

BOSHAM LIMITED AND SHOPWYKE LIMITED

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

Appendix MB5 to Rebuttal Statement of Evidence of
Matthew Bodley

5 December 2023

Ref: APP/PCU/CPOP/L3815/3321240

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 25 May 2022 13:19
To: Matthew Bodley
Subject: RE: Tangmere - Heavers et al

Hi – just as a follow up to the below, CPL would like to get on site to start the archaeology work from 23 September this year.

Thanks

Peter

From: Peter Roberts
Sent: 24 May 2022 17:54
To: matthew@matthewbodleyconsulting.com
Subject: Tangmere - Heavers et al

Dear Matt

Further to our conversation on Thursday, the position is as follows.

The Council were informed prior and during the Inquiry that the entirety of the land between Plot 16 and the A27/A285 was adopted highway and this was communicated to the Inspector. It was therefore excluded from the Order on the basis that compulsory purchase powers would not be required and the Inspector confirmed the Order on this basis.

National Highways have, since the Order was confirmed, now informed the Council that the land between Plot 16 and the gate at the junction with the roundabout is not adopted after all. However, a small section of this land is registered with your client rather than National Highways so, on the basis that none of this land is adopted the Council need to acquire a small strip from your client and the remainder from National Highways.

Putting to one side how we have got to this position, the Council are fully supportive of a CPO 2 to acquire these strips from your client and National Highways and preparation is underway in this regard. We see no reason as to why CPO 2 would not be confirmed and we would argue that CPO 1 and CPO 2 relate to the same scheme for the purposes of assessing compensation. However, until agreement is reached in respect of these additional strips or CPO 2 is confirmed, no GVDs will be issued under CPO 1 such that the scheme is temporarily suspended.

The Council's proposal is therefore that your client agrees terms whereby they transfer the strip of land to the Council effective from the Vesting Date specified in the GDV that will be served in respect of Plot 16 at nominal consideration but compensation in respect of Plot 16 will be assessed on the assumption that Plot 16 included this strip of land. This will just leave National Highways within whom Ged/I am having separate discussions with the intention of minimising further delays. In this regard, the S106 provides for significant payments to National Highways hence it is not in their interest to delay matters.

The Council's solicitors are currently drafting up the relevant Deed and your client's reasonable legal fees will naturally be covered. However, I would be grateful if you could take instructions in respect of this approach.

On a separate but related point, Countryside will shortly be commencing archaeological surveys on the Pitts/Church land and would like to extend these to the Heaver land. I am awaiting proposed dates and timescales from Countryside but would your client be agreeable to this?

I would be very happy to discuss further.

Kind regards

Peter

Peter Roberts
FRICS CEnv
Partner



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Matthew Bodley

From: Matthew Bodley
Sent: 27 May 2022 09:52
To: Peter Roberts
Subject: RE: Tangmere - Heavers et al

Hi Peter

Thanks for your email. I've been off for a few days this week but forwarded your emails on to my client and was able to catch up with him yesterday afternoon.

In order for us to consider your proposal please could you provide a drawing which identifies the land that you are referring to between plot 16 and the A27/A285, separately identifying the areas owned by National Highways and my client. Could you also mark on this drawing, or provide a separate drawing, showing your understanding of the extent of the public adoption.

We would also like to have an understanding of National Highways' position. Are you able to confirm whether they have agreed to a voluntary transfer and, if so, on what terms? Please could you also advise who is representing them in this matter.

Once we have heard back from you with the information requested we will review your proposal for the transfer of the additional land.

Although not entirely related, we are still awaiting final confirmation that the four side agreements granting replacement rights/easements relating to the medical centre have been agreed and can be engrossed and completed. We would ideally like to receive clarity on this in advance of entering into discussions in relation to the transfer of the additional parcel of land.

With regard the archaeological survey, my client was slightly surprised by the request as his recollection is that extensive surveys were undertaken about two years ago. He is also slightly aggrieved as he previously agreed to allow the survey on the understanding that he would be provided with a copy of the survey results, which he never was. This was prior to my involvement. Notwithstanding this, my client has no objection in principle to allowing access for survey, subject to agreeing the precise timing and extent of the investigation.

There is a problem with your proposed timing as it conflicts with farming activities. There is currently a rapeseed crop under cultivation which will be harvested in July and a wheat crop will be planted in mid-September. There is, therefore, a window of about five weeks from the end of July to the beginning of September during which the surveys could be undertaken. Is your client able to work within this window? If so, then our preference would be for the terms to be agreed in writing with an emphasis on minimising any disruption to farming activities and indemnifying loss. My client would also like to be provided with a copy of the survey results.

I look forward to receiving your responses to the matters raised above.

Regards
Matt

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Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 09 June 2022 17:25
To: Matthew Bodley
Subject: Tangmere Etc

Matt

I have your emails but have been involved in a compensation case that came to a head yesterday (it has only taken 6 years!) hence have been side-tracked and need to pick this up again.

Thanks

Peter

Peter Roberts
FRICS CEnv
Partner



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Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 15 June 2022 18:06
To: Matthew Bodley
Subject: RE: Tangmere - Heavers et al
Attachments: Tangmere - Trial trenching plan.jpg

Matt

Ardent are drawing up a LR compliant plan for the land. The Council have also drawn up a proposed Deed for my suggested way forward. I anticipate that these will be ready imminently. I am just keen to make sure that I give you accurate information etc on this hence whilst I do have other plans, I would rather wait till I have the definitive version.

We are progressing discussions with National Highways direct - I will update you further when I am able.

Dave Kerr of Osborne Clark has only just come back from holiday hence I need an update from him, but my recollection was that the agreements regarding the various rights of way had fallen away in light of the Council providing a unilateral open undertaking to replace the rights – I am not entirely clear what the agreements would give your client that the undertaking does not already cover and would welcome your comments in this regard.

I am not entirely clear why your client considers that the Council/CPL have not provided copies of the survey results and this point was addressed at the Public Inquiry. As you/Trevor Goode will hopefully recall, I advised the Inspector and, by extension, your client that all these reports were included within the ES submitted in support of planning application 20/02893/OUT which has been available for viewing by your client and the public on the planning portal since November 2020 i.e., well before the Inquiry. I am not entirely convinced that the link will work but to save you searching the LPA planning portal you might like to try this -

<https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QJZZT4ERUA00>

The further survey work is required by the LPA in respect of the discharge of planning conditions and therefore will be in the public domain on the LPA planning portal and freely available to your client.

With regard to the timings for further surveys, CPL are now proposing 5-6 weeks from the 1 August – would this work? In addition, it would be helpful if you could advise as to your proposed harvest/crop timings for Tangmere Corner. I have attached a plan illustrating the extent of the works to be undertaken.

Do you have any idea when your client intends to provide me with an unredacted copy of the Option Agreement?

Thanks

Peter

From: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Sent: 08 June 2022 14:25
To: Peter Roberts <peter.roberts@dwdllp.com>
Subject: RE: Tangmere - Heavers et al

Hi Peter

I refer to my email below.

Matthew Bodley

From: Matthew Bodley
Sent: 08 July 2022 18:14
To: Peter Roberts
Subject: RE: Tangmere - Heavers et al
Attachments: scan0238.pdf

Hi Peter

Without Prejudice

Thanks for your email which I have now discussed with my client. I respond to the various points under the sub-headings below.

Proposed Agreement to transfer the "Surplus" Strip

My client is agreeable in principle to the transfer of the surplus strip broadly in accordance with the terms outlined in the transfer agreement attached to your email. This will be subject to the addition of some form of words that states that my client's land (plot 16 as amended) has direct access to the public highway via the A27/A285 junction, suitable to create an access sufficient for the development of the TSDL.

In order to progress this we will require a costs undertaking for mine and Ashurst's costs for negotiating the agreement.

Survey Access

My client is agreeable in principle to providing access for survey, subject to the comments below and also subject to an undertaking on Ashurst's costs for agreeing a suitable licence for access. Please could you ask your client's solicitor to prepare a draft licence and plan, having regard to the comments below, and email them directly to Trevor Goode at Ashurst to progress.

I attach a copy of the plan you provided to which my client has made manuscript comments. The area hatched green is sown with Oil Seed Rape (OSR) which should, subject to the weather, be harvested by early August. The other two areas (hatched pink) are sown with beans which should be harvested by mid-September (this includes Tangmere Corner).

Subject to having harvested these crops, my client should be able to provide access to the OSR areas by the second week of August and the Beans areas by the third week of September, however, some flexibility will be required in the event of delays.

My client also need the land back by the 10 October to sow next year's crop. We appreciate this is quite tight for Countryside for the areas currently sown with Beans, but these areas appear to be subject to fewer surveys, so hopefully they can make this work.

Caution on Title of Control Strips

With regard the caution on my client's title which has been delaying registration, thanks for agreeing to assist if you can. My understanding is that the presence of the caution is delaying the registration of title. Therefore, we are just seeking co-operation from CPL and Aster to allow registration to occur because the agreement between CPL and Aster does not affect this land and should not have been registered as a caution against the title.

Bloor Option and Promotion Agreement

Finally, regarding the unredacted version of the Bloor Agreement, I am instructed that my client is prepared to provide a copy in exchange for copies of the agreements which your client completed with the Church, Pitts and Seaward.

Regards
Matt

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From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 18 June 2022 13:12
To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Subject: RE: Tangmere - Heavers et al

Matt

Without Prejudice

Please see attached the proposed Deed.

I have also attached a set of plans explaining the position:

- Plan 4 shows the adopted land position as advised to the Council at the CPO. This land was excluded from the CPO on the basis that it was adopted and highways had agreed that the site could be connected.
- Plan 3 shows the resultant CPO plan
- Plan 5 shows the actual position as confirmed to the Council after the CPO had been confirmed – you will note that none of the land up to the gate with the roundabout is adopted after all.
- Plan 1 shows the land that clearly belongs to National Highways which they will now need to transfer.
- Plan 2 shows the extent of Heaver’s registered land ownership which includes the bottom section of the access way. We believe that this boundary is a LR error based on the plans relating to the original acquisition of land by National Highways to build the A27 hence we do have the option of arguing the point to the LR but are trying to short circuit this.

In effect, we can a) argue that Heavers don’t actually own this strip of land, b) obtain a supplementary CPO and then argue the point when it comes to compensation or c) agree voluntary terms that assume that the Heavers own this strip of land and that it is part and parcel of Plot 16 for the purposes of compensation.

National Highways are not currently claiming ownership of your “surplus strip” and do not appear to be aware of the position going back to the construction of the A27 hence we are hoping to obtain two voluntary agreements whereby they will transfer plan 1 in its entirety and Heavers will transfer the balance of the land in accordance with the attached deed.

Ardent are drawing up a LR compliant plan for the Heavers part of the land and I will send this over ASAP.

Thanks

Peter

From: Peter Roberts
Sent: 15 June 2022 18:06
To: 'Matthew Bodley' <Matthew@matthewbodleyconsulting.com>
Subject: RE: Tangmere - Heavers et al

ACCESS

OSP - FROM

01.08.22

BEANS - FROM

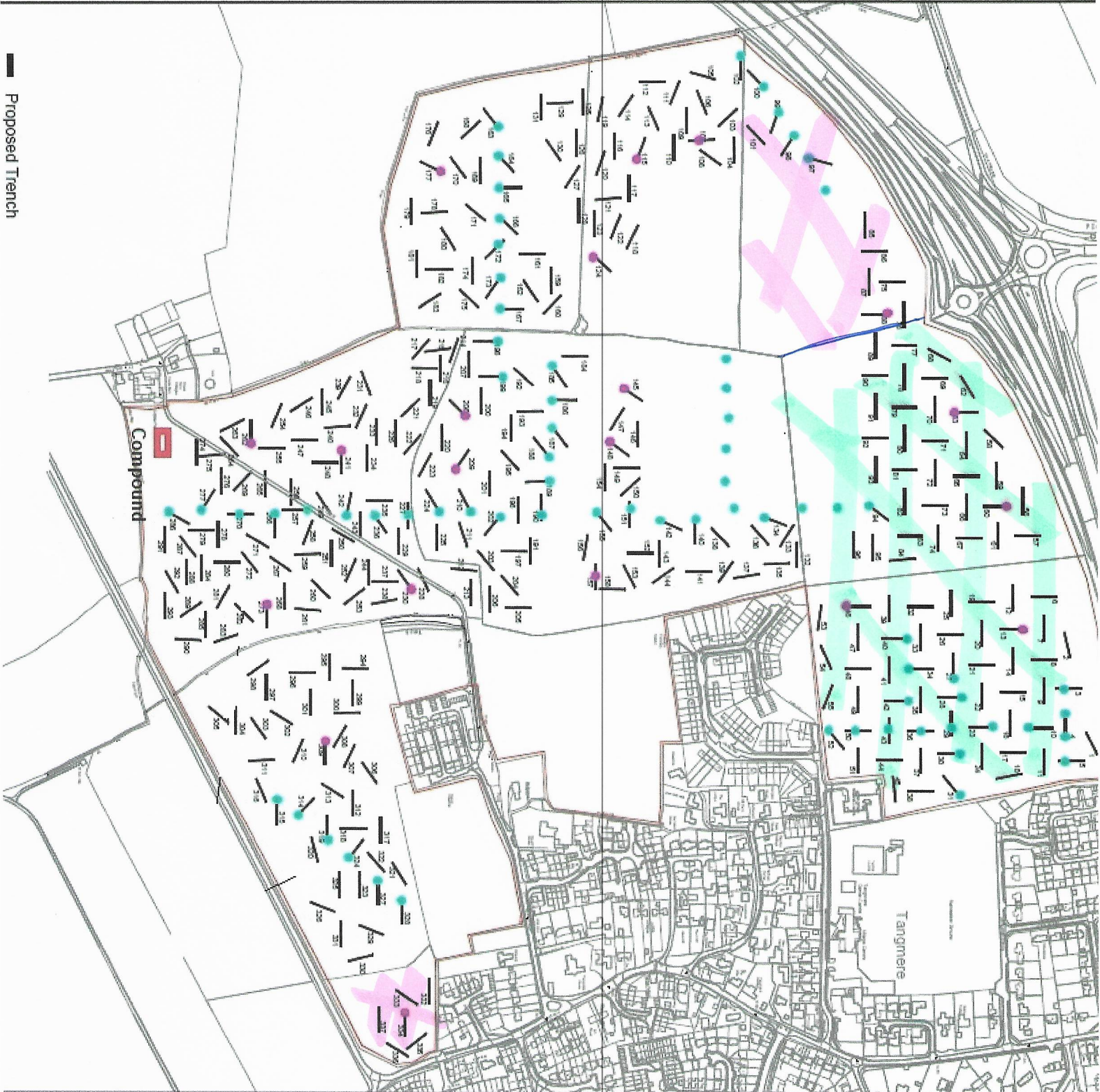
MID

SDP.

SUBJECT TO
CONTRACT.

RETURN BY

10 AUGUST.



Proposed Trench

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 11 July 2022 17:40
To: Matthew Bodley
Subject: RE: Tangmere - Heavers et al

Hi Matt

Answering your points in turn.

Proposed Transfer Agreement

As I expect you will have anticipated, I cannot recommend agreement to your proposed assumption that Plot 16 has full rights of access to the highway suitable for implementing development. If your client thinks that they had a ransom position having regard to the facts as they existed pre the CPO then fair enough but I am not about to change reality and recommend that your client is assumed to have rights and land that they did not have pre CPO.

The offer is simply this – to agree that the extra strip of land allegedly owned by your client is included within Plot 16. If this is not acceptable the Council has two options which it may address in parallel. The first is to argue that the strip does not actually belong to your client at all and there has been a Land Registry error such that it actually belongs to National Highways – we have already taken advice on that point. The second route is simply to get a second CPO for a belt and braces approach and then wait for your client to provide evidence that it has a superior claim to this strip than National Highways.

I don't have an issue with the principle of fees subject to you setting out what you are looking for. I would point out that we have drafted the documents so there isn't much for Ashurts to do so we would expect their fees to be moderated. Similarly, you and I have simply exchanged a handful of emails.

Survey Access

This has been drafted and should be with you soon.

Caution

I will leave that with your client to explain what they are wanting in due course.

Option Agreement

The agreements are between the landowners and the developer – the Council is not a party to these. My appearance at the Public Inquiry and role going forward is on behalf of the Council. These agreements are also completely irrelevant to the assessment of compensation having been entered into on the assumption of the confirmation of the CPO. As such, it is not within my gift to assist with your client's requirement. I guess that, as he is clearly not willing to provide the Option Agreement to enable early discussions we will just have to wait for the receipt of your client's claim.

I would be grateful if you would come back to me in respect of the Transfer Agreement.

Kind regards

Peter

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 13 July 2022 14:37
To: trevor.goode@ashurst.com; Matthew Bodley
Cc: Dave Kerr; John Webster
Subject: FW: Tangmere - Licence for Heaver [RC-ACTIVE.FID798306]
Attachments: 7. Heaver Official Copy (Title Plan) - WSX217492.pdf; 10. CS SOUTH LTD Official Copy (Title Plan) - WSX355209.pdf; 9. CS East Official Copy (Title Plan) - WSX355210.pdf; 13. Heaver Official Copy (Title Plan) - WSX276484.pdf; 14. Heaver Official Copy (Title Plan) - WSX225302.pdf; Heaver licence - Plan.pdf; Tangmere - Licence 130722.docx

Matt

Please see attached – I would be grateful if you/Trevor would now progress.

In a nutshell we need-

- 1) Completion of the land transfer previously sent to you
- 2) Completion of the attached licence

Kind regards

Peter

Peter Roberts
FRICS CEnv
Partner



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DATED

20

- to -

COUNTRYSIDE PROPERTIES (UK) LIMITED

LICENCE TO ACCESS
Land at Tangmere, Chichester



BETWEEN

- (1)
- (2) **COUNTRYSIDE PROPERTIES (UK) LIMITED** whose registered office is at
Countryside House The Drive Brentwood Essex CM13 3AT

RECITALS

- (1) The Licensor has agreed to grant a licence of the Site to the Licensee
- (2) The Licensee wishes to use the Site for the purpose of carrying out any surveys or technical investigations including intrusive and archaeological surveys and investigations (which for the avoidance of doubt shall include any mitigation works or measures required pursuant to those surveys and investigations) in connection with the proposed development of the Site.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

- (a) In this Agreement the following expressions (arranged in alphabetical order) shall have the following meanings that is to say:-

"Licensee"	The said Countryside Properties (UK) Limited
"Licensor"	
"Licence Period"	From [] August 2022 until [] July 2023
"Occupation Date"	[] August 2022
"Plan"	The Plan annexed
"Site"	The land edged red on the Plan being land [] forming the land registered at the Land Registry under title numbers [WSX217492, WSX355209, WSX355210, WSX225302, WSX276484]

- (b) Words importing the singular meaning shall include the plural meaning and vice versa

- (c) The clause headings in this Agreement shall not in any way affect its interpretation but are for the convenience of the parties only
- (d) Reference to clauses clause numbers and schedules are references to clauses clause numbers and schedules of this Agreement
- (e) In this Agreement reference to any statute shall be deemed to include any corresponding sections in any similar amending or re-enacting statute or in any Local Act

2. **LICENCE**

2.1 Subject to the terms of this Agreement the Licensor permits the Licensee, its employees, agents, contractors and consultants during the Licence Period to occupy and use the Site for the Permitted Use.

2.2 The Licensee acknowledges that:

- (a) The Licensee shall occupy the Site as a Licensee and that no relationship of the landlord and tenant is created between the Licensor and the Licensee by this agreement.
- (b) The Licensor retains control, possession and management of the Site and the Licensee has no right to exclude the Licensor from the Site PROVIDED THAT the Licensor will comply with any reasonable health and safety requirements required by the Licensee or any contractor employed by the Licensee .
- (c) The licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in Clause 4 may only be exercised by the Licensee, its employees, agents, contractors, consultants and all other persons authorised by the Licensee

3. **LICENSEES' UNDERTAKINGS**

The Licensee agrees and undertakes with the Licensor:-

- (a) To keep the Site clean and tidy and clear of rubbish and to leave the same in a clean and tidy condition and free of the Licensees' furniture equipment goods and chattels at the end of the Licence Period
- (b) Not to do any act matter or thing which would or might constitute a breach of any statutory requirement affecting the Site or which would

or might vitiate in whole or in part any insurance effected in respect of the Site from time to time

- (c) To insure the Licensee, its employees, agents, contractors, consultants and all other persons authorised by the Licensee and the Site and all lawful visitors against all claims arising from the exercise of the rights granted by clause 2 or from any negligence or default (including any breach or non-observance of the terms of this Licence however expressed or implied) in connection with the Site so as fully to satisfy all claims for which the Licensees may be liable under this Agreement
- (d) To make good all physical damage caused at its own expense to the reasonable satisfaction of the Licensor.

4. **TERMINATION**

This Agreement shall continue for the Licence Period and shall terminate automatically as follows:-

- (a) upon the expiry of one months notice served by the Licensee;
- (b) upon the expiry of one months notice served by the Licensor PROVIDED THAT the Licensee is in material breach of its obligations pursuant to this Licence and PROVIDED FURTHER THAT the Licensor has provided the Licensee with a reasonable opportunity of at least 10 working days to remedy such breach

6. **GENERAL**

- (a) The Licensor shall not be liable to the Licensee for any personal injury damage loss or inconvenience caused to them or to any goods or chattels brought by any person onto the Site it being the intention of and agreed between the parties that the Licensee exercising the rights granted by clause 2 shall do so at the risk of the Licensee
- (b) Nothing in this Agreement shall create the relationship of landlord and tenant between the parties

7. **NOTICES**

All notices given by either party pursuant to the provisions of this Agreement shall be in writing and shall be sufficiently served (but without prejudice to any other proper method of service) if marked for the attention of the Company Secretary and delivered by hand or sent by Recorded Delivery to the addresses shown above

THE COMMON SEAL of)
COUNTRYSIDE PROPERTIES (UK) LIMITED)
was hereunto affixed in the)
presence of:)

Director

Director/Secretary

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 20 July 2022 11:27
To: Matthew Bodley; trevor.goode@ashurst.com
Subject: Tangmere

Matt and Trevor

When will you be able to come back to me on this? August is nearly upon us so we need to understand your intentions in respect of the survey licences. It would also be helpful if you could respond on the other points at the same time.

Kind regards

Peter

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Matthew Bodley

From: Matthew Bodley
Sent: 26 July 2022 09:05
To: Peter Roberts; trevor.goode@ashurst.com
Subject: RE: Tangmere - Without Prejudice
Attachments: Highways Englad - Your property and land surveys.pdf; Highway Report - 27 June 2022.pdf

Hi Peter

I've now discussed with my client and comment on each matter below.

Survey Licence

I have reviewed the licence and have the following observations:

- The plan attached to your draft licence covers all of my client's land. In my previous note I had attached a plan and an explanation of the cropping/harvesting cycles and therefore what parts of the land you could survey and when. This plan and the attached timescales were put together by my client. You don't appear to have paid any attention to it.
- The same point applies to the content of the draft licence which seeks access for a period from an unspecified date in August this year to an unspecified date in July next year – i.e. circa 12 months. This doesn't reflect what was previously discussed. I consider it to be unreasonable and it is not agreed.
- The licence refers to using the land for the Permitted Use, but does not define what this is. Please clarify.
- There is nothing in the draft licence about compensation for loss or damage caused by the survey access. There would be a statutory entitlement to this if the surveys were undertaken using powers. Clearly, we are not going to agree to anything which does not reflect my client's statutory entitlement.
- Whilst there is a clause regarding insurance to protect the Licensee (i.e. your client) there is no mention of insurance or indemnities to protect my client from claims arising from actions taken by your client whilst on my client's land. We require appropriate third party and public liability insurance to be put in place.
- It is normal for a licence fee to be paid for survey access and a number of statutory bodies have published fee rates dependent upon the nature of the survey to be undertaken. For your information I attach a copy of the Highways England scale of licence fees from 2018 which shows that they pay £200 per borehole or trial pit. It may have been updated since then. I understand that other statutory bodies publish similar rates but have not taken the time to investigate fully. I have recently agreed £500 per trench with Cheshire East Council for trenches on agricultural land in Middlewich. Whilst these rates are not statutorily prescribed they represent best practice and what is independently considered to be fair and reasonable. Therefore, we would expect your client to take a similar approach. There is no mention of this in your draft and I should be grateful if you would confirm the licence fee which your client is proposing to pay.

My client would like to progress the licence in a cooperative manner but we are disappointed that you don't appear to have paid any attention to my previous email and instead appear to have just sent a standard template which doesn't reflect the feedback previously provided or the minimum statutory entitlement, and simply seeks to minimise responsibility risk and to your client.

Please could you ask your client to update the draft licence to reflect the above points, and re-issue it. I will then take instructions.

Transfer Agreement

As previously stated my client is, on a without prejudice basis, agreeable in principle to a transfer of the “surplus strip” along the lines proposed in the previous draft. However, we need to ensure that my client’s position is protected. This is why we included the requirement for an express provision that reflects my client’s access rights onto the land. This is simply seeking to clarify the current position. We are not trying to gain some advantage. My client has an existing right of access to the public highway which was agreed when the land was acquired for the A27 in the 1980s. This position is reflected in the current adopted highway plans as shown on the attached Highway Report. I understand it, was previously confirmed by National Highways (NH) prior to the public inquiry. The agreement between my client and NH’s predecessor when the land was acquired was that my client would continue to have direct access to the public highway (as that is what they had before the acquisition) and my client has been using the access continuously for a period of nearly 40 years since their land was acquired.

From our brief discussions and emails on this matter I think you are saying that NH are now suggesting an alternative position, despite the fact the current adoption plan clearly shows that my client has direct access to the public highway. My client has not received any contact or notification from NH to suggest a different position and is continuing to access the land as normal.

As we have not had direct contact with NH we don’t know precisely what position they are now stating and why. Nor do we understand the potential implications of this. We would like to understand this in more detail and discuss it directly with NH which is why I asked you to clarify their position and also to provide contact details of who it is you are dealing with at NH or their agent, which you have not provided. My client is not going to enter into an agreement along the terms you have proposed without having a full understanding of this. We are firmly of the view that my client’s land has access to the public highway, and it has been continuously used as such for decades. If a different view is now being put forward we need to understand it and we are not prepared to take any actions that may indicate that we agree that an alternative position exists as we do not accept it. That’s why we proposed the wording that we did in order to try and short circuit any potential delay which we thought would be in all parties’ best interests.

As previously requested please provide clarification of the position now being put forward by NH and provide contact details for the person that is acting on their behalf.

As previously stated we require an undertaking on Ashurst and my fees for dealing with both the survey licence and the transfer agreement. It is difficult to know precisely how much this will cost as we don’t know how the negotiations will go, but our current estimates are as follow:

	Ashurst	MBC
Survey Licence	1,500	1,250
Transfer Agreement	5,000	2,500

This may need to be reviewed depending on how swiftly the documents can be agreed.

I look forward to hearing from you.

Regards
Matt

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Your property and land surveys

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Highways England

At Highways England, we maintain, operate and improve England's motorways and major A-roads, the roads we all use between major cities and which are vital to our economy.

In 2014, the government tasked us with delivering their road investment strategy. This is a programme of investment which aims to improve journeys, tackle congestion, support the economy and maintain safety.

Introduction

This guide aims to inform you about the compensation you may be entitled to if we enter onto your land to carry our surveys, or leave measuring apparatus on it.

Our major road schemes go through a series of steps from the identification of options to the road being in use. The surveys we carry out help inform our decisions about which option is selected and the layout and design of the scheme.

More information about the process we follow to deliver our larger road schemes and the other types of compensation that may be available can be found in the following Highways England publications:

- Your property and our road proposals: 2017
- Your property and blight: 2017
- Your property and discretionary purchase: 2017
- Your property and compulsory purchase: 2017
- How to claim for the effects on your property of new or altered roads: 2015

For more information

 info@highwaysengland.co.uk

 0300 123 5000

 www.highways.gov.uk

Surveys and compensation

Even though Highways England can legally enter land to carry out surveys using its legislative powers, we would much rather work with you to agree suitable access arrangements, as this helps to keep any impact on your land or property to an absolute minimum.

We can compensate owners and occupiers for disturbance and damage resulting from surveys and pay rent where there is a need to leave apparatus on site. It is usually the occupier of the land who gets compensation as he/she is the one that will be most affected by our works. However, we will also consider reasonable evidence-based claims from landowners who are not in occupation but who have suffered disturbance and damage as a result of the survey.

You will normally need to make your claim for compensation after the survey has taken place. However, please refer to the “How we process your claims” section of this guide for more information.

Typical compensation levels

The tables on pages 8, 9 and 10 give a very general idea of the compensation rates Highways England typically applies to different types of survey. These rates are based on our experience of previous schemes and are considered to cover most of the losses suffered by those in occupation of the land.

The rates enable us to settle claims quickly and can be applied where we access your land by agreement and where we serve notice on you using one of our legislative powers. As they are a guide, any exceptional cases will be assessed on an individual basis. For example, they do not include disturbance payments such as crop loss or any effect on payments you receive from the Rural Payments Agency.

To assist you with compensation claims for intrusive surveys (such as boreholes, trial pits and archaeological surveys and trenches) we will send you a condition report which will include:

- Plans of the site (including details of access routes across your land to reach the survey locations)
- Details of the surveys undertaken
- A photographic record of conditions before and after the survey including any reinstatement works that have been carried out.



We can compensate owners and occupiers for disturbance and damage resulting from surveys and pay rent where there is a need to leave apparatus on site.

Compensation for boreholes and trial pits

These types of survey can be intrusive. However, the following rates assume that Highways England or our contractor puts the land back into its original state immediately after use:

Land Type	Compensation per borehole
Arable	£200
Grazing or grassland	£200
Woodland	£50
Orchards, hop-gardens and self-pick areas	£100
Yards, gardens etc.	£200

Rent for measuring apparatus left on the land

These could prompt a single one-off payment, or an annual figure depending on how long the equipment is left in place. Both options are reflected in the table below:

Land Type	Compensation annually	Compensation one off payment
Arable	£100	£200
Grazing or grassland	£100	£200
Woodland	£50	£100
Orchards, hop-gardens and self-pick areas	£100	£200
Yards, gardens etc.	£100	£200

Where a number of items of apparatus is to be left on your land, we will try to group them closely together and the rates apply to each group of apparatus. However, where there are single pieces of apparatus that cannot be grouped with other pieces, the rates will apply to the group and to each single piece.

The rates include checking visits. Where we leave equipment on your land we will enter into an agreement with you to detail:

- The type of equipment being left
- Its position
- How long it will be in place
- How often it will be monitored.

Archaeological surveys

Highways England pays a set fee per archaeological trench that reflects our experience.

Land Type	Compensation per trench
Arable	£200
Grazing or grassland	£200
Woodland	£50
Orchards, hop-gardens and self-pick areas	£100
Yards, gardens etc.	£200

Nevertheless, we also recognise that the size and depth of the trench and the duration of the survey may have a material impact. Therefore, we will consider evidence-based claims showing exceptional circumstances.

Compensation for non-intrusive/walk-over surveys

We do not have a rate for non-intrusive/walk-over surveys where there is no physical disturbance to the land. However, evidence-based claims for disturbance and damage will be considered.

Surveyors fees

The compensation rates, together with the short-term nature of the survey, mean that we can negotiate agreements directly with you. However, if you would prefer to appoint your own surveyor to negotiate with us, we will also pay the reasonable and proportionate costs that you incur in engaging him/her, together with his/her appropriate out of pocket expenses. Your surveyor's fee must represent the cost of valuing, compiling and negotiating the claim and we will request information, such as time sheets, from them.

Claims for the time of the landowner or occupier

In addition to the above compensation rates, you can also claim for your own time spent in dealing with survey agreements, where:

- Your time was directly attributable to the claim
- Highways England agrees that it is reasonable to repay you.

How we process your compensation claims

What we need from you.

Once the surveys are complete (or every three months if the surveys are continuing) Highways England requires the occupier, landowner or his/her surveyor to submit a detailed claim for compensation showing:

- The number of surveys carried out (you can find this information in the condition report or we can provide it on request)
- The amount being claimed
- Evidence for any additional items being claimed.

In some circumstances, Highways England may request their own surveyor to assess whether the level of compensation being claimed is reasonable. We will keep you informed of progress if this is the case.

We will ask you to provide your bank details and confirmation of your VAT status before we are able to make any payment. Compensation, including any surveyor's fee, is paid directly to you and you will be responsible for settling your surveyor's fees. However, we can pay your surveyor's fees directly to them if we have your written consent.

How long the process usually takes

Highways England commits to dealing with your compensation claim in a timely manner and wherever possible we will try to make payment within 40 days of the claim being received (providing all the necessary information has been supplied). The settlement of a claim may take less time, for example if we do not need to refer it to our own surveyor.

Many of our legislative survey powers also provide that, if we cannot agree the amount of compensation payable, you may refer your claim to the Lands Chamber of the Upper Tribunal for determination. However, where you do not have this right, provided the Tribunal is content to hear your claim, we would not raise an objection to your reference. The Tribunal can award costs to either party so it is important that you seek professional advice before referring your claim. Please note that, depending on the number of references the Tribunal is dealing with, it may take several months for it to hear your claim.

Claims should be referred to the Upper Tribunal (Lands Chamber) 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL.

Our commitment to be open and fair

We are open, honest and fair and publish all relevant information unless it is exempt from publication under the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 (DPA 2018).

We will not use your personal information for any purpose other than to process your claim for compensation. All information we hold will be maintained accurately and kept as up-to-date as possible. It will only be accessible to those in Highways England with a need to see and process it. It will be destroyed when that purpose is complete.

However, if you appoint a surveyor to negotiate your claim, we will take that as your agreement to share your information, other than your bank or building society details, with them, unless you instruct us not to do so.

You may request a copy of the personal records we hold about you in connection with your claim. Requests must be made in writing to the address below and we will respond to your request within 40 days.

**Highways England
Piccadilly Gate
Store Street
Manchester
M1 2WD**

Following a request for information, we will write to let you know whether we hold the information requested and, if we do, send that information to you. We are not required to send information where one or more of the exemptions apply. For example, another person's personal details would be protected under the GDPR and the DPA 2018 and therefore we would not pass this information on.

To find out more please look at the freedom of information section of our website:

 www.highways.gov.uk

Complaints procedures

Our aim is to provide the best possible service at all times but there may be circumstances in which you wish to make a complaint about the handling of your claim. We are keen to improve the service we offer our customers wherever possible and provide redress where appropriate. However, if you are unhappy with any offer of compensation then that falls outside the remit of our complaints procedure and you can ask the Upper Tribunal (Lands Chamber) to determine your claim.

More information about the complaints procedure can be found at:

 info@highwaysengland.co.uk.

 0300 123 5000

 www.highways.gov.uk

Further information

The Department for Communities and Local Government (DCLG) publishes the following series of technical booklets that you may find useful.

Booklet 1: Compulsory purchase procedure

Booklet 2: Compensation to business owners and occupiers

Booklet 3: Compensation to agricultural owners and occupiers

Booklet 4: Compensation to residential owners and occupiers

Booklet 5: Mitigation works

 info@highwaysengland.co.uk.

 0300 123 5000

 www.highways.gov.uk

If you need help accessing this or any other Highways England information, please call **0300 123 5000** and we will help you.

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This document is also available on our website at **www.gov.uk/highways**

If you have any enquiries about this publication email **info@highwaysengland.co.uk** or call **0300 123 5000***. Please quote the Highways England publications code **PR80/18**

Highways England Creative job number BED18 0085

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

Highways England Company Limited registered in England and Wales number 09346363

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 02 August 2022 13:38
To: Matthew Bodley; 'Trevor.Goode@ashurst.com'
Cc: Dave Kerr
Subject: Heaver Licences
Attachments: Tangmere - Heaver licence plan.pdf; Tangmere - Licence 290722.docx

Matt/Trevor - Please see attached regarding the licence.

Dave – I assume that you have sent the Medical Centre documents direct to Trevor. If not, I would be grateful if you would do so.

Many thanks

Peter

Peter Roberts
FRICS CEnv
Partner



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6 New Bridge Street
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peter.roberts@dwdllp.com
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Linked in

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Matthew Bodley

From: Matthew Bodley
Sent: 04 August 2022 09:39
To: Peter Roberts; 'Trevor.Goode@ashurst.com'
Cc: Dave Kerr
Subject: RE: Heaver Licences
Attachments: Tangmere - Licence 290722 (002) - MB amends.docx

Subject to Contract

Hi Peter

I've discussed the updated draft licence document with my client and attach a track change amended version.

As you know I'm on leave this week but my client was keen that I dealt with this now as he is on leave from next Wednesday (10th) and wants this resolved before he goes as he will be unable to deal with it whilst he is away. This means that whilst I've discussed this with my client I have not yet discussed with my client's solicitor as I don't want to intrude further into my holiday. Therefore, the revised draft is subject to any further comments from Ashurst.

As you will see I have included a licence fee of £20,000. From the plan you sent me there appear to be 106 trenches proposed on the land. I have applied the National Highways published licence fee rate (excluding disturbance) of £200 per trench / pit / borehole. This equates to £21,200 which I have rounded down to £20,000.

I should be grateful if you could take instructions and get back to me quickly in order that we can resolve before my client goes away.

Regards
Matt

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

www.matthewbodleyconsulting.com

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 02 August 2022 13:38
To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>; 'Trevor.Goode@ashurst.com' <trevor.goode@ashurst.com>
Cc: Dave Kerr <Dave.Kerr@osborneclarke.com>
Subject: Heaver Licences

Matt/Trevor - Please see attached regarding the licence.

Dave – I assume that you have sent the Medical Centre documents direct to Trevor. If not, I would be grateful if you would do so.

Many thanks

Peter

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 05 August 2022 12:36
To: Matthew Bodley; 'Trevor.Goode@ashurst.com'
Cc: Dave Kerr
Subject: RE: Heaver Licences

Matt

Subject to Contract

I don't have client's instructions as we are trying to get a meeting together to discuss with CPL.

You have amended the occupation dates to run to 10 October. CPL can get the trenching done but not the mitigation works so they will need a second licence unless we have agree terms for the transfer of land in the meantime. If you want to specify that the trenching is done by 10 October then fine but there doesn't seem much point having to then agree a second licence for the mitigation within the extended period.

As discussed, it is double counting to be paying a trenching fee and then crop loss on top – the whole point of the trenching fees paid by SU etc is to cover all heads of compensation. As such anything CPL pay now would be deducted from any future crop loss payments by the Council.

We also need to make sure that there isn't any duplication between compensation losses paid under the license and "shadow losses" when the main compensation claim comes in.

As I say – I don't have any instructions but I am mindful of timescales hence the above comments.

Thanks

Peter

From: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Sent: 04 August 2022 09:39
To: Peter Roberts <peter.roberts@dwdllp.com>; 'Trevor.Goode@ashurst.com' <trevor.goode@ashurst.com>
Cc: Dave Kerr <Dave.Kerr@osborneclarke.com>
Subject: RE: Heaver Licences

Subject to Contract

Hi Peter

I've discussed the updated draft licence document with my client and attach a track change amended version.

As you know I'm on leave this week but my client was keen that I dealt with this now as he is on leave from next Wednesday (10th) and wants this resolved before he goes as he will be unable to deal with it whilst he is away. This means that whilst I've discussed this with my client I have not yet discussed with my client's solicitor as I don't want to intrude further into my holiday. Therefore, the revised draft is subject to any further comments from Ashurst.

As you will see I have included a licence fee of £20,000. From the plan you sent me there appear to be 106 trenches proposed on the land. I have applied the National Highways published licence fee rate (excluding disturbance) of £200 per trench / pit / borehole. This equates to £21,200 which I have rounded down to £20,000.

Matthew Bodley

From: Matthew Bodley
Sent: 08 August 2022 17:18
To: Peter Roberts; 'Trevor.Goode@ashurst.com'
Cc: Dave Kerr
Subject: RE: Heaver Licences

Subject to Contract

Hi Peter

I've just come off a Teams meeting with my client to discuss your latest email regarding the licence for survey access.

My clients need the land back by 10 October at the latest. My clients intend to grow wheat in both fields and they need the land back in its mitigated state by 10 October in order to achieve this. If they don't have it back by then they will lose next year's crop which will equate to a loss of circa £80,000 based on an average yield of 4.5 tonnes per acre across the combined site area of circa 58 acres at £300 per tonne.

Therefore, we are only prepared to enter into an agreement based on a handback date of later than 10 October if your client is prepared to agree to a compensation payment of £80,000 for crop loss. If your client is prepared to agree this then they can have a licence for the whole year as proposed in your original drafting.

With regard to the proposed licence fee of £20,000 I do not agree that this amounts to double counting with any crop loss. It is well established compensation law that a claimant is entitled to a sum to reflect the value of the land plus an amount for disturbance. The licence fee is akin to the rent for occupation of the land. This principle is clearly followed in the National Highways published licence rates within the "Your property and land surveys" document. Page 6 of the document states that these rates do not include disturbance payments such as crop loss.

Therefore, in summary, my client is prepared to proceed on one of the following two bases:

- In accordance with the draft I sent you on 4 August; or
- A licence for a whole year provided your client agrees to a crop loss payment of £80,000 in addition to the £20,000 licence fee.

Please let me know how your client would like to proceed.

If you would like to discuss please feel free to call me on the mobile.

Regards

Matt

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

www.matthewbodleyconsulting.com

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 05 August 2022 12:36
To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>; 'Trevor.Goode@ashurst.com' <trevor.goode@ashurst.com>

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 08 August 2022 18:12
To: Matthew Bodley
Cc: trevor.goode@ashurst.com; Dave Kerr
Subject: Re: Heaver Licences

Matt

For clarity - is your 80k the gross value of the crop i.e sale price or the profit after deduction of cost?

Thanks

Peter

Peter Roberts

FRICS CEnv

Partner



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T: [020 7489 0213](tel:02074890213)
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On 8 Aug 2022, at 17:17, Matthew Bodley <Matthew@matthewbodleyconsulting.com> wrote:

Subject to Contract

Hi Peter

I've just come off a Teams meeting with my client to discuss your latest email regarding the licence for survey access.

My clients need the land back by 10 October at the latest. My clients intend to grow wheat in both fields and they need the land back in its mitigated state by 10 October in order to achieve this. If they don't have it back by then they will lose next year's crop which will equate to a loss of circa £80,000 based on an average yield of 4.5 tonnes per acre across the combined site area of circa 58 acres at £300 per tonne.

Therefore, we are only prepared to enter into an agreement based on a handback date of later than 10 October if your client is prepared to agree to a compensation payment of £80,000 for crop

Matthew Bodley

From: Matthew Bodley
Sent: 09 August 2022 09:44
To: Peter Roberts
Cc: trevor.goode@ashurst.com; Dave Kerr
Subject: RE: Heaver Licences

Peter

I requested clarification from my client – his response is as below.

“The £80,000 is the estimated sale price of the crop.

There are production costs, but we have incurred the vast majority of these already i.e. we have already bought the seed, fertiliser, machinery, etc and employed the labour. There will be some savings (i.e. fuel), but these are likely to be very small.

More importantly, we may not be entitled to receive our BPS (Basic Payment Scheme) grants if we don't actually grow crops. This will be worth more than the likely savings.

I can look in more detail at what savings might be available, but as part of this I will also want to look at the potential loss of grants. If the advice is that the grants may be lost, then I suspect that with this included the figure to claim will be more than £80,000 after deducting the savings.

I can't do this until I am back from holiday and neither can my farm manager as he is focussed on harvest. Tricky time of year I am afraid!”

Matt

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

www.matthewbodleyconsulting.com

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 08 August 2022 18:12
To: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Cc: trevor.goode@ashurst.com; Dave Kerr <Dave.Kerr@osborneclarke.com>
Subject: Re: Heaver Licences

Matt

For clarity - is your 80k the gross value of the crop i.e sale price or the profit after deduction of cost?

Thanks

Peter

Peter Roberts
FRICS CEnv
Partner

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 10 August 2022 10:39
To: Matthew Bodley
Cc: trevor.goode@ashurst.com; Dave Kerr
Subject: RE: Heaver Licences
Attachments: 2022-05-25 Letter to M Leach.pdf

Matt

I have spoken with CPL. In an ideal world they would have liked to agree terms for the licence with your client to get on site this year but I see little prospect of that now. I am therefore assuming that there isn't much point in continuing those discussions for the time being.

This leaves two issues – namely the Medical Centre agreements and the acquisition of the strip. I understand that the Medical Centre agreements are being progressed between Dave and Trevor and should be completed imminently. This just leaves the strip.

The Council's preference is that your client enters into a voluntary agreement whereby Plot 16 is agreed to include the strip and compensation would be assessed on the basis that they are in the same ownership. Your client would then be free to make whatever arguments they wish.

Your client has rejected this approach unless the Council agrees up front that your client has full ability to construct a connection to the A27 that is capable of adoption, but no evidence has been produced to support this position. In contrast, I have provided full evidence of the actual position to you which is as follows:

- The highway in question is not adopted (you have the proof of that)
- Your client does have general access rights but does not have any right to construct anything on the land in question (you have the proof that also)

If your client is able to produce evidence that contradicts either of these points then we can take that into account with the Tribunal being the ultimate arbiter. However, as I am sure you will be aware, in the meantime, the Council does not have the ability to agree to your client's proposals even if they wanted to. As such, this is not a negotiating position but a statement of reality.

The alternative is that the Council secure CPO 2. Your client will be the only statutory objector and our position will be that any objection your client makes is solely about money which is not a relevant consideration and that the terms we have offered are entirely reasonable and compliant (i.e., a repeat of last time). This is not meant as a threat but there is no point pretending otherwise. This of course will delay matters which is not helpful to anyone, but I see no alternative to break through this impasse unless you have any alternative suggestions.

I have attached a letter from the Council to CPL confirming their intention to commence CPO proceedings if required and their agreement to amending the Development Agreement to reflect the current position.

I would be grateful if you would revisit the previous terms offered to your client – they do not harm them in any way nor interfere with their ability to argue their position in respect of access and their full entitlement to compensation is upheld.

I look forward to hearing from you.

Peter

Matthew Bodley

From: Matthew Bodley
Sent: 10 August 2022 17:25
To: Peter Roberts
Cc: Trevor.Goode@ashurst.com; Dave Kerr
Subject: Re: Heaver Licences
Attachments: image001.png; image002.png; 2022-05-25 Letter to M Leach.pdf

Hi Peter

Thanks for your email. I'll have to take instructions. This will take a little while as my client has just gone on leave.

Just for the sake of complete clarity are you saying that your client will not be proceeding with its request for access to undertake surveys at this time?

Matt

On 10 Aug 2022, at 10:39, Peter Roberts <peter.roberts@dwdllp.com> wrote:

Matt

I have spoken with CPL. In an ideal world they would have liked to agree terms for the licence with your client to get on site this year but I see little prospect of that now. I am therefore assuming that there isn't much point in continuing those discussions for the time being.

This leaves two issues – namely the Medical Centre agreements and the acquisition of the strip. I understand that the Medical Centre agreements are being progressed between Dave and Trevor and should be completed imminently. This just leaves the strip.

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1. The highway in question is not adopted (you have the proof of that)
2. Your client does have general access rights but does not have any right to construct anything on the land in question (you have the proof that also)

If your client is able to produce evidence that contradicts either of these points then we can take that into account with the Tribunal being the ultimate arbiter. However, as I am sure you will be aware, in the meantime, the Council does not have the ability to agree to your client's proposals even if they wanted to. As such, this is not a negotiating position but a statement of reality.

The alternative is that the Council secure CPO 2. Your client will be the only statutory objector and our position will be that any objection your client makes is solely about money which is not a relevant consideration and that the terms we have offered are entirely reasonable and compliant (i.e., a repeat of last time). This is not meant as a threat but there is no point pretending otherwise.

Matthew Bodley

From: Peter Roberts <peter.roberts@dwdllp.com>
Sent: 10 August 2022 17:33
To: Matthew Bodley
Cc: Trevor.Goode@ashurst.com; Dave Kerr
Subject: RE: Heaver Licences

Matt – No access will now be taken until a GVD has been served. The timing of the GVD will depend upon whether your client is prepared to enter into an agreement on the proposed terms before we have a confirmed CPO 2. My hope is that you and your client will see the merits of an early agreement that assumes that Plot 16 and the strip are merged together under the existing CPO and keep your powder dry on the access points for discussion at a later date but I will leave that with you.

Thanks

Peter

From: Matthew Bodley <Matthew@matthewbodleyconsulting.com>
Sent: 10 August 2022 17:25
To: Peter Roberts <peter.roberts@dwdllp.com>
Cc: Trevor.Goode@ashurst.com; Dave Kerr <Dave.Kerr@osborneclarke.com>
Subject: Re: Heaver Licences

Hi Peter

Thanks for your email. I'll have to take instructions. This will take a little while as my client has just gone on leave.

Just for the sake of complete clarity are you saying that your client will not be proceeding with its request for access to undertake surveys at this time?

Matt

On 10 Aug 2022, at 10:39, Peter Roberts <peter.roberts@dwdllp.com> wrote:

Matt

I have spoken with CPL. In an ideal world they would have liked to agree terms for the licence with your client to get on site this year but I see little prospect of that now. I am therefore assuming that there isn't much point in continuing those discussions for the time being.

This leaves two issues – namely the Medical Centre agreements and the acquisition of the strip. I understand that the Medical Centre agreements are being progressed between Dave and Trevor and should be completed imminently. This just leaves the strip.

The Council's preference is that your client enters into a voluntary agreement whereby Plot 16 is agreed to include the strip and compensation would be assessed on the basis that they are in the same ownership. Your client would then be free to make whatever arguments they wish.

Your client has rejected this approach unless the Council agrees up front that your client has full ability to construct a connection to the A27 that is capable of adoption, but no evidence has been