bodley <Matthew@matthewbodleyconsulting.com>

Cc: Trevor.Goode@ashurst.com; Narisa Burfoot <Narisa.Burfoot@nationalhighways.co.uk>

Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Brian

Thank you for your further email. I'm providing this full response to you and also to Mr Bodley to avoid any further confusion. Please note I have removed Tim Reardon from this communication trail. I'm aware that there is a separate acquisition of land from Mr Heaver being dealt with by our General Counsel team, but that team have not been involved in any part of this transaction or sale preparation. We primarily use external contracted legal representation in our property sales. As

Matthew Bodley

From: Matthew Bodley
Sent: 06 February 2023 18:11
To: Mary Oakaby; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mary

I refer to my email of 30 January, below. I tried calling you earlier today and left a voicemail.

When do you think you will be in a position to respond to my email?

If you wish to discuss please give me a call on the mobile number below.

I look forward to hearing from you.

Regards

Matt

Matthew Bodley MRICS
Matthew Bodley Consulting
M: +44(0)7814 545287
E: matthew@matthewbodleyconsulting.com

www.matthewbodleyconsulting.com

From: Matthew Bodley
Sent: 30 January 2023 08:07
To: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot <Narisa.Burfoot@nationalhighways.co.uk>
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mary

Thank you for your email of 17 January (below) which we discussed during our phone call on 23 January. I'm just dropping you a line to follow up on our call.

Our discussions relate to the small parcel of land forming part of title number WSX220808 as shown below (the "**NH Land**") which Chichester District Council (the "**Council**") is seeking to acquire from National Highways ("**NH**") for an agreed purchase price of £10,000.

Matthew Bodley

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>
Sent: 14 February 2023 10:03
To: Matthew Bodley; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Matt

Thank you for your further email and apologies for the delay in response while I sought advice and dealt with other issues arising from this matter.

To resolve your further concerns regarding application of the Criche! Down Rules, I would reiterate our position that the Rules do not apply to the sale of this land, which is under the threat of compulsory purchase powers granted to the current development scheme. We consider both that such powers and the process of their granting naturally fulfils the ministerial approval that the sale to the Council is in the public interest, but also that as a non-legislative obligation, we are entitled to apply our own policies to the application to balance resource and costs. In addition, we must take into account the purpose and intention of granting current compulsory powers of acquisition, which would be frustrated by offering property back to former owners.

As you have confirmed, the underlying concern is to ensure that Mr Heaver's negotiations with the Council include the entitlement to a private right of access pursuant to our former road scheme. While the Council have reiterated that this right is not disputed, is being factored into negotiations as they are obligated to do so, and therefore reservation of rights within our transaction is not required, we have no wish to remain involved in this dispute and we will therefore include a right of access within our sale of land to avoid any further confusion. This will be along the general lines that the right is with and without vehicles, at all times and we would not consider it to be restricted.

We have further considered your request, but cannot agree to provide any statement confirming a hypothetical offer of the land to former owner (any offer is only made to the specific party/entity named on the acquisition transfer or evidenced successors in title), and nor do we consider it would be of any legal or other benefit. We consider application of the Rules at the point of sale, which includes application of our policies, and case specifics. Given that the situation is hypothetical, we cannot confirm whether we would have applied the Rules.. We are only able to confirm without prejudice that we would have considered application of the Rules whenever the land was taken forward for sale.

I will now reengage with the Council to progress our sale.

Kind regards

Mary

Mary Oakaby

Technical Estates Advisor, Financial and Business Services Directorate

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I utilise flexible working and do not expect a response from you outside your own working pattern

Matthew Bodley

From: Matthew Bodley
Sent: 18 April 2023 15:20
To: Mary Oakaby; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

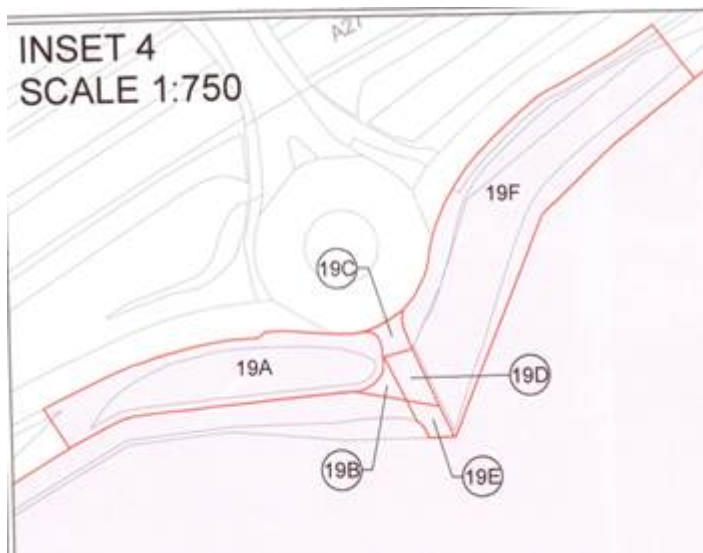
Dear Mary

Thank you for your email of 14 February (below) and apologies for delayed response. Within this email I refer to the "NH Land" and the "Heaver Land" as defined in my email to you of 30 January, which is in the email chain below.

I note your position that you remain of the view that the Crichel Down Rules do not apply in respect of the NH Land in this case. I have discussed this again with my client's solicitors and our position remains that we do not agree with your interpretation. However, we have no wish to take the point any further nor to try and frustrate the sale of the land to the Council and think it best that we simply agree to disagree on the point and move on.

Thank you again for confirming that the Heaver Land has the benefit of an unrestricted right of access over the NH Land with and without vehicles at all times. Thank you also for confirming that, whilst you consider it not to be strictly necessary, you will expressly include this right within the transfer to the Council. Please could you confirm when the transfer completes and send me a copy of the TR1 including the rights referred to in the transfer?

My comments above about the transfer are based on the assumption that NH is proceeding with the disposal of the NH Land to the Council by agreement. Can you confirm whether or not this is still the case? The reason I ask is that we've become aware that the Council has recently made a second CPO (CPO2) to include all of the land in CPO1 plus the interests owned by NH and my client which were excluded from CPO1. The additional interests included in CPO2 are Plots 19A to F, as shown in the CPO Map extract below.



19E is owned by my client. All the rest are owned by NH.

We were surprised that the Council has made CPO2 on the basis that I had written to the Council's agent accepting the offer that the Council had made to my client, subject to some minor amendments, and had understood that NH had also agreed to the sale of the NH Land to the Council. We note that CPO2 includes additional plots that the Council is now seeking to acquire from NH, as identified as plots 19A and 19F above.

Please can you confirm:

- Has NH agreed terms for the disposal of its interests to the Council by agreement?
- If the answer is yes, has the agreement been completed and, if so, can you please send me a copy of the TR1?
- If terms have not yet been agreed and/or the agreement has not been completed, is NH intending to object to CPO2?

I trust this is all in order but should you wish to discuss the matter please do not hesitate to contact me.

I look forward to hearing from you.

Regards

Matt

Matthew Bodley MRICS

Matthew Bodley Consulting

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E: matthew@matthewbodleyconsulting.com

www.matthewbodleyconsulting.com

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>

Sent: Tuesday, February 14, 2023 10:03 AM

To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>; Brian.Cheung@ashurst.com

Cc: Trevor.Goode@ashurst.com; Narisa Burfoot <Narisa.Burfoot@nationalhighways.co.uk>

Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Matt

Thank you for your further email and apologies for the delay in response while I sought advice and dealt with other issues arising from this matter.

To resolve your further concerns regarding application of the Crichel Down Rules, I would reiterate our position that the Rules do not apply to the sale of this land, which is under the threat of compulsory purchase powers granted to the current development scheme. We consider both that such powers and the process of their granting naturally fulfils the ministerial approval that the sale to the Council is in the public interest, but also that as a non-legislative obligation, we are entitled to apply our own policies to the application to balance resource and costs. In addition, we must take into account the purpose and intention of granting current compulsory powers of acquisition, which would be frustrated by offering property back to former owners.

As you have confirmed, the underlying concern is to ensure that Mr Heaver's negotiations with the Council include the entitlement to a private right of access pursuant to our former road scheme. While the Council have reiterated that this right is not disputed, is being factored into negotiations as they are obligated to do so, and therefore reservation of rights within our transaction is not required, we have no wish to remain involved in this dispute and we will therefore include a right of access within our sale of land to avoid any further confusion. This will be along the general lines that the right is with and without vehicles, at all times and we would not consider it to be restricted.

We have further considered your request, but cannot agree to provide any statement confirming a hypothetical offer of the land to former owner (any offer is only made to the specific party/entity named on the acquisition transfer or evidenced successors in title), and nor do we consider it would be of any legal or other benefit. We consider application of the Rules at the point of sale, which includes application of our policies, and case specifics. Given that the situation is hypothetical, we

Matthew Bodley

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>
Sent: 24 April 2023 14:08
To: Matthew Bodley; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Matt

Thank you for your further email.

We continue to progress the sale of our land to the Council but this has not yet completed, we're still in the process of trying to agree the wording for the insertion of the rights of access across our land. As previously outlined, we're seeking to reserve rights which we consider to be in line with the intent of the our former scheme. I'll need to take advice as to whether we're able to send a copy of the transfer to you once completed.

I can confirm that our sale, which is of our non-operational land within the gateway, remains by agreement in advance of execution of compulsory purchase powers at present. Due to an error, CPO1 had only included an area equating to Plot 19B, but we had agreed to apply compulsory purchase provisions to the acquisition of all our required land within the gateway, equating to Plots 19C and 19D, in lieu of the Council applying for a supplementary CPO (CPO2). Our team were therefore unaware of the Council's intention to apply for CPO2 before receiving notice, but do not intend to object to it as it does not fundamentally affect our transaction.

For clarity, please note that Plots 19A and 19F are part of our highway operational estate and are not part of my team's sale transaction. I've previously been given to understand that the Council will be entering into appropriate agreements to construct the full required widths of the development access over parts of our operational estate, and reassign that highway function to the local highway authority. My team would have no involvement in that.

Kind regards

Mary

Mary Oakaby

Technical Estates Advisor, Financial and Business Services Directorate

National Highways | Ash House | Falcon Road, Sowton Ind. Estate | Exeter | EX2 7LB

Telephone 0300 470 4359 **Mobile** 07925371551

Web: nationalhighways.co.uk

I utilise flexible working and do not expect a response from you outside your own working pattern

From: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Sent: 18 April 2023 15:20
To: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot <Narisa.Burfoot@nationalhighways.co.uk>
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mary

Matthew Bodley

From: Matthew Bodley
Sent: 26 April 2023 08:17
To: Mary Oakaby; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Mary

Thanks for your email with the update and confirmation that the sale of the non-operational land is progressing by agreement on a "compensation code" basis. We were also unaware of the Council's intention to apply for CPO2 before receiving the notice.

Your email states that you are still in the process of trying to agree the wording for the insertion of my client's right of access across your land which you consider to be in line with the intent of your former scheme. This statement gives my client cause for concern. It may be that I have misunderstood you, but your email suggests that you are attempting to agree the definition of my client's right over NH's land by discussing it with the Council, without involving my client in the discussion. My client's right of access over NH's land is a matter of fact and is not something to be negotiated with a third party.

As we have previously stated, prior to the implementation of your previous scheme, my client's land abutted and therefore had direct access to the old A27 trunk road meaning that the land benefitted from an unrestricted right of access at all times with and without vehicles. The right granted under the 1991 Side Roads Order replaced this on a like for like basis. Accordingly, my client's existing right of access is similarly unrestricted and is not capable of being unilaterally altered by one party. You have previously agreed that my client's right of access is unrestricted in your email of 14 February and it is not, therefore, a matter for debate with the Council.

In addition, I would note that my client had agreed not to pursue a return of NH's land under the Crichel Down Rules (notwithstanding that the legal advice received by my client is that the Crichel Down Rules do apply) in reliance on your confirmation that my client's land does benefit from an unrestricted right of access and that this would be recorded in the transfer to the Council. My client would prefer not to reopen the debate on the Crichel Down Rules, a desire which I think is shared by NH.

I should be grateful if you would immediately confirm that my client's right of access will be recorded in the transfer on an unrestricted basis as previously agreed.

I look forward to hearing from you.

Regards

Matt

Matthew Bodley MRICS
Matthew Bodley Consulting
M: +44(0)7814 545287
E: matthew@matthewbodleyconsulting.com

www.matthewbodleyconsulting.com

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>
Sent: Monday, April 24, 2023 2:08 PM
To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>; Brian.Cheung@ashurst.com

Matthew Bodley

From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>
Sent: 28 April 2023 17:27
To: Matthew Bodley; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot; Edmund Day
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

Dear Matt

Thank you for your email.

I've now asked our legal representative Edmund Day of Gowling WLG to continue correspondence with you about this directly. Edmund has confirmed he will contact you next week, and I've copied him into this.

Kind regards

Mary

Mary Oakaby

Technical Estates Advisor, Financial and Business Services Directorate

National Highways | Ash House | Falcon Road, Sowton Ind. Estate | Exeter | EX2 7LB

Telephone 0300 470 4359 **Mobile** 07925371551

Web: nationalhighways.co.uk

I utilise flexible working and do not expect a response from you outside your own working pattern

From: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Sent: 26 April 2023 08:17
To: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>; Brian.Cheung@ashurst.com
Cc: Trevor.Goode@ashurst.com; Narisa Burfoot <Narisa.Burfoot@nationalhighways.co.uk>
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

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Your email states that you are still in the process of trying to agree the wording for the insertion of my client's right of access across your land which you consider to be in line with the intent of your former scheme. This statement gives my client cause for concern. It may be that I have misunderstood you, but your email suggests that you are attempting to agree the definition of my client's right over NH's land by discussing it with the Council, without involving my client in the discussion. My client's right of access over NH's land is a matter of fact and is not something to be negotiated with a third party.

As we have previously stated, prior to the implementation of your previous scheme, my client's land abutted and therefore had direct access to the old A27 trunk road meaning that the land benefitted from an unrestricted right of access at all times with and without vehicles. The right granted under the 1991 Side Roads Order replaced this on a like for like basis. Accordingly, my client's existing right of access is similarly unrestricted and is not capable of being unilaterally altered by one party. You have previously agreed that my client's right of access is unrestricted in your email of 14 February and it is not, therefore, a matter for debate with the Council.

Matthew Bodley

From: Edmund Day <edmund.day@gowlingwlg.com>
Sent: 02 May 2023 11:55
To: Matthew Bodley
Cc: Trevor.Goode@ashurst.com; Brian.Cheung@ashurst.com; Giles Clifford
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256] [EFILE-LEGAL02.666356.2735928]

Hi Matt,

Further to Mary's email below and discussions between ourselves and National Highways, I wanted to update you that I have responded to the Council's agent this morning in relation to the proposed transfer (and in particular your client's claimed access right).

To save myself from paraphrasing, and to avoid the scope for confusion, I have copied my email below for your attention. In essence, we consider the existence of any access right in favour of your client to be a question of fact, which will bind any purchaser regardless of whether it is expressly referenced in the transfer (which we think is the wrong approach).

As you know, Giles and myself will be taking this matter forwards on behalf of National Highways following Eliza's departure.

We have taken that opportunity to review this matter in detail (and in particular the access right claimed by Mr Heaver, which appears to be the last remaining 'sticking point'), and in our view neither of the approaches taken by the Council or National Highways to date are quite right. The rest of this email sets out our rationale for that conclusion together with a proposed solution which we think reflects the correct approach to the transfer.

As with any land transfer, the Council will acquire the land in question subject to all title matters. It is not for National Highways to establish what those title matters are in respect of any third party claim, but clearly one of those title matters relates to a claim to an access right in favour of Mr Heaver's land. That claim has come to the parties' attention as a result of:

- i. The 1998 deed of exchange being noted on both the benefiting Heaver title and burdened National Highways title.*
- ii. The SRO having been disclosed, which, although we don't consider that this in itself grants any rights, may be suggestive of such a right having come into existence.*
- iii. Any claim to an 'overriding interest' i.e. an interest which will bind a purchaser regardless of it not being noted on the relevant title.*

As is the normal approach to the acquisition of land, it is for the Council as buyer to carry out its own due diligence and form its own view as to the existence and/or validity of any claimed right based on the above or otherwise.

I mention above that we don't believe the approach taken by either the Council or National Highways has been correct to date. This is because:

- i. National Highways has sought to reflect the title position in the transfer, where this is in reality a matter of fact and it is not appropriate for National Highways to seek to set this out in the transfer.*
- ii. Similarly the Council has sought to reflect the title position resulting from rights purported to be granted in the SRO, whereas this is again incorrect in that it seeks to limit the extent of title matters which apply to the land to be acquired.*
- iii. In any case, seeking to draft a third party access right into the transfer suggests the creation of a new right rather than, in the usual way, simply that the land is being transferred subject to any title matters that do exist.*

The correct approach, therefore, we think is for any reference to Mr Heaver's claimed right to be removed from the transfer. The transfer will refer to the land being transferred subject to title matters so the risk rightly remains with the buyer to establish what those title matters are. Nothing National Highways and the Council agree to include in or exclude from the transfer will alter the legal position as to what third party rights affect the land that is transferred, which is a question of fact.

The Council will need to take its own advice, but on the basis of that approach we anticipate that it may see fit to:

- i. *make further enquiries of Mr Heaver as to the nature of his claimed right, which the Council is free to do; and/or*
- ii. *exercise such other powers as it sees fit in order to acquire satisfactory title to the land in question.*

Please do let me know if you have any questions in relation to the above, once you have had the opportunity to discuss with the Council and the Council's solicitors. I ask at this stage that we correspond by email so that we have a clear paper trail as to our discussions on this matter.

As you have alluded to in your email, it is not for National Highways to seek to either represent or negotiate the status of your client's claimed access right and I anticipate that the Council's representative may contact you to make further enquiries in that regard. I will, however, seek to keep you updated should direct discussions between the Council and National Highways progress further.

Many thanks,

Edmund

Edmund Day
Associate

T +44 (0)20 7759 6731

M +44 (0)7920 182489

Edmund.Day@gowlingwlg.com

Gowling WLG (UK) LLP, 4 More London Riverside, London, SE1 2AU, United Kingdom



From: Mary Oakaby <Mary.Oakaby@nationalhighways.co.uk>

Sent: Friday 28 April 2023 17:27

To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>; Brian.Cheung@ashurst.com

Cc: Trevor.Goode@ashurst.com; Narisa Burfoot <Narisa.Burfoot@nationalhighways.co.uk>; Edmund Day <Edmund.Day@uk.gowlingwlg.com>

Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256]

This message originated from outside your organisation. mary.oakaby@nationalhighways.co.uk

Dear Matt

Thank you for your email.

I've now asked our legal representative Edmund Day of Gowling WLG to continue correspondence with you about this directly. Edmund has confirmed he will contact you next week, and I've copied him into this.

Kind regards

Mary

Matthew Bodley

From: Trevor.Goode@ashurst.com
Sent: 10 May 2023 17:33
To: edmund.day@gowlingwlg.com
Cc: Brian.Cheung@ashurst.com; giles.clifford@gowlingwlg.com; Matthew Bodley; David.Razzell@ashurst.com
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [EFILE-LEGAL02.666356.2735928] [ASH-EUS.FID4047256]
Attachments: Deed of Easement of Access Rights.docx

Edmund

Further to our brief discussion on Friday, please find attached a draft deed of easement which is designed to give effect to the provisions of the SRO.

In view of the fact that the land is still owned by National Highways (albeit surplus to requirements), we see no reason why the easement cannot be completed ahead of the intended transfer to the Council.

You will, of course, be aware of the wider concern on the part of my client relating the proper application of the Critchell Down Rules and the apparent absence of a Ministerial Consent to the proposed disposal.

There is no intention to seek to hold up or delay the proposed transfer, but my client reserves its right to take whatever action is necessary to ensure that the rights referenced in the SRO are secured, in advance of any transfer by National Highways to the Council.

I look forward to hearing from you.

Regards

Trevor

Trevor Goode

Partner, Co-Head of Planning and Environment

trevor.goode@ashurst.com

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From: Goode, Trevor 11114

Sent: 05 May 2023 16:07

To: Edmund Day <edmund.day@gowlingwlg.com>

Cc: Cheung, Brian 12732 <Brian.Cheung@ashurst.com>; Giles Clifford <giles.clifford@gowlingwlg.com>; Matthew Bodley <Matthew@matthewbodleyconsulting.com>

Matthew Bodley

From: Edmund Day <edmund.day@gowlingwlg.com>
Sent: 22 May 2023 13:24
To: Trevor.Goode@ashurst.com; Brian.Cheung@ashurst.com
Cc: Giles Clifford; Matthew Bodley; David.Razzell@ashurst.com; Toni Weston
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [ASH-EUS.FID4047256] [EFILE-LEGAL02.666356.2735928]

Hi Brian, Trevor,

I have discussed this matter further with National Highways, whose position is that they will not be making an express grant to your client (whether in the transfer to the Council or as a separate deed of grant) in advance of the disposal to the Council, and that transfer will be proceeding without delay.

National Highways have been clear that the Council will, as a matter of law, take the transfer land subject to any existing title matters that exist. It is not for National Highways to determine the presence, absence or relative strength of your client's claim to an access right, and by completing the transfer National Highways will not be prejudicing any rights your client may currently enjoy or put your client in any worse position than it is currently in.

You will appreciate that National Highways is not compelled (by virtue of the SRO or otherwise) to enter into an express grant of rights and it is for your client to safeguard its legal position as it sees fit.

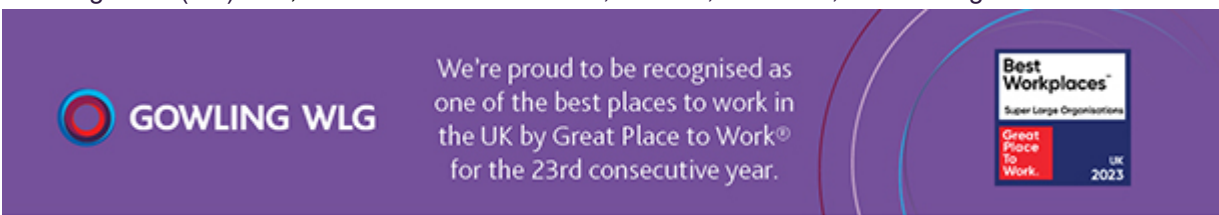
Many thanks,

Edmund

Edmund Day
Associate

T +44 (0)20 7759 6731
M +44 (0)7920 182489
Edmund.Day@gowlingwlg.com

Gowling WLG (UK) LLP, 4 More London Riverside, London, SE1 2AU, United Kingdom



From: Brian.Cheung@ashurst.com <Brian.Cheung@ashurst.com>
Sent: Tuesday 16 May 2023 12:01
To: Edmund Day <Edmund.Day@uk.gowlingwlg.com>
Cc: Giles Clifford <Giles.Clifford@uk.gowlingwlg.com>; Matthew@matthewbodleyconsulting.com; Trevor.Goode@ashurst.com; David.Razzell@ashurst.com
Subject: RE: Land at Strettington, Boxgrove and Tangmere with Title Number WSX220808 [EFILE-LEGAL02.666356.2735928] [ASH-EUS.FID4047256]

This message originated from outside your organisation. brian.cheung@ashurst.com

Edmund