

BOSHAM LIMITED AND SHOPWYKE LIMITED

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

Rebuttal Statement of Evidence of

Matthew Bodley

5 December 2023

Ref: APP/PCU/CPOP/L3815/3321240

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APPENDICES – SEPARATELY BOUND

- MB1. Objection Letter of 5 May 2023
- MB2. CPO1 Inquiry Documents - Peter Roberts' Statement of Evidence and the Council's Closing Submission
- MB3. Copy Correspondence between representatives of the Owners and National Highways
- MB4. Copy Correspondence between representatives of the Owners and the Council
- MB5. Copy Correspondence between Peter Roberts and Matthew Bodley regarding request for access to undertake intrusive surveys

1. INTRODUCTION

Qualifications and Experience

- 1.1 I, John Matthew Scott Bodley, have been a professional member of the Royal Institution of Chartered Surveyors since 1992 and am a member of its Valuer Registration Scheme. In addition, I hold a Bachelor of Science degree in Urban Estate Surveying from Trent Polytechnic (now known as Nottingham Trent University). I have over 33 years' professional experience, 29 of which have been in the field of compulsory purchase and compensation.
- 1.2 I am the managing director and sole employee of Matthew Bodley Consulting Limited which is a consultancy business formed in June 2015 specialising in compulsory purchase and compensation advice.
- 1.3 Before setting up my own business I worked for 20 years at Drivers Jonas LLP (latterly Deloitte Real Estate), two years at GVA Grimley (now known as Avison Young) and two years at Carter Jonas LLP. I was Head of the National Compulsory Purchase and Compensation Practices at each of those firms.
- 1.4 I have advised numerous acquiring authorities, developers, private landowners and occupiers in respect of compulsory purchase procedure and compensation. This has involved acting both for those promoting and implementing compulsory purchase powers, and for those who are subject to them. I have advised the promoters of several regeneration projects, acting for both acquiring authorities and developers. Examples of town and city centre schemes I have been involved with include Reading (Oracle), High Wycombe (Eden), Bath (Southgate), Oxford (Westgate), Winchester (Silverhill), Glasgow (Buchanan Galleries extension) and Edinburgh (St James).
- 1.5 I have advised on the use of compulsory purchase order ("**CPO**") powers for several housing led schemes including in Shoreham, Maidenhead and the London Boroughs of Barnet, Westminster and Lewisham. Recently I acted for the London Borough of Enfield in the promotion of the Meridian Water Strategic Infrastructure Works CPO which will facilitate the delivery of up to 10,000 new homes. I led the third-party negotiations and gave evidence at the CPO inquiry. The CPO was confirmed in July 2021. I am currently advising developers on housing led schemes at Elephant and Castle and West Hampstead.
- 1.6 I have provided compulsory purchase and compensation advice on projects of national significance including the London 2012 Olympic and Paralympic games, High Speed 1, High Speed 2, Crossrail, Crossrail 2 and the Bakerloo Line Extension. I have given evidence as an Expert Witness at public local inquiries and in the Upper Tribunal (Lands Chamber).
- 1.7 I have acted on behalf of several landowners and businesses who have been subjected to compulsory purchase powers. Whilst at Drivers Jonas I was the principal author of the series of five public information "*Claimants' guidance booklets*" produced by the then Department for Transport Local Government and the Regions (now Department for Levelling Up, Housing and Communities ("**DLUHC**")) in England and Wales, first

published in 2001. I have been a member of the Compulsory Purchase Association since its inception in 2002 and served as an elected committee member for five years from 2008 to 2013.

Involvement with the Project

- 1.8 I am instructed by Bosham Limited and Shopwyke Limited (the “**Owners**”). I was instructed in January 2021. At the time of my initial instruction the Owners’ land had been included in the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 (“**CPO1**”) being promoted by Chichester District Council (the “**Council**”). The Owners had objected to CPO1 prior to my instruction.
- 1.9 Initially I was instructed to advise the Owners of their entitlement to compensation in the event that their interests were compulsorily acquired. I subsequently participated in the negotiations with the Council and their development partner, Countryside Properties (UK) Limited (“**Countryside**”), both of whom were being advised by DWD surveyors.
- 1.10 I prepared and submitted a proof of evidence in support of the Owners’ objection against CPO1. I did not give oral evidence at the inquiry but attended as an observer.
- 1.11 I was retained to advise in connection with the compensation claim that would follow the implementation of CPO1 which was anticipated to occur shortly after confirmation, based on statements made by the Council during the CPO1 inquiry. I have since been retained to advise in connection with the more recent inclusion of the Owners’ land in the Chichester District Council (Tangmere) (No.2) Compulsory Purchase Order 2023 (“**CPO2**”).

My Instructions

- 1.12 My instructions are to advise the Owners on the following matters:
- (a) to provide advice to the Owners on their entitlement to compensation in the event that their land is compulsorily acquired, having regard to the relevant statutes, case law and established principles for assessing compensation, which are commonly referred to as the “**Compensation Code**”;
 - (b) negotiations with the Council and Countryside to agree terms upon which the Owners would be prepared to dispose of their interests by private treaty agreement. These negotiations have primarily been with Peter Roberts of DWD;
 - (c) to present evidence to the public local inquiry into CPO2, if necessary, to demonstrate that CPO2 is not necessary for the Council to achieve the purposes of CPO2.
- 1.13 In carrying out these instructions I have been assisted by other members of the Owners’ professional team which includes Savills, Quod, Mosaic Urban Design and Masterplanning, i-Transport LLP, PG Consulting Civil and Infrastructure Engineers, Ashurst LLP and counsel.
- 1.14 I recognise fully, and have complied with, the duties owed by me to the inquiry in my role as an expert witness.

Scope of Evidence

- 1.15 The Owners' grounds of objection are set out in the letter of objection from their solicitors, Ashurst, dated 5 May 2023, a copy of which is attached at Appendix MB1.
- 1.16 The Owners were not intending to expand upon their written objection by way of further evidence or participation at the CPO inquiry. However, having read the evidence of Mr Roberts in relation to his negotiations with me I consider there to be a number of factual inaccuracies and misleading statements which need to be drawn to the attention of the Secretary of State. Accordingly, I am submitting this rebuttal statement in order to set the record straight and clarify points where I consider Mr Roberts' evidence to be misleading.
- 1.17 Within this statement I will also provide an update on the latest position regarding my negotiations with Mr Roberts and the Owners' ongoing and strenuous attempts to reach an agreement which would avoid the need to compulsorily acquire the Owners' interest in Plot 19E and could potentially obviate the need for CPO2.
- 1.18 My rebuttal evidence will demonstrate that CPO2 is not necessary insofar as it relates to the Owners' land. Furthermore, on the basis that the Council has agreed terms with National Highways ("NH") to acquire NH's interests it does not appear to be necessary at all and it appears that all interests in the additional land included in CPO2 but not in CPO1 (the "**Additional Land**") could be secured by agreement. In particular, there is no justification for CPO2 to seek further powers over the land which is already within CPO1 which was confirmed in November 2021 and remains operable for over a year. Therefore, as a minimum CPO2 should be amended to remove the CPO1 Land.
- 1.19 The Owners accept that their property interests are included in an allocated strategic development location and that CPO1 has been made and confirmed and that CPO1 enables the Council to acquire the majority of their land required for the Countryside scheme. The Owners also accept that the Additional Land which appears to form the rationale for the promotion of CPO2 is also required, but they are willing to transfer their interest in the land (Plot 19E) to the Council on terms which appear to have been agreed with Mr Roberts who, I am informed, is instructed to act on behalf of the Council.
- 1.20 The Owners have no objection to their land being acquired and are still trying to reach an agreement with the Council for a private treaty agreement which avoids the need for CPO2. The Owners' objection to CPO2 is not about the amount of compensation offered for their land. The objection is more fundamental: (i) there is no need to seek to re-acquire land already secured under CPO1 and thereby prolonging the uncertainty over the timing of acquisition of land; (ii) CPO 2 should have been confined to the Additional Land required to provide certainty of an access to the A27 roundabout; and (iii) there has been a blatant failure on the part of the Council to comply with the "*Guidance on Compulsory purchase process and the Criche! Down Rules*" issued by DLUHC (July 2019) (the "**CPO Guidance**") and to seek to enter into meaningful negotiations with the Owners – it is clear from the Council's evidence and the position taken at the pre-inquiry meeting that there was never any real intention to seek to engage in a true and meaningful manner with the Owners and that the "*offers*" from Mr Roberts were designed to convey an attempt to negotiate but when analysed in detail

were actually intended to obstruct and frustrate the Owners' genuine attempts to transfer their land to the Council.

- 1.21 What the Owners require is more certainty of timing of acquisition and they object to the making of a further CPO which is unnecessary and would serve no purpose other than to extend the period of time which the Owners' land (and that of the other landowners) could be subject to confirmed CPO powers by a further three years. If CPO2 was confirmed in the first or second quarter of 2024 there is the potential that the Owners' land will be blighted by a confirmed CPO for up to five and half years, as against the statutory limit of three years. This is on the basis that CPO1 was confirmed over two years ago and, if CPO2 is confirmed, a new three-year period would commence from the date the Council serves notices of confirmation.
- 1.22 It is accepted that there is a significant difference of opinion between the Council and the Owners as to the quantum of the compensation that the Owners are entitled to. Accordingly, the Owners recognise that it is highly unlikely that it will be possible to reach an agreement with the Council as to the quantum of compensation and accepts that this is something that can be determined by the Upper Tribunal (Lands Chamber) (the "**Upper Tribunal**") at a later date. The quantum of compensation does not need to be agreed or determined prior to the CPO2 inquiry as an agreement can be reached which defers the agreement or determination of compensation to a later date. Such an approach is not uncommon, and the Owners have been attempting to reach agreement with the Council on this basis for over a year. This approach serves only to reinforce the point that the Owners' objection is **not** about the quantum of compensation which is accepted is not a matter for consideration by either the Inspector or the Secretary of State.
- 1.23 The Council already has the power to acquire all of the interests in CPO1 on the basis that CPO1 has been confirmed. Furthermore, at the inquiry into CPO1 the Council stated that Countryside had reached private treaty agreements to acquire all interests, other than those of the Owners. Therefore, in respect of all interests within CPO1 the Council and/or Countryside has the benefit of contractual agreements and / or a confirmed CPO to acquire all interests.
- 1.24 The Council has stated a desire to take possession of the entirety of the land within CPO1 and CPO2 expeditiously. The Council has made commitments in respect of both CPO1 and CPO2 to take possession of all land included within each CPO within six months of confirmation of the respective CPO.
- 1.25 As will be seen from the content of this rebuttal statement, the Owners are agreeable to a voluntary transfer of their land interests which fall outside of CPO1 but within the boundary of CPO2 for a nominal consideration, provided that the transfer is linked to the acquisition of the entirety of their landholdings, including their land within CPO1. They are currently continuing in their attempts to try to agree terms with the Council to achieve this.
- 1.26 Set against this factual background, the Council has failed to demonstrate that CPO2 is necessary or a last resort, or that they have engaged genuinely and constructively with the Owners to reach agreement in order to avoid the need to CPO their land.

- 1.27 My rebuttal evidence will demonstrate that, contrary to the assertions in Mr Roberts' evidence, the Owners have made clear that they are agreeable to transfer their interests by agreement on fair and reasonable terms which reflect the Owners' statutory entitlement but that the Council's approach to negotiation, led by Mr Roberts, does not meet the requirements of the CPO Guidance.
- 1.28 Furthermore, as the Owners are agreeable to a sale of their land by agreement and the remainder of the land within CPO2 is already subject to a confirmed CPO or, in the case of the only other interest which falls outside of CPO1, terms have been agreed, CPO2 is not necessary.
- 1.29 As stated above my rebuttal evidence is intended to respond to the factual inaccuracies in Mr Roberts' evidence. However, it is important that this is framed within the appropriate context. Accordingly, this statement is set out in the following sections:
- (a) Background and Context to CPO2
 - (b) The Additional Land excluded from CPO1 and giving rise to the Council's decision to make CPO2
 - (c) The CPO Guidance which acquiring authorities should follow
 - (d) Negotiations with the Council and Countryside
 - (e) Negotiations regarding Countryside's request for access to undertake intrusive surveys
 - (f) Grounds of Objection
 - (g) Summary and Conclusion
 - (h) Statement of Truth

2. BACKGROUND AND CONTEXT

- 2.1 The Owners and CS South Limited are companies owned and controlled by Mr and Mrs John Heaver. John Heaver is my client contact. The Owners own two parcels of land known as “**Shore’s Meadows**” and “**Tangmere Corner**” (together the “**Properties**”). The Properties are within the Tangmere Strategic Development Location (“**TSDL**”) and are included in CPO2. Brief details of the Properties are as follows:

Description	Site Area (acres)	CPO2 Plot Numbers
Shore’s Meadows	55.55	16, 17, 18, 19E
Tangmere Corner	2.89	1, 3, 4, 5
TOTAL	58.44	

The above plot numbers relate to CPO2

- 2.2 The freehold title to plot 16 is registered in the name of CS South Limited, but the freehold interest was transferred to the Owners in a transfer dated 14 February 2022. The transfer is pending registration at the Land Registry.
- 2.3 All of the Properties apart from Plot 19E were also included in CPO1. CPO1 was confirmed on 11 November 2021. Notice of confirmation was published on 23 December 2021.
- 2.4 The interests within CPO1 are hereafter referred to as the “**CPO1 Land**” and those within CPO2 as the “**CPO2 Land**”.
- 2.5 The Council has entered into a Development Agreement with Countryside to deliver a residential led development scheme on the TSDL (the “**Scheme**”).
- 2.6 The Council had committed in the Statement of Reasons and Statement of Case in support of CPO1 to “*take possession of the entirety of the [CPO1 Land] within 6 months*” of confirmation of CPO1. Statements to this effect were made on behalf of the Council at the CPO1 inquiry (see paragraph 6.4 of Andrew Frost’s evidence and paragraph 13(iii) of the Council’s Closing Submission to the CPO1 inquiry).
- 2.7 The same commitment to “*take possession of the entirety of the Order Land within 6 months*” of confirmation has been made at paragraph 8.10 of the Statement of Case in support of CPO2 and also at paragraph 6.4 of Mr Frost’s statement of evidence.

Negotiations Prior to the CPO1 Inquiry

- 2.8 Negotiations took place prior to the making of CPO1 and in the lead up to the CPO1 inquiry. Copies of relevant emails are contained in the bundle of correspondence at Appendix MB4 to this statement. In my opinion these negotiations are not directly relevant to the CPO2 inquiry in the context of demonstrating that reasonable attempts have been made to acquire land by voluntary agreement prior to the exercise of

compulsory purchase powers, as they related to CPO1. A fresh obligation arises for the Council to make reasonable efforts to acquire land by agreement prior to the exercise of compulsory purchase powers under CPO2. However, the pre-CPO1 negotiations are relevant to the extent to which they set out the Council's opinion of the Owners' compensation entitlement at that time.

- 2.9 Prior to the making of CPO1 and in the period leading up to the CPO1 inquiry Countryside had sought to negotiate with the Owners for an option over Shore's Meadows and had issued draft Heads of Terms (the "**Hybrid Option**"). A copy of the Hybrid Option is included at Appendix PR1 to Mr Roberts' proof of evidence.
- 2.10 It is important to note that the Hybrid Option was not an offer to purchase but was, as the name suggests, an "*option*" to purchase parts of Shore's Meadows. This option was only operable by Countryside, with no ability for it to be triggered by the Owners. Accordingly, the Hybrid Option would not have provided any certainty to the Owners. The terms offered by Countryside amounted to an option for Countryside to draw down up to 50% of the net developable area over undefined parts of the Property at Countryside's choice, exercisable over a period of up to seven years, at 90% of market value with 50% of the payments being deferred for a further year. In addition, the Hybrid Option sought to place an obligation on the Owners to vary their existing Promotion and Option Agreement with Bloor Homes (the "**Bloor Option**"). In summary, Countryside was seeking the ability to draw down the parts of the Property they would like (which were as yet undetermined), at a time of their choosing over a period of up to seven years, for an undetermined price at a discount to market value, and to defer payment for a further 12 months. The Hybrid Option did not oblige Countryside to draw down any of the land. Therefore, under the terms of the Hybrid Option it is possible that Countryside may not have drawn down any of the land over the seven year period that they were seeking. During this period the Owners would not be able to deal with the Properties.
- 2.11 Mr Roberts states within his proof that offers were put to the other major landowners within the TSDL on the same basis as the Hybrid Option and that agreements had been reached with all parties on this basis. He expresses the view that these terms are more favourable to landowners than an agreement based on the Compensation Code. I have not seen the terms of any agreements reached with the other landowners so I am not in a position to agree or disagree with Mr Roberts on this point but it should be noted that other landowners had limited access and did not own land fronting the A27 with direct access on to it which I am advised would be capable of independent development (as part of an early phase of the wider development of the TSDL) resulting in a value that exceeds anything they would achieve under the Hybrid Option.
- 2.12 Furthermore, the Hybrid Option did not make any allowance for the strategic importance of Shore's Meadows in unlocking the entire TSDL due to controlling the primary access into the TSDL from the A27 and the significant value attached to this. It was instead based on an equalisation approach.
- 2.13 Accordingly, the Owners were not prepared to accept the Hybrid Option and would prefer to be compensated under the Compensation Code, as is their right. I readily acknowledge that Mr Roberts does not agree with this, but the CPO inquiry is not the forum to debate the matter. The important point is that the Owners would prefer to

agree a sale of their land and crystallise their full entitlement to compensation in accordance with the Compensation Code (as determined by the Upper Tribunal) as opposed to entering into an option arrangement which they consider to be inferior and which may not be triggered for up to seven years, if at all, and would sterilise the land for the period it is in place.

- 2.14 The terms of the Hybrid Option would have provided Countryside with full control without providing any commitment to proceed. Conversely, these terms would not provide any certainty to the Owners and would have sterilised the land for up to seven years.
- 2.15 On 30 July 2021 I issued Heads of Terms to the Council's surveyor, which at that time was Ged Denning of DWD, seeking to progress an agreement on the basis of a "*Lands Tribunal Contract*" based on an outright acquisition of Shore's Meadows (as opposed to an option) whereby the quantum of compensation could be agreed or determined at a later date on the same basis as if the land had been compulsorily acquired. This included a minimum land payment of £30m and proposed that the acquisition be by the Council, as the statutory acquiring authority promoting CPO1, as opposed to Countryside.
- 2.16 On 25 August 2021 Peter Roberts of DWD, on behalf of Countryside (not the Council), emailed me with a revised set of Heads of Terms to purchase all of the Properties within CPO1 on a "*straight compensation basis*". The Heads of Terms were accompanied by "*a schedule of values for each interest/plot which adopt a strict compensation code approach having regard to the actual circumstances of ownership and matters to which each title is subject*". The file name of the attached schedule was "*R2 Compensation Offer Table*". The schedule of values attached to the Heads of Terms amounted to a total sum of £2,329,000 in respect of the Owners' interests in the CPO1 Land. These Heads of Terms and the accompanying schedule of values are hereafter referred to as the "**Code Offer**".
- 2.17 I responded on 1 September 2021 putting forward a revised proposal based on a reduced minimum land payment of £12m and stating that my client's required the purchaser to be by the Council, not Countryside, for capital gains tax purposes.
- 2.18 Mr Roberts responded on 6 September 2021 confirming that his email of 25 August 2021 had set out his "*R2 assessment/compensation code approach*" in respect of each of the Owners' interests.
- 2.19 The Code Offer was not acceptable to the Owners, and they did not wish to proceed with it at the time. It is relevant because it included Mr Roberts' estimate of Rule 2 compensation in accordance with the Compensation Code, as confirmed by his subsequent email of 6 September 2021. As will be seen from the summary of more recent negotiations later in this rebuttal evidence in the context of CPO2, Mr Roberts has sought to resile from his stated position as to his compensation assessment for the Owners' Properties. Correspondence from both Mr Roberts and the Council's solicitor has sought to suggest that Mr Roberts' Code Offer in his email of 25 August 2021 was not in fact his opinion of compensation but was a commercial offer on behalf of Countryside (not the Council) and it exceeded the Owners' compensation entitlement.

- 2.20 This is simply not true. This is clear from the content of Mr Roberts' emails of 25 August and 6 September 2021. Furthermore, Mr Roberts' statement of evidence to the CPO1 inquiry includes a number of statements to the effect that the Code Offer represented his assessment of the Owners' compensation entitlement. The most obvious example of this is at paragraph 4.46 of his CPO1 statement of evidence which said "*I took instructions from the Council and Countryside in light of Mr Bodley's email and responded on 25 August 2021 setting out my proposed Heads of Terms having regard to a strict application of the compensation code to the entirety of the Heaver Land including Tangmere Corner. I adopted initial considerations for each plot and interest based on my current opinion of value in the "no scheme world"*".
- 2.21 He repeated statements to this effect in his oral evidence to the inquiry and stated that he considered that the Code Offer was less favourable than the Hybrid Option that had previously been offered by Countryside. This is confirmed in paragraphs 39, 40 and 41 of the Council's Closing Submission to the CPO1 inquiry.
- 2.22 Mr Roberts' statement of evidence to the CPO1 inquiry and the Council's closing submissions are attached at Appendix MB2.
- 2.23 In the recent correspondence relating to CPO2 Mr Roberts has also sought to distance himself from his compensation code assessment within the Code Offer by stating that this was an offer made on behalf of Countryside as opposed to the Council. I agree that it was initially put forward on behalf of Countryside, but Mr Roberts sent a further email on 20 September 2021 which stated "*I am writing in a bid to continue our negotiations regarding the potential for concluding a voluntary agreement. In this regard, I confirm, for the sake of good order, that my proposals as set out in my previous emails assume that your clients' land interests will be acquired by the Council*".
- 2.24 No agreement was reached prior to the CPO1 inquiry, the Owners maintained their objection and CPO1 was subsequently confirmed on 11 November 2021.
- 2.25 Based on the statements made by the Council that it would take possession of all interests in the CPO1 Land within six months of confirmation of CPO1, the Owners anticipated that the Properties would be vested within the first half of 2022 and commenced preparation of a compensation claim in readiness for this. The preparation of the draft claim was a time-consuming and costly process involving input from myself, Quod planning consultants and their valuation colleagues, Modus Construction cost consultants, Savills strategic and development land agency, Mosaic Urban Design and Masterplanning, i-Transport LLP, PG Consulting Civil and Infrastructure Engineers, Ashurst LLP and counsel.
- 2.26 On 24 May 2022 I received an email from Mr Roberts stating that CPO1 had omitted two strips of land (the "**Additional Land**") required to deliver the Scheme and that until these strips had been acquired, either by agreement or by way of a second CPO, the Scheme was being temporarily suspended and no GVDs would be issued under CPO1.

3. THE ADDITIONAL LAND

Description of the Additional Land

- 3.1 The land omitted from CPO1 not forming part of the public highway which has led the Council to make CPO2 comprises a small area of land totalling 102m² (0.025 acres) adjacent to the A27 roundabout junction in the north of the TSDL, and comprises Plots 19D and 19E of CPO2. The land sits between the Owners' interest in Shore's Meadows (plot 16 in CPO1) and the adopted highway. Three additional areas of public highway (Plots 19A, 19C and 19F) totalling 2,298m² (0.57 acres) have also been included in CPO2.
- 3.2 The Additional Land (excluding public highway) falls into two ownerships as follows:
- (a) the Owners (Bosham Limited and Shopwyke Limited) comprising 39m²; and
 - (b) National Highways ("NH") comprising 63m². NH also own the additional areas of public highway.
- 3.3 The part owned by the Owners actually forms part of the Shore's Meadows title (title no. WSX217492) and on this basis it is not clear why the Council excluded it from plot 16 of CPO1. It has now been included as plot 19E to CPO2.
- 3.4 The part owned by NH now forms plot 19D to CPO2. NH also own Plot 19B which is unadopted highway. Plot 19B had been included in CPO1 as Plot 18. Plots 19B, 19C and 19D are together referred to as the "**NH Land**".
- 3.5 The Council's Statement of Reasons for CPO2 explains that the Additional Land was originally excluded from CPO1 as it was understood from adopted highway plans, issued by the Highway Authority at that time, to be adopted highway maintained at public expense in the ownership of NH. The works proposed on this land comprised alterations to the highway and, accordingly, it would not have been necessary for the Council or Countryside to own the Additional Land to undertake these works subject to obtaining the necessary agreements and consents from the Highway Authority.
- 3.6 Once it transpired that the Additional Land was not public highway it became apparent that the Council would not be able to undertake the proposed highway works without ownership of the Additional Land.

The Owners' Rights Over the Additional Land and Background to the Dispute with NH

- 3.7 The Council's Statement of Case for CPO2 and some of the Statements of Evidence refer to a High Court injunction being sought by the Owners in respect of NH's interest in the NH Land. However, no explanation has been provided as to the background and circumstances which caused the Owners to take action and the Council appears to be trying to portray the Owners in an unfavourable light and as behaving unreasonably. As I explain later, this dispute has now been resolved. However, I think it is important to

understand the background to the position regarding the Additional Land and the dispute between the Owners and NH which demonstrate that the Owners' actions were entirely reasonable and necessary. This is summarised below.

- 3.8 Prior to 31 March 1998, Shore's Meadows and the NH Land (collectively the "**Original Shore's Meadows**") were in the common ownership of Herbert George Heaver, John Heaver's father and predecessor in title to the Owners. At this time Herbert George Heaver also owned other land, including Plot 19B, which previously formed part of the Original Shore's Meadows.
- 3.9 During that period of common ownership, the northern boundary of the Original Shore's Meadows was formed by the southern edge of the old A27 trunk road and, as such, the Original Shore's Meadows benefitted from a direct and unfettered means of access to and from the old A27 trunk road at all times and for all purposes.
- 3.10 In 1991, the A27 Trunk Road (Westhampnett Bypass) Compulsory Purchase Order (No SE 4) 1991 (the "**1991 CPO**") and the A27 Trunk Road (Westhampnett Bypass Side Roads) Order 1991 (the "**SRO**") were made by the Secretary of State for Transport for the purposes of upgrading the A27 trunk road and building the Westhampnett Bypass.
- 3.11 The 1991 CPO authorised the Secretary of State for Transport to compulsorily acquire parts of the Original Shore's Meadows and other land for this purpose.
- 3.12 The SRO provided for the stopping up of the private means of access between the Original Shore's Meadows and the old A27 trunk road and for a replacement means of access over the NH Land between the new A27 trunk road and Shore's Meadows.
- 3.13 On 31 March 1998, a deed of exchange was made between Herbert George Heaver and the Secretary of State for Transport under which Herbert George Heaver transferred land, including the NH Land, to the Secretary of State for Transport.
- 3.14 Since then, Herbert George Heaver, and subsequently the Owners, have continuously used the access across the NH Land between Shore's Meadows and the A27 roundabout. This has been done on the understanding that the Owners had a right of access at all times and for all purposes in accordance with the replacement means of access referred to in the SRO.
- 3.15 It had been understood, both from the continued use of the access and published adopted highway plans, that all of the Additional Land, including the NH Land, was either owned by the Owners or was adopted highway maintained at public expense. It is clear from paragraph 1.6 of the Statement of Reasons in support of CPO2 that the Council and Countryside were of a similar view.
- 3.16 It was not until Mr Roberts' email to me of 24 May 2022 that the Owners became aware that the NH Land was not adopted highway. I responded to Mr Roberts on 27 May 2021 requesting details of NH's position in respect the NH Land and also requesting details of who was acting for NH and their contact details so that I could contact them to independently verify their position. Mr Roberts refused to provide contact details for NH or their advisors and continued to do so despite numerous repeated requests.

- 3.17 Paragraph 7.17 of Mr Roberts' evidence states that he considered my request to be entirely inappropriate and a potential breach of confidence, although he did not convey this to me at the time of my initial request. This is not the reason he gave to me at the time as can be seen from his email to me of 26 July 2022 where he states that he will take instructions. It would, therefore, appear that he was instructed by Countryside and/or the Council not to provide the contact details as opposed to any potential breach of confidence.
- 3.18 Whatever the real reason for Mr Roberts refusing to provide the NH contact details, I disagree that there are any issues of confidentiality. NH are a large publicly funded organisation and as such are answerable to the general public. Furthermore, if they have information which potentially has a material impact on the Owners' use, enjoyment and value of their land, they should be content to talk to the Owners about it. NH were being represented by an agent. Agents regularly speak with other landowners and their agents. I frequently make or receive calls to and from other agents to speak to them about deals or projects they are involved in. This is entirely normal, it is a part of how agents operate, and I cannot imagine that NH's agent would have been concerned about a breach of confidence had their details been provided to me, or mine to them.
- 3.19 If Mr Roberts had concerns regarding confidentiality, he could easily have addressed this by asking the relevant person within NH, or their agent, whether they would be prepared to speak to me, particularly given the context that I was acting for an adjoining landowner with rights over the land in question. When I did eventually track down the right person to speak to they did not have any concerns about speaking with me. In my opinion, Mr Roberts was being deliberately obstructive which is symptomatic of his approach for the majority of my negotiations with him.
- 3.20 The potential existence of a strip of unadopted private land in third party ownership between Shore's Meadows and the public highway had potential adverse implications for the Owners, both in terms of the value of Shore's Meadows and its continued use. It was also not reflective of the SRO and the terms agreed between Herbert George Heaver and the Secretary of State for Transport and the 1998 Deed of Exchange.
- 3.21 This was obviously of concern to the Owners and, therefore, on becoming aware of it, the Owners sought to formalise the position regarding access to Shore's Meadows. This has been a protracted process which has been hampered by Mr Roberts, presumably on the instruction of the Council and/or Countryside, being obstructive in terms of providing details of the relevant personnel within NH to enable the Owners to independently ascertain NH's position. This will be evident from the summary of negotiations as set out in section 5.
- 3.22 After several emails, phone calls and letters, the Owners were independently able to identify the person within NH dealing with this matter, Mary Oakaby, Technical Estates Advisor in the Financial and Business Services Directorate. It took until January 2023 to achieve this, over six months after I had initially requested the information from Mr Roberts.
- 3.23 Mr Roberts' evidence states that he became aware that the Additional Land was not adopted highway on 16 February 2022, yet he did not confirm this to me for over three months on 24 May 2022 and then refused to provide the NH contact details, which it

took the Owners until January 2023 to discover independently, resulting in several months of unnecessary delay.

- 3.24 Copies of emails between representatives on behalf of the Owners and NH are contained in Appendix MB3. Relevant extracts are summarised below.
- 3.25 An email was received from Ms Oakaby on 17 January 2023 in which she confirmed that *“as part of the A27 Trunk Road (Westhampnett Bypass) Scheme, Shore’s Meadow (which comprises the land within title WSX217492) was provided with a replacement private means of access pursuant to the scheme Side Roads Order”*. The email went on to say that whilst rights are often not completed and registered to titles as part of the scheme, the SRO provides entitlement to a private right of access. Ms Oakaby confirmed that NH were progressing a sale of the NH Land to the Council and that she was dealing with Mr Roberts on this matter.
- 3.26 I emailed Ms Oakaby on 30 January 2023 to seek confirmation that the right of access would be recorded on the title to the NH Land prior to its transfer to the Council. The purpose of the request was to unequivocally and formally clarify the position. The email made clear that the Owners had no interest in frustrating the sale of the NH Land to the Council but wanted to clarify the status of the right of access in order to protect their position and simplify and assist subsequent discussions between the Owners and the Council regarding the status of the access right which would be a material consideration as to the market value of Shore’s Meadows.
- 3.27 In Ms Oakaby’s response of 14 February 2023 she again confirmed that the Owners’ right was not disputed and that it was, therefore, not necessary to include the right within the sale of the NH Land to the Council. Notwithstanding this, her email went to say *“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”*. She ended the email by saying that she would now reengage with the Council to progress the sale of the NH Land.
- 3.28 On 18 April 2023 I emailed Ms Oakaby to request an update on the sale of the NH Land to the Council and the position regarding recording the right of access in the transfer documents. She responded on 24 April 2023 stating that NH were continuing to progress the sale of the NH Land to the Council but that it had not yet completed and that they were still in the process of trying to agree the wording for the right of access across the land. It is not clear why this process was taking so long and one can only speculate that the Council were not agreeable to the reference to the right of access.
- 3.29 As an aside I consider it interesting to note from Ms Oakaby’s email of 24 April 2023 that she states that her team *“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”*. As I had stated in my email to Mr Oakaby, the Owners and I had been equally surprised at the notice of the making of CPO2. This was on the basis that I had, in February 2023, expressed a willingness to proceed with a sale of the Owners’ interest in the Additional Land in accordance with the terms put forward by Mr Roberts.

- 3.30 With regard to Plots 19A and 19F she states “...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”. In other words, this means that there is no requirement for the Council or Countryside to own Plots 19A and 19F (or 19C for that matter) to achieve their purpose of access to the development site as this land forms part of the existing public highway and the development access could be constructed by way of a highway agreement without the need for ownership.
- 3.31 I responded to Ms Oakaby’s email on 26 April 2023 raising concerns as to why NH were seeking to agree the wording of the Owners’ rights without involving the Owners in the discussion. I expressed my opinion that the Owners’ rights are a matter of fact and not something to be negotiated with the Council. Ms Oakaby had previously stated that the right of access was unrestricted and for all purposes at all times. It was, therefore, not appropriate for this to be a matter of negotiation between NH and the Council, particularly without involving the Owners, as beneficiaries of the right, in the discussion.
- 3.32 Ms Oakaby responded on 28 April 2023 stating that the matter would henceforth be dealt with by an external lawyer, Mr Edmund Day of Gowling WLG.
- 3.33 Mr Day emailed me on 2 May 2023. He referred to the right of access as the “*claimed access right*” which appeared to be questioning the existence of the access right and was a change from the previous comments from Ms Oakaby, which had acknowledged the existence of the right. Within Mr Day’s email he included an extract from his email of the same date to the Council’s surveyor, Mr Roberts. Within this the email there was reference to “*the access right claimed by Mr Heaver, which appears to be the last remaining sticking point*”. This would indicate that all terms of the transfer were agreed apart from how to deal with the access right and that the Council were seeking to reject the existence of the access right. The email appeared to question whether or not any rights existed and stated that “*The correct approach, therefore, we think is for any reference to Mr Heaver’s claimed right to be removed from the transfer*”.
- 3.34 On 10 May 2023 the Owners’ solicitor, Trevor Goode of Ashurst, emailed Mr Day seeking to agree an easement between NH and the Owners to give effect to the provisions of the SRO and confirm the Owners’ right of access across the NH Land. Mr Day responded on 22 May 2023 stating “*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*”. The email concluded by saying “*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*”.
- 3.35 Given previous statements made by Mr Roberts challenging the nature and extent of the Owners’ rights across the NH Land, the Owners were concerned that the sale of the NH Land without clarification of the access right would prejudice their position. Accordingly, they took appropriate action to safeguard their legal position.

- 3.36 The Owners commenced legal proceedings against NH to clarify the position regarding the right of access and, at the same time, applied for an interim injunction preventing the sale of the NH Land pending resolution of the dispute. The application for an interim injunction was granted.
- 3.37 Subsequently, satisfactory terms have been agreed between the Owners and NH which recognise the right of access of the NH Land and the parties have entered into a Deed of Grant of Access Rights (the “**Access Deed**”). The Access Deed gives effect to the meaning and effect of the SRO and the intention of the parties to the 1998 Deed of Exchange, which was to provide that Shore’s Meadows enjoys an unrestricted right of access over the NH Land to and from the current A27 trunk road at all times and for all purposes. This includes a right to repair, maintain, improve, resurface and/or renew the NH Land and/or install conduits on, in, under or across the NH Land. The Access Deed completed on 15 November 2023. Accordingly, the Owners’ claim against NH has been settled, the legal proceedings discontinued, and the interim injunction has been withdrawn.
- 3.38 The withdrawal of the interim injunction means that the transfer of the NH Land to the Council in accordance with the terms which I understand have been agreed, as stated in Mr Roberts’ letter of 16 December 2022 and paragraph 6.29 of the CPO2 Statement of Case, can proceed. This transfer will be subject to the right of access in favour of the Owners.

4. THE CPO GUIDANCE

4.1 Guidance to acquiring authorities on the use of compulsory purchase powers is set out in the CPO Guidance. In addition to the CPO Guidance, case law is also relevant, but this will be the subject of legal submissions in due course if necessary.

4.2 Mr Roberts (and Mr Frost) refers to the Council having complied with the CPO Guidance. I disagree. The parts of the CPO Guidance which I consider to be of most relevance to the Owners' objection and the Council's conduct of the negotiations are set out below.

1. **Paragraph 2: "When should compulsory purchase powers be used?"**

"Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest.

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

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects".

4.3 Further guidance on this point is provided in **paragraph 17** which includes the statement:

"Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted..."

2. **Paragraph 19: "What other steps should be considered to help those affected by a compulsory purchase order?"**

"Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring authorities should therefore consider:

- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected*
- appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access*
- keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power*
- offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the*

acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber))

- offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate
- providing a 'not before' date, confirming that acquisition will not take place before a certain time
- where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition."

3. **Paragraph 106: "What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?"**

"Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework
- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area
- whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired
- the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position".

5. SUMMARY OF NEGOTIATIONS

- 5.1 Mr Roberts' statement of evidence includes two lengthy sections on negotiations with objectors both before and after the CPO1 inquiry. In my opinion, Mr Roberts does not give a balanced view of the negotiations and presents his evidence in a biased way which seeks to cast the Owners in an unreasonable light. He has been selective with the correspondence he has chosen to include in his appendices which does not provide a full picture. He also makes assertions which are simply not true. This is neither correct nor fair and I therefore need to address this within my rebuttal evidence.
- 5.2 In this section I summarise the negotiations between the parties since the confirmation of CPO1. These effectively started with Mr Roberts' email to me of 18 November 2021, advising that CPO1 had been confirmed, and continue up to the current day.
- 5.3 I do not consider the negotiations prior to the confirmation of CPO1 to be relevant in terms of determining whether or not the Council has met the requirements of the CPO Guidance in terms of taking reasonable steps to acquire land by agreement in accordance with the Compensation Code and that compulsory purchase powers are required as a last resort. The pre-CPO1 negotiations were relevant to CPO1 which was confirmed in November 2021. Negotiations in respect of CPO1 are not relevant to CPO2 and the Council needs to demonstrate that it has met the requirement of taking reasonable steps to acquire all of the land within CPO2 prior to making CPO2.
- 5.4 As set out within this section, the Council did take steps to acquire the Additional Land by agreement, albeit I do not consider the steps they have taken to be reasonable, genuine and constructive and it should be abundantly clear that the use of CPO powers in respect of the Additional Land is not a last resort. However, with regard to the land within CPO2 that is also within CPO1, the Council have not taken any steps to acquire this by agreement. This is presumably because they felt there was no requirement to do so on the basis that this land is already within a confirmed CPO. However, the Council surprisingly decided to include this land within CPO2 despite the fact that it was already within a confirmed CPO which was less than halfway through its operable life at the point that it made CPO2.
- 5.5 Having decided to include all of the CPO1 Land within CPO2 the Council should have met the requirements of paragraphs 2 and 17 of the CPO Guidance before making CPO2, but they did not.
- 5.6 I consider that some of the correspondence prior to CPO1, principally Mr Roberts' email of 25 August 2021, is relevant to CPO2 as it contains Mr Roberts' stated opinion of the Owners' compensation entitlement in accordance with the *Compensation Code* at circa £2.33m and is referred to in subsequent negotiations in respect of CPO2. Mr Roberts' email of 20 September 2021 is also relevant as it confirms that the offer put forward by Mr Roberts' based on £2.33m was made on behalf of the Council.
- 5.7 I have already described the negotiations prior to the confirmation of CPO1 to the extent which I consider them relevant at paragraphs 2.8 to 2.26 in section 2.

- 5.8 A bundle of copy correspondence is attached as Appendix MB4. This includes the relevant emails relating to CPO1 as referred to in section 2, but primarily relates to correspondence following the confirmation of CPO1.
- 5.9 In addition to the open correspondence between the parties there have also been without prejudice exchanges. Without prejudice correspondence has been excluded from the bundle, with a few exceptions. The first exception is an exchange of emails between Mr Roberts and me in which I make repeated requests for him to provide me with the NH contact details, which I had first requested on 27 May 2022, and him refusing. The email was headed “without prejudice” as it was responding to an earlier email from Mr Roberts which he had marked “without prejudice”. I have therefore redacted the content of the email that it was responding to.
- 5.10 The second exception is an email from Mr Roberts dated 5 May 2023, which I have included as it is referred to at some length at paragraph 7.42 and 9.42 of his proof. Interestingly, at paragraph 9.43 of his proof Mr Roberts is critical of the Owners for not attaching a copy of his email of 5 May 2023 to Mr Bodley’s email (by which I think he means to refer to the objection submitted by Ashurst which had a copy of my email of 4 May 2023 attached). It would have been inappropriate for Ashurst to have done so as the email was without prejudice. I also note that he has not included it in within the appendices to his proof, but I have included it in Appendix MB4.
- 5.11 The third exception is an email from me to Mr Roberts dated 8 July 2022. I am entitled to lift the veil of without prejudice on my own correspondence provided it does not respond or refer to without prejudice content from Mr Roberts.
- 5.12 A summary of the most relevant correspondence is set out below.
- 5.13 As Mr Roberts states, there was some brief contact in November 2021 shortly after the confirmation of CPO1 but there was then no further contact until Mr Roberts’ email to me of 24 May 2022. It was at this point that Mr Roberts advised me that the Additional Land was not adopted highway as originally thought and, therefore, the Council would like to acquire the two interests in the Additional Land from NH and the Owners. The email contained a proposal for the acquisition of the Owners’ interest in the Additional Land “*whereby they [the Owners] transfer the strip of land [Plot 19E] to the Council effective from the Vesting Date specified in the GVD that will be served in respect of Plot 16 [Shore’s Meadow] at nominal consideration but compensation in respect of Plot 16 will be assessed on the assumption that Plot 16 included this strip of land.*” The email stated that the Council’s solicitors were drafting up a deed based on this proposal.
- 5.14 The email also stated that Mr Roberts and his colleague were having separate discussions with NH regarding the acquisition of their interest in the Additional Land.
- 5.15 I responded to Mr Roberts on 27 May 2022 confirming that I had had an initial discussion with the Owners but required additional information in order to fully consider the matter. This included understanding the position being adopted by NH and requesting contact details of the party representing NH in order that I could contact NH directly to understand their position. This has already been described in section 3.

- 5.16 On 18 June 2022 Mr Roberts did subsequently email a draft deed based on the proposal summarised in his 24 May 2022 email. However, the draft deed was attached to a without prejudice email and therefore I have not referred to the content of the draft deed here, other than to say that it did reflect the structure of the proposal outlined in the 24 May 2022 email.
- 5.17 Despite the fact that the requested information had not yet been received, I sent a further email to Mr Roberts on 8 July 2022, on a without prejudice basis, to confirm that the Owners were agreeable in principle to transfer their interest in the Additional Land broadly in accordance the proposal outlined in Mr Roberts' 24 May 2022 email. I stated that the Owners' agreement was subject to incorporating some wording to acknowledge the Owners' right of access over the Additional Land between Shore's Meadows and the A27, sufficient for the purposes of development. The inclusion of such wording was intended as a practical solution and to save avoidable costs and time. It reflected the Owner's knowledge and understanding of their access right at that time, and this has subsequently been confirmed by NH with the completion of the Access Deed. The Owners required this wording to protect their position as they were unaware of the stance being adopted by NH with regard to their right of access over the NH Land. Mr Roberts was unhelpfully still refusing to provide the previously requested NH contact details which would have enabled the Owners to clarify the position directly with NH.
- 5.18 Mr Roberts responded on 10 August 2022 stating that he considered the Owner's rights over the Additional Land to be insufficient to provide an access suitable for the development of land within the TSDL and, accordingly, the Council would not agree to the proposed wording relating to the status of the right of access. He stated that the terms previously offered, excluding the statement regarding access rights, remained open for acceptance.
- 5.19 On 16 December 2022 Mr Roberts emailed me a letter providing an update since the previous exchanges. The letter referred to the Additional Land (which includes the NH Land) stating that "*...it was not adopted, was not included in the Order and there are no existing rights over the land...*" The letter stated that "*National Highways have advised the Council that they have not granted any such rights.*" The letter also stated that Plot 18 (of CPO1) was also required for the junction improvement works and that "*I am not aware that your client has claimed any rights over Plot 18*". Whilst I may not have conveyed this to Mr Roberts it is not correct to say that my client has no rights over Plot 18. Plot 18 had also formed part of the Original Shore's Meadows that was acquired by the Secretary of State for Transport pursuant to the 1998 Deed of Exchange (in the shadow of the 1991 CPO) and was subject to the requirements of the SRO. Therefore, the Owners have an equivalent right over Plot 18 as they do over the rest of the NH Land. Plot 18 is included in the recently completed Access Deed between NH and the Owners.
- 5.20 Mr Roberts' letter stated that NH had told him that they had a "*lack of knowledge as to the existence of any explicit rights*" over the NH Land. It went on to state that the Council had agreed terms with NH to purchase the NH Land (including Plot 18) for £10,000. The letter then went on to say that the Owners' interest in the Additional Land will be the only remaining interest which the Council needs to acquire. This is presumably on the basis that all other interests are already within CPO1. It stated that

“the Council would much prefer to reach a voluntary agreement with your client and be able to abandon CPO2”.

- 5.21 Mr Roberts’ 16 December 2022 letter put forward three options for the acquisition of the Owners’ land. Options 1 and 2 were options for a voluntary transfer and Option 3 was the promotion of CPO2. **“Option 2”** is virtually identical to the proposal outlined in Mr Roberts’ email 24 May 2022 and for which a draft deed had been issued, which contemplated that Shore’s Meadows would be vested and the Additional Land would be transferred on the vesting date and the compensation payable for Shore’s Meadows would be assessed on the basis that the Additional Land formed part of Shore’s Meadows. The Option 2 proposal included the payment of an additional consideration of £10,000 for the Additional Land. The letter was not marked “without prejudice” and did not form part of a without prejudice chain of correspondence. Toward the end of the letter, it stated *“Just so you are aware, I reserve the right to bring this letter to the attention of the Inspector as part of any future Inquiry proceedings in respect of the second CPO”.*
- 5.22 I responded on 22 December 2022 stating that Options 1 and 2 were of interest but in order to fully consider the options available to them, the Owners would like assurances on the following matters:
- Confirmation that if the Owners agreed to a voluntary transfer the agreement will contain confirmation that the transfer is without prejudice to the Owners’ position regarding their ability to develop their land independently in the no scheme world.
 - A repeat of the request that Mr Roberts provide contact details for the appropriate person at NH and/or their agent, Carter Jonas.
 - Confirmation of the likely vesting date for CPO1 in the event the Owners agree to a voluntary transfer.
- 5.23 Mr Roberts’ reply of 5 January 2023 did not directly answer the first question but implied that he agreed this point. He did not answer the second or third questions. Notwithstanding this, I emailed Mr Roberts on 23 February 2023 to confirm that the Owners would like to proceed by way of Option 2 subject to the following conditions:
- (a) The agreement is without prejudice to the Owners’ position that they could have obtained planning permission for the development of Shores Meadows in the no scheme world and they reserved the right to pursue a compensation claim in respect of Shore’s Meadows and the Additional Land on this basis.
 - (b) All of the Owners’ land, including Tangmere Corner, to be included in the vesting, which will occur by end of June 2023.
 - (c) Arrangements to be put in place to enable the Owners to take this summer’s harvest (to have completed by end of August 2023).
 - (d) An advance payment of compensation to be paid on the vesting date, the amount of which is to be not less than 90% of £2,330,000 (this being Mr Roberts’ estimate of compensation as attached to the Code Offer of 25 August 2021).
 - (e) Basic Loss Payments in respect of each interest, to be paid on the vesting date.

- (f) The Council to make a contribution toward reasonable professional fees incurred to date payable on exchange of contracts – details of the fees incurred to date to be provided in due course.
- 5.24 I considered these conditions to be reasonable on the basis that they reflected what the Owners’ statutory entitlement would be if the acquisition occurred by way of CPO. The proposed level of Advance Payment is significantly below the Owners’ opinion of their entitlement to compensation but was proposed on the basis that it was considered to be uncontentious given that it was the Council’s surveyors’ publicly stated estimate of compensation as set out in the Compensation Schedule attached to his email of 25 August 2021, confirmed by his email of 6 September 2021 and submitted as evidence to the CPO1 inquiry.
- 5.25 The request for a contribution toward reasonable professional fees was also meant to be uncontentious and is in accordance with the statutory entitlement. It was anticipated that a request for full reimbursement of fees may have initially been rejected and could have resulted in delays in reaching agreement, hence why I only proposed a “*contribution*” toward fees. I did not seek to impose a minimum level as my client was keen to avoid debate and delay in order to move swiftly to an agreement.
- 5.26 Mr Roberts responded on 14 March 2023, but his email was marked “without prejudice”, so it is not appropriate for me to refer to it here. However, as can be seen from paragraphs 7.33 to 7.36 of his proof, the condition that appears to have been of principal concern to him was the proposed level of advance payment. He states within his proof that his £2.33m figure was not his estimate of compensation under the Compensation Code but was instead a commercial offer put forward by Countryside (not the Council) in order to avoid the need for the CPO1 inquiry. This is clearly not the case. As explained at paragraphs 2.16 to 2.22 of this rebuttal, the £2.33m was clearly Mr Roberts’ opinion of rule 2 compensation and it was put forward on behalf of the Council. For him now to say something different because it suits his purposes to do so is disingenuous.
- 5.27 At paragraph 7.34 of his proof, he also states that when the Code Offer was made it was subject to claw-back provisions in the event that the ultimate compensation settlement was below this figure. I am not clear why he considers this latter point to be relevant as my email of 23 February 2023 was very clear that the payment was intended to be an advance payment in that it would be based on 90% of the £2.33m and, therefore, a balancing payment would be required, either positive or negative, once the final compensation had been agreed or determined.
- 5.28 I sent an open email to Mr Roberts on 18 April 2023, restating the Owners’ desire to proceed by way of Option 2 and providing an explanation for the conditions which had been proposed. In particular, I explained that the advance payment was based on Mr Roberts’ assessment of compensation as set out in his Code Offer of 25 August 2021. I also clarified that the provisions relating to the advance payment were intended to reflect the statutory provisions in section 52 of the Land Compensation Act 1973 – i.e. based on 90% and subject to a balancing payment.
- 5.29 Paragraph 7.35 of Mr Roberts’ proof appears to be critical of me for referring to section 52 but I do not understand why. He states that an advance payment should be based on the Council’s estimate not the claimant’s opinion and does not entitle the claimant to

demand or expect an amount other than 90% of the Council's estimate. I find this to be very bizarre as I understood the £2.33m to be the Council's estimate and I was proposing that the advance payment be based on 90% of it. It was certainly not my estimate of compensation, which was considerably higher, but I was trying to find a compromise that would enable the transaction to proceed by agreement. I agree that section 52 does not entitle a claimant to demand an amount other than the Council's estimate. Section 52 states that the advance payment should be based on 90% of the agreed amount or, in the absence of agreement, the acquiring authority's estimate. I had therefore proposed what I understood to be the acquiring authority's estimate.

- 5.30 Paragraph 2 of the CPO Guidance states that voluntary negotiations prior to exercise of CPO powers should be based on the Compensation Code. The advance payment provisions are an element of the Compensation Code and I was seeking to incorporate it within the voluntary agreement and I did not understand why Mr Roberts took exception to it. It would appear that he was proposing that no advance payment would be made on transfer as he did not put forward an alternative offer.
- 5.31 Mr Roberts responded on 25 April 2022 claiming that the Code Offer of 25 August 2021 was in any event without prejudice and that I would not be able to refer to it at CPO inquiry or any subsequent reference to the Upper Tribunal. The inference of this was that he was attempting to conceal his information from the CPO2 inquiry, despite the fact that he had submitted it as evidence to the CPO1 inquiry. This would appear to show that he is seeking to distance himself from his previous rule 2 compensation estimate of £2.33m. His reasoning for saying it was without prejudice was based on an explanation that all communications relating to negotiations are to be considered without prejudice, whether or not they are marked as such, and that, therefore, my subsequent emails which had referred to the Code Offer were also without prejudice and could not be submitted to an inquiry into CPO2. This is incorrect.
- 5.32 He also stated that his letter of 16 December 2022, which had included the Option 2 proposal that the Owners were now attempting to agree, was to be treated as without prejudice, indicating that he also wanted to conceal this from the CPO2 inquiry. This is also wrong as it was not marked as such and did not form part of a without prejudice chain of correspondence. This was a concern to the Owners as it indicated that he was no longer prepared to proceed on the basis of his previous proposal.
- 5.33 Mr Roberts' interpretation of what does and does not constitute "without prejudice" is factually incorrect. The Council had submitted the Code Offer of 25 August 2021 as evidence to the CPO1 inquiry ("*ID/12 Open Correspondence (MB, DWD and CPUK)*") and he had made a number of references to it in his proof of evidence to the CPO1 inquiry. As for the 16 December 2022 letter, this was clearly not without prejudice and it even included the statement "*Just so you are aware, I reserve the right to bring this letter to the attention of the Inspector as part of any future Inquiry proceedings in respect of the second CPO*".
- 5.34 Putting to one side Mr Roberts' incorrect interpretation of what constitutes "without prejudice", it is clear that he was seeking to distance himself from his Code Offer and his previously proposed agreement structure. His email claimed that he had insufficient information to undertake a valuation of the Properties, which is contrary to comments he

made in the Code Offer. He also claimed that the Code Offer had assumed that the Owners “*had unfettered rights to construct an access to the A27. It is now clear that this assumption was incorrect*”. As explained in section 3, Shore’s Meadows does have unfettered rights to construct an access to the A27, subject only to obtaining the necessary planning and highway consents, which has now been acknowledged by NH and formalised by way of the Access Deed.

- 5.35 Mr Roberts further claimed that the Code Offer was a “*commercial offer*” intended to avoid the costs of securing and implementing statutory powers. That is in direct conflict to the evidence he presented to the CPO1 inquiry.
- 5.36 His response to the reasonable request for a “*contribution toward reasonable professional toward fees*” (as referred to at subparagraph 5.23(f) above), was “*No-one would provide an open cheque book for fees*”. That is quite clearly not what I had asked for in my email. He went on to say “*The Council are only required to pay reasonable fees incurred in the preparation and negotiation of your client’s compensation claim. As no acquisition notices have been served yet, no entitlement to reimbursement of fees has arisen*”. He then went on to say that the Council would be prepared to voluntarily agree some reimbursement of fees potentially as far back as 16 December 2022. It is worth noting that, to date, the Owners’ have not received any contribution toward fees from the Council or Countryside in respect of CPO1 or CPO2, despite the fact that negotiations commenced several years ago, as acknowledged by Mr Roberts.
- 5.37 Paragraph 7.38 of Mr Roberts’ proof accuses Ashurst of making false claims regarding statements made by Mr Roberts to NH regarding the status of the Owners’ right of access across the NH Land. Mr Roberts’ letter of 16 December 2022 includes at paragraph 3 the statement “*This additional land is not adopted, was not included in the Order and there are no existing rights over that land*”. There are similar comments throughout the rest of the letter. This would seem to suggest that, at the very least Mr Roberts was questioning the existence of any rights. The wording of paragraph 7.39 of his proof suggests that he is still questioning the existence of any rights. The Access Deed emailed to Mr Roberts on 30 November 2023 (and included within Appendix MB4) will hopefully allay Mr Roberts’ concerns.
- 5.38 Paragraph 7.41 of Mr Roberts’ proof states that there was a “*clear indication that agreement with the Heaver Objectors was not likely*” and that there was a “*lack of certainty that National Highways would proceed to sell their land to the Council*” and accordingly, the Council made CPO2.
- 5.39 Both of those statements are a biased presentation of the truth. With regard the likelihood of the Owners reaching an agreement, this should have been very likely. The Owners had attempted to accept the Option 2 offer within Mr Roberts’ letter of 16 December 2022. As part of this they had requested an advance payment based on the Council’s publicly stated estimate of compensation and a contribution toward their fees. Both were reasonable requests and accord with the CPO Guidance. As to the likelihood of reaching agreement with NH, paragraph 7.26 of Mr Roberts’ proof states that on 21 October 2021 NH issued a Memorandum of Sale (which I understand to mean that terms had been agreed) and that the matters had been passed over to solicitors to complete the sale. Mr Roberts’ letter to me of 16 December 2022 stated terms had

been agreed with NH. Similarly, Ms Oakaby's email of 10 January 2023 to Brian Cheung of Ashurst (which is in the chain below Ms Oakaby's email of 17 January 2023 at Appendix MB3) refers to the sale of the NH Land to the Council as being "*an active property sale*".

- 5.40 From this it can be seen that the Council only had two outstanding interests that it needed to acquire which fell outside of CPO1, namely the Owners' and NH (as well as the Bloor Option in respect of plot 19E, which I discuss in the following paragraph). It made CPO2 on 30 March 2023. At that point it had agreed terms with NH and instructed solicitors five months earlier; and my client had expressed a willingness to progress an agreement for the disposal of its interest in the Additional Land at a nominal sum of £10,000 as proposed by the Council provided this occurred simultaneously with the vesting of its interests in the CPO1 Land as offered in Mr Roberts' email of 24 May 2022 and as one of the offer options in his letter of 16 December 2022. As part of this transaction, I requested that the Owners received an advance payment based on 90% of the Council's stated estimate of its rule 2 compensation, subject to the usual provision of a balancing payment (positive or negative) following settlement of the final compensation sum, and a contribution toward reasonable professional fees.
- 5.41 It should be noted that plot 19E, being part of the Shore's Meadows title (title no. WSX217492) the majority of which was included as plot 16 of CPO1, is also subject to the Bloor Option. However, given that the Council had reached an agreement with Bloor in respect of CPO1, I assume that Bloor would be willing to extend that agreement to plot 19E. Paragraph 5.43 of Mr Roberts' proof of evidence confirms that the Council and/or Countryside have reached agreement with Bloor.
- 5.42 An email from Mr Roberts dated 5 May 2023 (referred to below) confirms that, on that date, the Owners were, in fact the only remaining landowner with whom terms had not been agreed.
- 5.43 Given the status of the discussions with the only two required landowners outside of CPO1, the Council's decision to make CPO2 when it did was clearly unnecessary, disproportionate and premature.
- 5.44 For some reason which I still do not fully understand the Council refused to progress negotiations on the previously proposed basis, despite the fact that both the structure of the agreement and the estimated level of compensation had previously been proposed by Mr Roberts. The reason for the Council's refusal to progress was stated in subsequent correspondence to be the proposed level of advance payment and the reimbursement of fees. Mr Roberts did not put forward an alternative level of advance payment but stated that the Council had insufficient information to make an assessment of value and, therefore, the level of advance payment. To this end he requested the following information:
- (a) Unredacted copy of the Bloor Option
 - (b) Copies of lease granted in respect of the land
 - (c) Legal documents relating to the access to the A27, although he then said in brackets that he had already sourced these from NH.

- 5.45 CPO2 was made on 30 March 2023 and the Owners objected on 5 May 2023 to protect their position.
- 5.46 On 4 May 2023 I responded to Mr Roberts' email of 25 April 2023 providing the additional information requested which comprised an unredacted copy of the Bloor Option (a redacted version having previously been provided to the Council's development partner Countryside in June 2019), confirmation that there were no leases in place over the Properties as they were farmed "*in hand*" by the Owners, and confirming that Mr Roberts was already in possession of the documents relating to the access, comprising the 31 March 1998 Deed of Exchange and the SRO. I also provided an explanation as to why the Owners' land had unrestricted access to the A27 in accordance with the explanation provided above at paragraphs 3.8 to 3.14 of this rebuttal.
- 5.47 Mr Roberts responded on 5 May 2023. His response was stated to be without prejudice, but it is appropriate for me to refer to it as he has referred to it at some length in his proof. The email is included in full at Appendix MB4. I draw attention to the third bullet point of his email which states that "*The Council have made a series of offers but all have been rejected*". This is not true. I assume that, in part, he must have been referring to the offers made in connection with CPO1 prior to the CPO1 inquiry, which I agree had been rejected and details of this are set out in section 2 of this rebuttal. However, he had only provided two offers in respect of the Additional Land which was included in CPO2 but not CPO1, namely: his email of 24 May 2022; and his letter of 16 December 2022, and the Owners had attempted to accept both of them but the Council was now resiling from them.
- 5.48 He states that the sticking points to agreement are the quantum of advance payment and reimbursement of fees. As stated on a number of occasions in this rebuttal, the quantum of advance payment proposed was based on his compensation estimate and, with regard to fees, I had simply requested a contribution toward reasonable fees without specifying a figure. I had not suggested a figure as I had been awaiting agreement of the principle before incurring the time and cost of collating the relevant invoices. Mr Roberts never provided agreement to the principle, so the matter did not progress.
- 5.49 Mr Roberts continued to put up barriers to progress, in particular focussing on the status of the occupation of the land, despite assurances from the Owners' solicitors that the land was farmed in hand, there were no third-party leases and vacant possession could be provided.
- 5.50 Mr Roberts sent a further email on 11 May 2023, but it was without prejudice and therefore, not appropriate for me to comment on the content other than to say it did not provide assistance in moving toward an agreement in accordance with Option 2. Instead, it appeared to place obstacles to reaching an agreement.
- 5.51 Mr Roberts' comment at paragraph 7.43 that it became apparent that I "*expected the Council to reimburse all their professional fees dating back to prior to the First Inquiry*" is not true. I did not make that statement and it is plain to see from the bundle of correspondence that I requested a "*contribution*" toward my client's reasonable professional fees.

- 5.52 His statement at paragraph 7.44 of his proof is also not true. He states that he has “repeatedly requested, but have never been provided with, an indication as to what fees are being contended for by the Heaver family and quantified requests for reimbursement so that I can set out the Council’s response”. I have reviewed all of the correspondence from Mr Roberts and have only found two references to fees. The first reference was in his email of 25 April 2023 stated *“this regard, it seems to me that we could potentially (subject to instructions) go back to 16 December 2022 in respect of your fees and, once we have an idea as to what the agreement will comprise, I can ask OC to advise as to what would comprise reasonable fees for entering into a legal agreement. It would be helpful if you could advise as to your terms of engagement with your client and provide a time schedule from 16 December 2022 to provide me with some context”*.
- 5.53 The second reference was in his email of 5 May 2023 where he says that his “feeling is that £3,500 is reasonable” for entering into an agreement - which it clearly is not. He then goes on to say, *“You can argue all the other issues including the potential for development and historic fees etc once the agreement has been completed as part of the compensation claim process”*. So, this second reference clearly is not a request for fees, it is a statement that he is prepared to recommend a very low figure which is clearly not reflective of the time incurred but that, if the Owners feel they are entitled to additional fees, this can be dealt with at a later date by way of a compensation claim. So, what he refers to as repeated requests is in fact one request. This is another example of misrepresentation by Mr Roberts.
- 5.54 On 18 July 2018 the Owners’ solicitor, Ashurst wrote to the Council’s solicitor, Davitt Jones Bould (“**DJB**”), confirming the Owners’ willingness to sell the Properties voluntarily and provided a draft agreement based on the Option 2 proposal from Mr Roberts’ 16 December 2022 letter.
- 5.55 Mr Roberts refers to this letter at paragraphs 7.46 to 7.52 of his proof. At paragraph 7.47 he has highlighted the statement by Ashurst that *“our clients have always been willing to sell the CPO Land on reasonable commercial terms”*. At paragraphs 7.51 and 7.52 he then arrives at a conclusion that the use of this phrase means that the Owners were unwilling to dispose of their land at a price of less than £30m, this being the figure included in the Heads of Terms I had issued on 30 July 2021 prior to the CPO1 inquiry.
- 5.56 I have no idea how Mr Roberts has arrived at this conclusion or what point he is trying to make. The draft contract attached to the Ashurst letter was in accordance with the structure proposed by Mr Roberts on 24 May 2022 and 16 December 2022, namely: transfer of the Additional Land outside of CPO1 for £10,000; and vesting of the CPO1 Land. The draft contract is included in the bundle of correspondence at Appendix MB4. As can be seen, the Advance Payment is defined on page 1 as £1,944,535, being based on 90% of £2,160,595 which was the Council’s previous compensation estimate apportioned to Shore’s Meadows. The agreement provided for the final compensation sum to be agreed or determined at a later date in accordance with the Compensation Code.
- 5.57 It is true that my view on the likely level of compensation settlement is significantly higher than that of Mr Roberts. However, whatever the compensation figure ultimately turns out to be will be determined in accordance with the statutory Compensation Code,

if necessary by reference to the Upper Tribunal. That will be the case whether an agreement is reached which provides for compensation to be determined by reference to the Tribunal or whether the Council exercise their CPO powers and the Owners' statutory compensation entitlement is agreed or determined by the Upper Tribunal.

- 5.58 I think the inclusion of a provision for determining compensation for the main CPO1 Land at a later date is a common theme in all offers that have been put forward by both parties. It is unclear why Mr Roberts seems to have been concerned by Ashurst's use of the phrase "*reasonable commercial terms*" and it is not clear what point he is trying to make or why this should have prevented the Council from progressing an agreement on the basis of the proposed draft agreement. I also do not understand why Mr Roberts considers there to be something untoward about the Owners only being willing to sell their land on reasonable commercial terms. They are unlikely to be willing to sell their land on what they consider to be unreasonable commercial terms.
- 5.59 DJB responded to Ashurst on 9 August 2023. Their response was as unhelpful as Mr Roberts' email of 5 May 2023, and contained a number of factual inaccuracies. It claimed that the Code Offer was not Mr Roberts' assessment of the compensation entitlement and that Mr Roberts had given evidence at the CPO1 inquiry that the offer was in fact significantly more favourable than the compensation code entitlement. This is simply wrong for the reasons explained at paragraphs 2.16 to 2.20 above.
- 5.60 It included a comment to the effect that the market value needs to reflect the Local Planning Authority's opinion that planning permission for an independent development of the Properties would be refused. That assertion is not accepted by the Owners but putting that to one side that position has not changed since Mr Roberts put forward the Code Offer. The Council's planning witness to the CPO1 inquiry made the same assertions as to planning as now being asserted by DJB. The Code Offer which the Council is now seeking to resile from equated to approximately £40,000 per acre which reflects a very modest amount of hope value. To suggest that approximately 58 acres of land in Chichester allocated for residential development with a direct access to a trunk road is only worth £40,000 per acre is utterly implausible.
- 5.61 To put this into context, the financial viability appraisal prepared by Knight Frank dated 3 March 2023 and appended to the CPO2 Statement of Case values the entirety of the TSDL (circa 188 acres) at £30.6m, which equates to £162,766 per gross acre. I think this is actually low as recent transactions on permitted residential sites around Chichester over the last two to five years have achieved values in the range of £200,000 to £500,000 per gross acre.
- 5.62 There are only three major landowners in the TSDL, namely: the Owners; Church Commissioners and the Pitts family. The Owners' land amounts to 58.44 acres which equates to 31% of the site and, importantly controls the primary access to the A27 which is key to unlocking the development of the entire TSDL. It is simply not credible to suggest that the Properties are worth less than Mr Roberts' previous Code Offer of £2.3m which is only 7.5% of Knight Frank's valuation for the whole site and equates to £40,000 per acre.
- 5.63 The Owners consider the Properties to be worth considerably in excess of this sum and will submit evidence in support of its claim, if necessary at the Upper Tribunal, in the

event that the Properties are ever acquired. However, property valuation is not a matter for consideration at CPO inquiry and the Owners have no wish to discuss valuation points at the inquiry. The repeated references to the Code Offer are simply to demonstrate the lack of any proper and genuine engagement by the Council and its advisor to acquire the Properties on reasonable terms. The Council's approach is unreasonable and is in direct conflict with the CPO Guidance.

- 5.64 DJB's letter did not provide any specific comments on the Ashurst draft agreement which was extremely unhelpful. It set out a number of obstacles to agreement as listed at paragraph 7.50 of Mr Roberts' proof. In particular, I note the point made in the first bullet point that "*The proposed agreement still required the exercise of compulsory purchase powers by the Council hence defeated the point of trying to reach agreement in the first place*". This statement shows a clear lack of understanding of the situation by the Council's solicitors. The proposed agreement, as with all of the negotiations since May 2022, was attempting to reach an agreement that avoided the need for CPO2, and it clearly achieved this. The CPO powers to be exercised were those within CPO1, which had already been confirmed. It is not apparent why the Council would be unwilling to exercise the CPO powers within their confirmed CPO1.
- 5.65 The proposals put forward by Mr Roberts in May and December 2022 were based on the exercise of the CPO1 powers, as was the one in his most recent email of 5 May 2023. There is no logic as to why DJB were now seemingly objecting to a proposal on this basis and their comments seem to be either deliberately obstructive or incompetent.
- 5.66 Mr Roberts emailed me on 16 August 2023 on similar lines to the DJB letter and again sought to distance himself from his Code Offer. On the subject of the value of Shore's Meadows he advised that Countryside has now taken independent planning advice which expressed the view that Shore's Meadows is incapable of independent development and that he considers its value to be no more than agricultural value. He therefore concludes its market value to be £12,000 per acre, which would equate to circa £700,000 for the combined value of the Properties, which is less than one third of his previous Code Offer. The recent planning advice he referred to (and which is refuted by the Owners) appears to be no different from the opinions expressed by the planning authority at the time of the Code Offer so it is not clear why it has resulted in a 70% reduction of Mr Roberts' opinion of value. To suggest that 58.44 acres of allocated land with direct access to the A27 and with control over the access to the remaining circa 130 acres of the allocated site is worth only £700,000 is even more implausible than the Code Offer of £2.3m. Even the most pessimistic approach to hope value could not conclude that 30% of an allocated site comprising only three landowners and having control of the access was worth only 2.28% of the Knight Frank valuation of the assembled site.
- 5.67 To put this into context, the Bloor Option was entered into in December 2012 (with the Owners' predecessors in title). Bloor paid an Option Fee of £500,000 on entering into the Bloor Option. They also paid a contribution toward the owners' agent's fees of £50,000. In 2018, Bloor paid a Further Option Fee of £100,000 to prevent the Bloor Option from expiring and extending it for a further six years. Both the Option Fee and the further Option Fee are non-refundable but are deductible from the Option Price if the Bloor Option is ever exercised. The contribution toward agent's fees is not refundable

or deductible. Therefore, Bloor have speculated £650,000 to enter into the Bloor Option. It is, therefore, frankly ludicrous to suggest the land does not have any hope value and is worth no more than £700,000.

- 5.68 Furthermore, it should be noted that, when granting the Bloor Option, the owners excluded from the Option Land two narrow strips along the southern and eastern boundaries of Shore's Meadows (the "**Control Strips**"). Therefore, the financial terms of the Bloor Option exclude any potential share to Bloor of any enhanced value for providing access to the rest of the TSDL. Any such uplift was retained by the owners.
- 5.69 At the time that the Bloor Option was entered into off market approaches were made to two other parties: Bovis Homes Limited; and Wates Development Limited. Both expressed an interest in entering into a promotion and option agreement and submitted financial proposals and in both cases it was expressly clear that the Control Strips would be excluded from any agreement reached in order for the owners to retain any associated value. Interestingly, Bovis Homes put forward a proposal based on a Minimum Land Price of £200,000 per gross acre. Bovis Homes are now part of the same group of companies as Countryside.
- 5.70 The fact that three established housebuilders put forward financial proposals, each including significant non-refundable deposits, is evidence of the significant hope value inherent in the Properties and demonstrates the unreasonableness and lack of credibility in the Council's approach to negotiations with the Owners.
- 5.71 As previously stated, I am aware that matters of valuation and compensation are not directly relevant to the inquiry, but they are relevant to the extent that they demonstrate the unreasonable approach being adopted by the Council and Mr Roberts and the lack of any genuine good faith attempt to acquire the Properties by agreement in accordance with the requirements of the CPO Guidance.
- 5.72 Mr Roberts' email of 16 August 2023 attached a set of Heads of Terms for a voluntary acquisition of all of the Properties by Countryside based on a consideration of £2.3m inclusive of Loss Payments. This offer was made in full knowledge of the terms of the Bloor Option.
- 5.73 Mr Roberts sent a subsequent email on 21 August 2023 attaching a separate set of draft Heads of Terms for a voluntary acquisition by the Council. The email and the attached draft Heads of Terms were marked "without prejudice", and it is therefore not appropriate to comment on the detail. As Mr Roberts says in his proof the proposed terms were very similar terms to those within the Countryside Heads of Terms. What he does not say in his proof is that the level of consideration proposed was significantly lower and was aligned to the derisory opinion of value referred to in Mr Roberts' previous email of 16 August 2023, being less than one third of his previously stated opinion of value.
- 5.74 Mr Roberts' use of "without prejudice" would indicate that he did not want his proposed level of consideration to be referred at CPO inquiry or any subsequent Upper Tribunal proceedings, although I do not know why.

- 5.75 Paragraph 7.56 of his proof states that, as the email was marked “without prejudice”, he is unable to attach it to his report. That is not actually correct. He is entitled to attach without prejudice correspondence from him provided it does not refer to any without prejudice content from me without my consent. If Mr Roberts has any doubts about this, I can confirm that I would have no objection to him providing a copy of this email to the inquiry and I would in fact welcome it as I think it would be helpful for the inquiry to see it in order to assist in forming a judgement on the appropriateness of the negotiations conducted on behalf of the Council.
- 5.76 It is apparent that by August 2023 the Council had changed its position in respect of the structure of the offer in that they now seemed unwilling to exercise the powers in CPO1.
- 5.77 On 13 September 2023 I responded to Mr Roberts refuting various points in his earlier email and the letter from DJB and restated that the Owners wished to reach an agreement based on the Option 2 proposal and that it was important that the purchaser was the Council, as opposed to Countryside, and that the land within CPO1 should be acquired pursuant to the compulsory purchase powers in the confirmed CPO1 in order that the Owners could benefit from the provisions within section 246 of the Taxation of Chargeable Gains Act 1992. I am not a tax expert, but the Owners had taken independent tax advice from a tax lawyer on this point.
- 5.78 There was an exchange of emails between Mr Roberts and me on 28 and 29 September 2023, copies of which are included in the bundles at Appendix MB4 and large sections are quoted at paragraphs 7.58 to 7.60 of Mr Roberts’ proof. His email of 29 September 2023 effectively states that his latest Heads of Terms are superior to those previously issued by Ashurst as his do not require the exercise of CPO powers whereas the Ashurst ones do. He attempted to justify this on the basis of the CPO Guidance which states that CPO powers should only be used as a last resort, making a similar point to that in DJB’s letter of 9 August 2023.
- 5.79 In my view, Mr Roberts was being deliberately obtuse. He was aware that the majority of the Owners’ land was already included in the confirmed CPO1 and he was also aware that the Owners were willing to reach an agreement which included the acquisition of their interests in the CPO1 Land pursuant to CPO1. The CPO powers which we were seeking to avoid the need for were those within CPO2 on the basis that my client had on numerous occasions confirmed their willingness to transfer the Additional Land by agreement for nominal consideration, so the CPO2 powers against the Owners were, therefore clearly unnecessary.
- 5.80 Mr Roberts stated in his email that “*the Council want to agree terms that avoid any exercise of CA powers*”. This statement is not reflective of their actions on the basis they have made a CPO over significant areas of land which are already subject to an existing confirmed CPO.
- 5.81 I do not agree that the wording of the CPO Guidance should prevent the exercise of CPO powers against a particular claimant, in favour of a transfer by agreement, where that claimant has expressed a preference for that acquisition to proceed by way of CPO. Up until May 2023 Mr Roberts had been promoting an agreement structure based on the exercise of the CPO1 powers.

- 5.82 I also do not understand why Mr Roberts should state that he is at a loss to understand why his terms were less favourable than the Ashurst ones when they preserved the Owners' rights to make a reference to the Upper Tribunal. Both sets of Heads of Terms included the ability to make a reference to the Upper Tribunal so his terms were no more favourable than ours in respect of that point. The principal difference, other than the level of advance payment, was that the Ashurst Heads of Terms provided for the acquisition of the CPO1 Land by GVD which is more tax efficient to my client. I do not accept that Mr Roberts did not understand that as I had explained it in my email to him of 13 September 2023 and expanded upon this in our without prejudice meeting the following day. This appears to be another example of Mr Roberts placing obstacles in the way of reaching an agreement with the Owners in direct conflict with the CPO Guidance.
- 5.83 On 13 October 2023 Ashurst wrote again to DJB repeating the Owners' willingness to proceed with an acquisition in accordance with the Option 2 proposal and explaining the importance of structuring the agreement in that way. A slightly amended version of the draft agreement seeking to address Mr Roberts' apparent concerns about confidentiality was appended to the letter with a request that DJB consider the draft.
- 5.84 Mr Roberts' comments on this at paragraph 7.63 of his proof and states that it is bizarre that on the one hand the Owners were objecting to CPO2 whilst requesting that their land within CPO1 was acquired pursuant to CPO powers. It is really not difficult to follow and I find it hard to believe that Mr Roberts does not understand the point. The previously agreed consideration for the part of Shore's Meadows that falls only within CPO2 is £10,000. The capital gains tax implications on this will be de minimis and there will be no material impact whether or not this land benefits from the capital gains provisions which apply to acquisitions by compulsion. By contrast, the land within CPO1 is of considerable value and the capital gains tax implications would be significant.
- 5.85 It is really not a difficult concept for Mr Roberts and the Council to grasp that the Owners' position, which has been clearly set out, is that they would like the CPO1 Land to be acquired pursuant to CPO1 but that they object to CPO2 on the grounds that it is not required against the Owners' land as most of the land can already be acquired pursuant to CPO1 and they are willing to transfer their interest in the Additional Land for nominal consideration by agreement.
- 5.86 DJB responded on 16 October 2023 stating that DJB would consider Ashurst's latest draft with Mr Roberts who would revert. Mr Roberts' response arrived later that day stating that the draft agreement was totally pointless as the principles of the agreement had not been agreed. This is despite the fact that the draft agreement was based on the structure first put forward by Mr Roberts in May 2022 and repeated in emails in July and August 2022 and then set out in his letter of 16 December 2022 and the draft terms in his email of 5 May 2023. It had included an advance payment based on his assessment of compensation. Despite saying that it was pointless, Mr Roberts provided track change comments on the draft agreement.
- 5.87 On 24 October 2023 Ashurst returned a further mark-up of the draft agreement which addressed the comments suggested in Mr Roberts' previous email and tracked changes. The advance payment was left blank with the suggestion that the terms of the

agreement be agreed whilst parallel discussions took place in an attempt to agree the level of advance payment.

- 5.88 Mr Roberts responded the same day stating that *“there are fundamental and deeply held differences between us that will not be resolved prior to the inquiry such that I think we have exhausted trying to agree terms on this basis”*.
- 5.89 He stated that the draft agreement appeared to indicate that the Owners’ objection to CPO2 would not be withdrawn for circa three months which would be after the CPO inquiry. He did not elaborate on how he reached this conclusion but I think it was on the basis that the Ashurst draft agreement stated that the objection would not be withdrawn until the transfer of the Additional Land had completed and this was to coincide with the vesting of the CPO1 Land and that the vesting process takes three months. This was not the intention of the Ashurst drafting but I accept that it was a legitimate point for Mr Roberts to raise and I addressed it in my response of 2 November 2023 as explained at paragraph 5.96 below.
- 5.90 Mr Roberts’ email then went on to set out bullet point terms for a proposed acquisition by the Council of only Plot 19E separate from the rest of the Owners’ Properties, i.e. he was proposing an acquisition of the Owners’ interest in the Additional Land (Plot 19E) comprising 39m² but excluding all of the Owners’ Properties within CPO1 comprising circa 58.44 acres. In terms of site area Plot 19E represents 0.02% of the Owners’ land ownership and is the primary access from the A27 into Shore’s Meadows (and the rest of the TSDL). For the Owners to agree to sell this land separately from the remainder of their land would be completely irrational.
- 5.91 Mr Roberts’ proposal for the remaining 99.98% of the Owners’ Properties appears to be that this land may or may not be vested at some future as yet undetermined date under CPO1 or CPO2. It seems from this that the Council and Countryside are not confident that they will vest the land prior to the expiry of CPO1 in December 2024 despite the stated commitment in both CPOs to take possession of all land within six months of confirmation. It appears they want to keep their options open by securing a new CPO which would provide them with a further three years within which it could be implemented. The Council and Countryside appear to be seeking flexibility without commitment. This proposal would just lead to a continuation of the uncertainty that has already blighted the Properties for several years, which is unacceptable.
- 5.92 The Council’s approach to their dealings with the Owners is in direct conflict with the extracts of the CPO Guidance set out in the previous section. The Council is not making reasonable attempts to acquire the Owners’ interests by agreement; they are not making offers based on fair compensation; the use of CPO powers would clearly not be a last resort given the Owners’ willingness to dispose of Plot 19E by agreement at nominal consideration, provided this is linked with an acquisition of the remainder of their land; the Council is clearly not taking steps to minimise the period of uncertainty and delay and is instead looking to extend this period by seeking a new CPO over the entire combined CPO1 and CPO2 Lands which would provide them and Countryside with a further three years to implement their powers from the date of confirmation of CPO2; and, there is a clear alternative to the use of CPO powers given the Owners’

willingness to proceed in accordance with the Council's previously proposed agreement structure.

- 5.93 Rather confusingly, the day after Mr Roberts' email effectively stating he was no longer prepared to have any further discussions regarding the draft agreement, DJB responded to Ashurst stating *"Thank you for your letter. As the Council's solicitors, we are engaging in the process to assist with resolution of the outstanding points so that the agreement can be finalised and completed. We provided our comments to Peter Roberts, who consolidated them into the overall response from the Council to Matt Bodley yesterday. We are continuing the group effort with DWD, yourselves and Matt Bodley to reach agreement on the heads of terms so we can finalise the agreement"*.
- 5.94 DJB's response would seem to suggest that the parties were moving closer to an agreement subject to resolving some outstanding points. This email arrived the day after Mr Roberts had said *"there are fundamental and deeply held differences between us that will not be resolved prior to the inquiry such that I think we have exhausted trying to agree terms on this basis"*. There appears to be a disconnect between the Council's surveyor and their solicitor.
- 5.95 I responded to Mr Roberts on 2 November 2023 stating that the Owners were not interested in a sale of Plot 19E separate from the rest of their ownership and reiterated the Owners' desire to proceed on the basis of the draft agreement prepared by Ashurst in accordance with Option 2. I stated that the only difference between the parties appeared to be the level of the initial advance payment. The Owners had proposed a figure based on Mr Roberts' previously stated compensation estimate, not because they agreed the figure but because it seemed uncontentious and the Owners were keen to proceed swiftly without further protracted debate, safe in the knowledge that they could pursue their claim in full at the Upper Tribunal. However, given that the Council was now clearly seeking to distance itself from its own previously stated compensation estimate I asked Mr Roberts to confirm, in open correspondence, what figure he now proposed as an advance payment.
- 5.96 My email also responded to the comments Mr Roberts had made about the objection not being withdrawn until after the CPO inquiry. My response on this point stated *"I can assure that the intention is for us to reach an agreement as soon as reasonably practicable and to withdraw the objection ahead of the CPO2 inquiry. I assume your comments about the timing of withdrawing the objection relate to the current drafting where it states that withdrawal of the objection will not be until after completion of the sale and purchase of Plot 19E and that this will occur on the vesting date. This is not the intention and we can amend the agreement to tie withdrawal of the objection to the service of the vesting notice as opposed to completion"*.
- 5.97 Mr Roberts refers to this point at paragraphs 7.66 and 7.89 of his proof and seeks to present this as some intentional plot by the Owners to try and mislead the Council in some way. At paragraph 7.66 he states *"it is readily apparent that Ashurst were proposing that its clients' objection is not withdrawn until after the inquiry proceedings have closed"*. At paragraph 7.89 he states that *"Ashurst have, at the very last minute prior to the submission of evidence, fundamentally changed their position with regard to the withdrawal of their clients' objection such that, rather than being withdrawn after the*

closure of the Inquiry proceedings they are now proposing to withdraw on exchange of the agreement which is targeted for 30 November 2023". Mr Roberts' statement is clearly a misrepresentation of the facts. It has never been the intention to withhold the withdrawal of the objection until after the closure of the inquiry. It was a simple drafting error that I addressed in my email of 2 November 2023, but Mr Roberts has chosen to ignore this in order to present an inaccurate position to the inquiry.

- 5.98 Mr Roberts responded on the same day (2 November 2023). His response was characteristically unhelpful. He suggested that his proposal for a transfer of only Plot 19E in isolation "*achieves exactly what your client wants – a voluntary transfer of plot 19E that preserves your client's rights of access and the right to claim compensation once the GVD is served.*" As a point of detail, there are no rights of access over Plot 19E serving the remainder of Shore's Meadows. There is no reason for there to be as they both form part of the same freehold title. Mr Roberts appears to be confusing Plot 19E with the NH Land which does have a right of access over it in favour of Shore's Meadows. If they were so minded, the Owners could agree to sell Plot 19E and reserve a right of access over it to their retained land as part of the sale agreement, but this completely misses the point. The Owners have no desire to sell Plot 19E separately from the rest of Shore's Meadows. This is unacceptable to the Owners, and it is not clear why it would be acceptable to any landowner. It certainly does not achieve exactly what the Owners want as suggested by Mr Roberts. It would clearly be beneficial to the Council and Countryside as it would provide them with significant control at limited cost and commitment.
- 5.99 Mr Roberts' email went on to say "*I will leave it to you to review the numerous offers that have been discussed during the life of this project but, if you do, you will find that this offer is entirely in keeping with what has been proposed previously*". I have reviewed all of the previous offers and Mr Roberts' statement is clearly incorrect and is completely irrational. The previous offers have all related to the acquisition of all of the Owners' interest within CPO1 and CPO2. There have been differences in terms of the identity of the purchaser and the extent to which CPO powers would be used in respect of the CPO1 Land, but all involved the acquisition of all of the Owners' land. To suggest that an acquisition of Plot 19E in isolation is entirely in keeping with this is irrational.
- 5.100 Mr Roberts refused to put in open correspondence his opinion of value stating: "*I have already told you what the Council's opinion of value is but you haven't been prepared to accept it*". It is true that Mr Roberts has told me his latest opinion of value, but he did so on a without prejudice basis and seems unwilling to put it in open correspondence. I find it extraordinary that an acquiring authority seeking to acquire land by agreement in advance of the exercise of CPO powers is not prepared to make a financial proposal in open correspondence. This approach does not accord with the CPO Guidance. Mr Roberts also states in this email that an agreement involving the vesting of the Owners' Properties within CPO1 "*is not acceptable in any circumstances, and I would be negligent to recommend this to the Council*". He does not actually say why this is the case. This was the first time he had stated this, and I find it perplexing given that the proposals set out in his emails from May 2022 to May 2023 were based on this structure of agreement.

- 5.101 Despite Mr Roberts' statements about not being prepared to proceed by way of vesting and the change in proposed agreement structure since August of this year to preclude the use of a GVD in respect of the CPO1 Land, paragraph 7.88 of his proof states that the proposed structure as set out in his letter of 17 [by which I assume he means 16] December 2022 "*remains on the table*". This is another example of Mr Roberts' inconsistent approach.
- 5.102 Despite my email of 2 November 2023 stating in no uncertain terms that Mr Roberts' proposal to acquire only Plot 19E was totally unacceptable and of no interest to the Owners, Mr Roberts sent a further email on 6 November 2023 attaching formal Heads of Terms for this proposal. His email incorrectly stated "*Now that I have addressed your sole concern in respect of access rights...*" He is incorrect in that access rights are not the Owners' sole concern, and he has not addressed it. The Owners have been living with the uncertainty created by the threat of compulsory purchase for several years and they would like this to end. They are willing to sell the entirety of their interests in the Properties by agreement and in order to achieve this they are prepared to accept an advance payment based on a level below their views on value provided they have the ability to pursue this further at the Upper Tribunal.
- 5.103 As to the suggestion about selling the strip of land across the access to the site separately from the remainder of their land for a nominal sum and reserving rights of access across it, there is no sensible reason why any landowner would do this. It would clearly be very convenient for the Council and Countryside, but it has no attraction to the Owners and would have no attraction to any other landowner. It would be a completely pointless transaction from the Owners' point of view.
- 5.104 Mr Roberts then sent a further email on 15 November 2023 attaching a draft agreement based on his proposal to acquire only Plot 19E, despite my previous unequivocal statement that the proposal was of no interest. He states that I had raised concerns in respect of access over plot 19E and stated that his proposed Deed potentially enhanced the existing rights. I had not raised concerns about access; rather I had stated that I could see no good reason why any landowner would agree to sell a small parcel of land which provide the primary access into their site, separately from the rest of their site. Mr Roberts' proposal would certainly not enhance the Owners' access rights as he suggests. It is not rational to state that an access right granted over land transferred to a third party would be superior to the Owners' existing position of unencumbered freehold ownership.
- 5.105 In a last-ditch attempt to reach agreement prior to the CPO2 Inquiry, Ashurst issued a revised set of Heads of Terms to DJB on 17 November 2023. The covering letter referred to "*contradictory emails from Mr Roberts*" which Mr Roberts seems to have taken exception to at paragraph 7.80 of his proof. The point Ashurst was making was that Mr Roberts' emails of 2 and 15 November which stated that he had no interest in any further discussions relating to the draft agreement provided by Ashurst on 24 October 2023 due to fundamental and deeply held differences were contradictory to DJB's letter of 25 October 2023 which said they were seeking to resolve outstanding points in order to finalise an agreement.

- 5.106 The Ashurst revised Heads of Terms sought to accommodate what was stated by Mr Roberts to be the two fundamental and deeply held differences between the parties, namely: (1) the level of advance payment; and (2) the Council's refusal to make a GVD, despite previous proposals to do so. The Owners' position in respect of both of these two supposed fundamental differences is based on the Council's previous proposals in respect to each, namely: the Council's publicly stated opinion of the compensation entitlement as set out in the Code Offer and presented as evidence of such at the CPO1 inquiry; and the Council's proposed agreement structure as set out in Mr Roberts' email of 24 May 2022 and Option 2 of his 16 December 2022 letter, and most recently his email of 5 May 2023.
- 5.107 With regard to the agreement structure point, Ashurst's letter states that the Owners are now prepared to proceed by way of a private treaty transfer to the Council (not Countryside) without the need for this to proceed by way of vesting following a clearance letter from HMRC which has provided comfort in relation to the Capital Gains Tax concerns. This, therefore, addresses one of Mr Roberts' fundamental concerns. With regard to the other one, I have invited him to suggest the level of initial advance payment at which the client would be prepared to proceed but he is unwilling to put it in open correspondence.
- 5.108 In typical fashion, at paragraph 7.79 of his proof, Mr Roberts is critical of the most recent Heads of Terms accusing Ashurst of doing a "*full about turn*" as if this is a bad thing. The changes to the proposed agreement structure have not been done because it is the Owners' preference to do so. They have been done because the Owners are trying to find a way of reaching an agreement in order to bring to an end the uncertainty, and consequential stress, they have been subject to for several years. They have received clearance from HMRC that they can dispose of the CPO1 Land to the Council by agreement and still benefit from the same capital gains tax provisions as if their land had been acquired by way of GVD. They have therefore put forward a compromise proposal which reflects Mr Roberts' comments in an attempt to reach an agreement. They should be commended for this, not criticised. The Council should be making more effort to accommodate the Owners' concerns. It is the Council that is promoting CPO2, in addition to the CPO they have already promoted over largely the same land. The Owners simply want to see an end to this.
- 5.109 Ashurst's letter also confirms that agreement has been reached between the Owners and NH and a joint application has been made to discontinue the legal proceedings and for the interim injunction to be withdrawn. On this basis NH will be able to proceed with the voluntary transfer of the NH Land to the Council in accordance with the terms previously agreed. There is, therefore, the opportunity to acquire all remaining land interests which fall outside of CPO1 without recourse to CPO2.
- 5.110 At paragraphs 7.82 to 7.84 of his proof, Mr Roberts is critical of me stating that I have not been prepared to engage regarding planning and valuation matters. I have been clear with Mr Roberts that it is quite apparent that my opinion of value greatly exceeds his and there seems little likelihood of us reaching an agreement. Based on comments within his emails Mr Roberts appears to share this view (see his emails of 5 May 2023 and 24 October 2023). I have also explained to him that the process of preparing a

valuation is a costly exercise involving a number of other consultants in addition to myself.

- 5.111 The Owners incurred significant costs in this connection in the months leading up to the CPO1 inquiry which proved to be abortive expenditure due to the significant differences that were apparent between us. The Owners incurred further costs in this connection in the months following the confirmation of CPO1 in November 2021 in readiness for submitting a claim in the first half of 2022 given the Council's commitments to vest my client's land within six months of the confirmation, this again proved to be a fruitless exercise as the Council has not implemented CPO1.
- 5.112 The Owners are not prepared to incur further, potentially abortive expenditure until a valuation date for the assessment of compensation has been fixed, either as a result of a voluntary acquisition or the vesting of the land.
- 5.113 Since May 2022 when the Owners were informed that CPO1 would not be exercised due to the issues related to the Additional Land, my client's objective has been to try and find an agreement that will enable the entirety of the Owners' interests to be transferred to the Council on reasonable terms and on an unconditional basis to enable them to progress their claim at the earliest opportunity, if necessary by reference to the Upper Tribunal.
- 5.114 I strongly refute Mr Roberts' assertion that I have acted in any way which is contrary to the Compensation Claims Protocol or the RICS Professional Statement "Surveyors advising in respect of compulsory purchase and statutory compensation". These are baseless allegations.
- 5.115 Mr Roberts emailed me on 24 November 2023 in response to the Ashurst letter of 17 November 2024 raising some queries on elements of the attached Heads of Terms and I replied on 30 November 2023 to respond to the queries raised. I also requested an open meeting to discuss the Heads of Terms in an attempt to conclude an agreement. Mr Roberts has agreed to meet on a without prejudice basis and it is hoped that this may yield some progress.
- 5.116 I have received a further email from Mr Roberts on 1 December 2023 attaching a letter, but this was too late for inclusion in my appendices and detailed comment in this rebuttal. Nothing in his letter changes my opinion on anything within this rebuttal statement and, in fact simply enforces it. I will be replying to Mr Roberts but not before the submission of this rebuttal statement. A copy of Mr Roberts' letter and my response together with any further relevant correspondence over the next week can be provided to the inquiry together with an update on negotiations.

Countryside's Request for Access for Intrusive Surveys

- 5.117 At paragraph 5.34 Mr Roberts refers to the request for Countryside for access on to the Owners' land to undertake surveys. It is not clear what the relevance of this in terms of the CPO2 Inquiry. As Mr Roberts states, there are powers available for access to undertake surveys at section 172 of the Housing and Planning Act 2016 and these do not require a confirmed CPO in order for them to be implemented (even though there is a confirmed CPO over the land which they want to survey). So, if Countryside and the

Council wanted to make use of the powers for access to undertake surveys, they could, and it really is of no relevance to the merits or otherwise of CPO2.

- 5.118 I can only assume that Mr Roberts has decided to refer to this in his evidence in order to try and give the false impression that the Owners' actions in this matter were in some way unreasonable. To this end he has referred to the request for a premium payment of £100,000.
- 5.119 As with so much of Mr Roberts' evidence, this statement has been presented completely out of context presumably in an attempt to make the Owners appear unreasonable, and he has not provided any background information relating to the request for access.
- 5.120 I set out below full details of the communications between Mr Roberts and I regarding the request for access for survey. Copies of the relevant email correspondence are attached in Appendix MB5.
- 5.121 Mr Roberts states that he made the request for survey access in August 2022. This is not correct. He actually made the initial request by email to me on 24 May 2022. I sought instructions from the Owners and responded on 27 May 2022 confirming the Owners' agreement in principle subject to agree the precise timing and extent of the investigation. The Owners' priority was to minimise disruption to farming activities and have a satisfactory indemnity against loss. Mr Roberts responded on 15 June 2022 stating that Countryside was seeking 5-6 weeks from 1 August 2022 and attaching a plan showing the proposed location of the trenches. This showed that Countryside was seeking access to all 58 acres of the Owners' land and intended to dig 106 trenches.
- 5.122 After taking instructions I responded on 8 July 2022 confirming agreement in principle subject to an undertaking on my costs and solicitor's fees for agreeing a suitable licence for access and requested Countryside's solicitors prepare a draft. I attached a plan to my email identifying which crops were in which part of the site by reference to colour coding and advising that parts of the site would be available to Countryside from the second week of August and the remainder by the third week of September. I stated that the whole site would have to be returned by 10 October to sow the next year's crop.
- 5.123 On 13 July 2022 Mr Roberts sent a draft licence which did not appear to pay any regard to my email of 8 July 2022. It included a plan of all of the Heaver Land and sought a licence period of circa 12 months from an unspecified date in August 2022 to the following July. It did not specify the uses it proposed to undertake on the land and was silent regarding compensation for loss or damage as required by the statute, nor third party or public liability insurance. It also did not include any provision for payment of a licence fee which is normally offered when parties take entry for survey under the shadow of statutory powers.
- 5.124 I responded on 26 July 2022 providing comments on the draft licence together with details of the rates of licence fees commonly paid by utility companies when taking access for surveys. I provided a copy of the discretionary regime operated by National Highways as an example and invited Mr Roberts to propose an appropriate licence fee. My email also provided estimates for legal fees and my fees for dealing with the licence.

- 5.125 On 2 August 2022 Mr Roberts sent a revised draft licence. This had a licence period of 15 August 2022 to 14 August 2023 (12 months) and did not make any provision for a licence fee.
- 5.126 I responded on 4 August 2022 with track change amendments to the draft licence which included a proposed licence fee of £20,000 based on 106 trenches at the National Highways adopted rate of £200 per trench equating to £21,200 and rounded down to £20,000. I amended the licence to include an end date for the occupation of 10 October 2022 in line with what had previously been advised.
- 5.127 Mr Roberts responded on 5 August 2022 stating that Countryside needed the occupation to run beyond 10 October and that he did not consider any licence fee appropriate in addition to the undertaking in respect of crop loss. I responded on the same day stating that 10 October was the latest date the Owners could agree to as they needed the land back by that date in its mitigated state to plant the next year's crop. If occupation went beyond 10 October, my client would lose the crop which would equate to a loss of circa £80,000. I stated that if they wanted the land beyond that date they could have it provided they pay for the crop loss of £80,000 in addition to the licence fee. My email included an explanation of how this was calculated based on an average yield of 4.5 tonnes per acre at a value of £300 per tonne. I also explained that if the Owners did not farm the land for a year they would probably lose their entitlement to their Basic Payment Scheme grants.
- 5.128 I also directed Mr Roberts to the relevant section of the National Highways payment scheme document which made it clear that the £200 per pit licence fee payment was in addition to any payment for crop loss.
- 5.129 After some further exchange of emails Mr Roberts emailed on 10 August 2022 to say that Countryside no longer intended to access the site for surveys.
- 5.130 This little episode is another example of the Owners behaving reasonably and helpfully in responding to a request from Mr Roberts and incurring time and cost in engaging with him, in this case for a period of four months. This included reviewing and providing comments on draft licence documents and researching utility company discretionary payment schemes, only for Countryside to ultimately decide that they did not actually wish to pursue it.
- 5.131 The Owners did not receive any reimbursement from the Council or Countryside for the abortive fees incurred, just as they have not received any recompense at all over the entire period of dealings with the Council and Countryside.
- 5.132 Despite this, Mr Roberts has sought to present this in his proof in a distorted manner to try to show that the Owners have behaved unreasonably.

Conclusion on Negotiations

- 5.133 To conclude, the Owners are willing to dispose of the Properties to the Council by agreement for an initial payment considerably below their own opinion of value, provided the right to pursue a claim to the Upper Tribunal is preserved. The Owners would agree to withdraw their objection on exchange of contracts.

- 5.134 Since February of this year the Owners have been attempting to reach an agreement based on the principles offered by Mr Roberts in his email of 24 May 2022, his letter of 16 December 2022 and his email of 5 May 2023. An agreement was drafted based on the terms offered by Mr Roberts and providing for an advance payment based on Mr Roberts' publicly stated estimate of compensation and one that he submitted as evidence to the CPO1 inquiry. Mr Roberts has resiled from both his previously stated compensation estimate and the structure of agreement he proposed. Mr Roberts and DJB have made incorrect and misleading statements as to the status of Mr Roberts' Code Offer and associated Compensation Schedule, seeking to make out that it was a commercial offer as opposed to the compensation estimate that it clearly was. They have said that the offer was made by the Countryside and not the Council, which is also not true. Mr Roberts has also sought to conceal the content of his Code Offer by stating that it was without prejudice despite the fact that it was submitted as evidence to the CPO1 inquiry and referred to in his proof.
- 5.135 He has repeatedly found reasons not to reach agreement. He has previously cited the Bloor Option as a reason not to progress, despite the fact that the Council and/or Countryside have already reached an agreement with Bloor and presumably obtained a copy from them. An unredacted copy of the Bloor Option was provided to him on 4 May 2023. He has also referred to uncertainties relating to tenancies or leases granted to farmers of the land. Assurances have been given that there are no third-party farming interests that need to be determined and that vacant possession can be delivered on completion.
- 5.136 A draft agreement based on his proposed structure was provided to Mr Roberts on 18 July 2023. He eventually responded to this with track change amendments on 16 October 2023. Ashurst responded with a track change updated draft addressing Mr Roberts' comments on 24 October 2023. Mr Roberts then responded stating that "*there are fundamental and deeply held differences between us that will not be resolved prior to the inquiry such that I think we have exhausted trying to agree terms on this basis*". This was despite the Council's solicitor stating that they were "*engaging in the process to assist with resolution of the outstanding points so that the agreement can be finalised and completed*".
- 5.137 Mr Roberts then came up with an alternative proposal to acquire only Plot 19E separately from the rest of the Owners' Properties despite that fact that no indication had been given by the Owners of having any interest in this. This should have been obvious given the attempts to progress an agreement on the basis of Option 2. Then, despite being told unequivocally that the Owners had no interest in pursuing an agreement on this basis he produced some formal Heads of Terms followed by a draft agreement.
- 5.138 Mr Roberts' approach has consistently been to delay, to obfuscate and to avoid any commitments on the part of the Council or Countryside. This is evident by the fact that he is not even prepared to agree to matters which were originally proposed by him. He was deliberately obstructive when asked to provide the contact details of the relevant people within NH, which hampered the Owners' ability to understand NH's position in respect of the Owner's right over the NH Land, resulting in additional cost and delay.

- 5.139 In my experience, in order for negotiations to be fruitful there needs to be trust between the parties. It is not unusual for there to be differences of opinion, but these can be resolved, or at least narrowed, through constructive negotiation and compromises on both sides. However, without trust there is little prospect of an agreement. Regrettably, neither I nor the Owners have any trust in Mr Roberts due to his constantly changing position which is evident from the biased way he has presented his evidence.
- 5.140 Mr Roberts has consistently misrepresented the facts and has repeatedly changed his position both in terms of his assessment of compensation and the structure of an agreement. Notably in August 2023 he was no longer prepared to proceed on the basis of an agreement that included a vesting of the Owners' interest in the CPO1 Land. This was despite the fact that this was the structure he had been promoting since May 2022 and which the Owners had been attempting to accept since July 2022. His change of position came despite the fact that he had been informed that this was the basis upon which the Owners wanted to proceed.
- 5.141 The approach of the Council and Countryside appears to be to avoid entering into any financial commitments with any of the landowners. That is certainly the experience of the Owners. Whenever the Owners have tried to agree terms based on proposals put forward by Mr Roberts, he then seeks to resile from his previously stated position.
- 5.142 It is understood that the other major landowners within the TSDL, namely: the Church Commissioners; and the Pitts, have reached agreement with Countryside on terms based on the Hybrid Option which was offered to the Owners prior to the CPO1 inquiry. As explained at paragraphs 2.10, the Hybrid Option does not provide any commitment to acquire. Rather it is simply an option in favour of Countryside which cannot be operated by the respective landowners and, accordingly, provides no certainty to those landowners. If the agreements with these parties are, as stated by Mr Roberts, on similar terms to the Hybrid Option, they are no more than options in Countryside's favour which will have involved minimum expenditure and commitment from Countryside, and none from the Council.
- 5.143 It is not surprising that these landowners would be willing to proceed on this basis as it adopts an equalisation approach to site servicing and infrastructure. This is clearly favourable to them as it would address their inability to access their land from the A27 which is necessary to enable development of their land. Such an approach would, therefore, enhance the value of their land. However, such an approach would have the opposite effect on the Owners' Properties by removing their control over the A27 access and thereby significantly depressing the value of the Owners' Properties.
- 5.144 When I asked Mr Roberts to identify what he considered to be the fundamental and deeply held differences between the parties, he stated that it was the quantum of compensation for the purposes of the advance payment and the requirement to use a GVD. The first point can be addressed as the question of compensation can be agreed or determined by the Upper Tribunal at a later date. All that is required is the agreement of an advance payment. If the sum ultimately agreed or determined is higher or lower than the advance payment, there would be a balancing payment one way or the other. With regard to the use of a GVD, this was initially required by the Owners to address Capital Gains Tax concerns but following clearance from HMRC (obtained by the

Owners at their own time and expense in order to be helpful to the Council) this is no longer required provided the acquisition is by the Council, not Countryside. Accordingly, the latest Heads of Terms issued by Ashurst on 17 November 2023 address the two fundamental issues referred to by Mr Roberts meaning that there should be no reason why the Council cannot proceed by agreement which would enable the objection to be withdrawn but would also not require CPO2 in respect of the Owners' Properties.

- 5.145 On the basis of Mr Roberts' statement that he has agreed terms with NH and solicitors have been instructed and that agreement has been reached with Bloor, the Council does not need CPO2 at all, and would be able to implement CPO1 significantly in advance of its expiry date in December 2024. As previously communicated to Mr Roberts the interim injunction over the NH Land has been withdrawn.

6. GROUNDS OF OBJECTION

- 6.1 The principal Grounds of Objection were set out in the Owners' written objection as attached at Appendix MB1 and summarised below:

CPO2 is Unnecessary

- 6.2 CPO2 is unnecessary as there is already a confirmed CPO (CPO1) over the majority of the CPO2 Order Land. CPO2 is, therefore, plainly not required over this area as the Council can simply implement CPO1. The Additional Land not within CPO1 comprises approximately 0.3% of the total CPO2 Order Land. There are only two third parties with interests in the Additional Land, namely the Owners and NH (as well as Bloor's Table 2 interest). As has been demonstrated in the preceding section the Owners have confirmed a willingness to dispose of their interest in the Additional Land for nominal consideration. The Council put forward a proposal to achieve this in May 2022 and the Owners indicated a willingness to proceed in accordance with that proposal in July 2022.
- 6.3 The Council restated this proposal as Option 2 of three options it put forward in a letter dated 16 December 2022. The Owners have been attempting to accept the Option 2 proposal since February 2023, but the Council has repeatedly found reasons for not proceeding.
- 6.4 The Owners have sought to progress an agreement based on the proposal put forward by the Council and including an advance payment based on the Council's stated estimate of compensation. The Owners have provided the Council with all of the information they have requested in respect of the Bloor Option and occupational interests in the Properties and confirmed its ability to deliver vacant possession. It has also provided information regarding its rights of access to the public highway.
- 6.5 The Bloor Option applies to Plot 19E but paragraph 5.43 of Mr Roberts' proof of evidence confirms that the Council and/or Countryside have reached agreement with Bloor.
- 6.6 Accordingly, CPO2 is not required in respect of Plot 19E.
- 6.7 The Council's Statement of Reasons and Statement of Case for CPO2 state that terms have been agreed with NH to purchase Plots 19C and 19D (as well as 19B, which was included in CPO1) (together comprising the NH Land) and that solicitors have been instructed to complete legal agreements. The interim injunction placed over the NH Land has been withdrawn following settlement of the dispute between the Owners and NH. Therefore, CPO2 is not required in respect of Plots 19B, 19C and 19D.
- 6.8 It is not clear what efforts, if any, have been made by the Council to acquire Plots 19A and 19F as neither the Statement of Reasons nor the Statement of Case refer to any attempts to acquire by agreement. Ms Oakaby's email to me of 24 April 2023 indicates that she was not aware of any indication given by the Council of their intention to acquire these plots prior to the making of CPO2. In any event, as acknowledged in the proofs of evidence of Mr Roberts and Mr Frost, there is no requirement for the Council

to own Plots 19A and 19F (or 19C) as they form part of the adopted public highway, as stated at paragraph 6.29 of the Statement of Case. Paragraph 12.14 of the Statement of Case states that these plots are required to deliver the proposed highway works at the A27 roundabout.

- 6.9 Accordingly, these plots comprise adopted highway and the Council requires them to undertake highway works. There is no need for the Council to own these plots to undertake these works. This can be achieved by obtaining the necessary highways consents and agreement from the Highway Authority, which are required whether the Council owns the land or not. This approach is confirmed by Ms Oakaby's email of 24 April 2023. Therefore, the inclusion of these plots in CPO2 is unnecessary.
- 6.10 It is, therefore, clear that CPO2 is not required as there is an existing CPO of the majority of the Order Land. The only land not within CPO1 comprises Plots 19A and 19C – 19F and these can be acquired by agreement and/or, in the case of plots 19A, 19C and 19F, do not need to be acquired to achieve the Acquiring Authority's purpose.

There are Alternative Means of Delivering the Scheme without Recourse to CPO2

- 6.11 The third bullet point of paragraph 106 of the CPO Guidance states that acquiring authorities should consider whether the purposes of the order could be achieved by alternative means, including any alternative proposal put forward by the owners of the land.
- 6.12 As stated above, the majority of the CPO2 Land is already included in the confirmed CPO1 which has over a year left to run. This means there is a clear alternative to CPO2. With regard to the parts of the CPO2 Land which fall outside of CPO1 both the Owners and NH are willing to dispose of their interests in the Additional Land by agreement for nominal consideration and have, in fact been trying to do so for over a year.
- 6.13 As a further alternative, CPO2 could be amended so that it only includes the Additional Land. The reason stated in the Statement of Case for including all of the land, including the CPO1 Land, in CPO2 is that there is a risk that CPO1 would expire before CPO2 was confirmed. CPO1 will remain operable until 22 December 2024. The decision on CPO2 will be issued at least six months in advance of that date, and would be even quicker if the Council secured the withdrawal of the Owners' objection by agreeing to exclude the CPO1 Land from CPO2.
- 6.14 As stated above, if the Council had engaged effectively with the only two parties with an interest in the Additional Land, the land could have been acquired by agreement months ago. This outcome is still achievable.
- 6.15 Furthermore, if as stated by the Acquiring Authority, the Additional Land is required to deliver the Scheme it means that CPO1 is of no use on its own. On that basis as a further alternative the Council should have withdrawn CPO1 on the making of CPO2.
- 6.16 It is neither necessary nor proportionate for the Acquiring Authority to have two CPOs in place over the same land at the same time.

The Council has not Demonstrated Reasonable Attempts to Acquire Land by Agreement

- 6.17 As explained in detail in the previous section, the Council has not made genuine attempts to acquire the Owners' interests in the Additional Land by agreement without recourse to CPO2. It initially indicated that it was willing to acquire this land by agreement and put forward a proposal to link this with the vesting of the Owners' main landholdings. This was initially put forward by email on 24 May 2022 and then in a letter dated 16 December 2022. The Owners attempted to progress on the basis of the Council's proposed structure (Option 2) and by reference to the Council's compensation estimate (the Code Offer).
- 6.18 The Council has sought to resile from both its proposed structure of the agreement and its stated estimate of compensation for the Owners' CPO1 Land and has sought to misrepresent the facts in respect of the latter point. No good reason has been provided for this. The Council has sought to place obstacles in the way of reaching agreement and has not complied with the CPO Guidance.
- 6.19 With only two third party interests to acquire beyond what is already included in the CPO1 Land and both of those landowners confirming a willingness to sell by agreement for nominal consideration, the use of CPO powers is clearly not being used a last resort as required by the CPO Guidance.
- 6.20 There have been two recent inspector's decisions not to confirm CPOs in the Royal Borough of Windsor and Maidenhead (Nicholson's Shopping Centre and Surrounding Area at High Street, Queen Street and King Street) CPO 2022 and the London Borough of Barking and Dagenham Council (Vicarage Field and Surrounding Land) CPO 2021. It was stated that the acquiring authorities in both of these cases were not able to demonstrate that they had made adequate attempts to acquire interests by private treaty voluntary negotiations. Financial viability was also a reason for not confirming the Vicarage Fields CPO.
- 6.21 The basis for refusing to confirm the Maidenhead CPO was the impact on a single objector. The scheme promoters challenged the decision not to confirm the CPO in the High Court. The objector also made a High Court challenge against the planning permission for the scheme. The parties subsequently reached a settlement agreement on confidential terms resulting in both parties consenting to judgement to quash the decision not to confirm the CPO. The objector simultaneously withdrew its objection against the CPO and the CPO was subsequently confirmed without the need for a further inquiry.
- 6.22 As both parties consented to judgement in the High Court the reasoning for the initial decision not to confirm the CPO was not challenged and there was no basis for finding that the Inspector's original decision was unlawful. The CPO was only confirmed following the withdrawal of objection.
- 6.23 These decisions serve to demonstrate that where an acquiring authority has not conducted negotiations in good faith and made genuine attempts to acquire interests by

agreement, the use of compulsory purchase powers to acquire those interests cannot be said to be a measure of last resort.

- 6.24 In this case CPO2 is premature and unnecessary and cannot be said to be a measure of last resort.

CPO2 Fails to Comply with the CPO Guidance

- 6.25 CPO2 has failed to comply with the CPO Guidance for the reasons stated above. Furthermore, it has clearly not met the requirement of paragraph 19 of the CPO Guidance which deals with the steps that an acquiring authority should take to try to mitigate the impact on those affected by a CPO. This paragraph of the CPO Guidance recognises the uncertainty and anxiety caused to owners and occupiers of the affected land. Amongst, the recommendations in the CPO Guidance to minimise this uncertainty is *“keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly”*.
- 6.26 The Council clearly did not achieve this in respect of CPO1, however, the Council has had ample opportunities to rectify this by acquiring the Additional Land by agreement, which was, and still is, clearly achievable due to the willingness of the only two parties with an interest in the Additional Land to proceed by way of voluntary agreement.
- 6.27 CPO1 has been confirmed for over two years. If CPO2 is confirmed in the first quarter of next year it will have a further life of three years meaning that the Owners and the other affected parties could be subject to a confirmed CPO for over five years. CPO1 was made in October 2020 meaning that the CPO1 Order Land has already been statutorily blighted for over three years and was the subject of generalised blight for several years before that. There is now the potential for it to be subject to a confirmed CPO for a period of a further three years. This is easily avoidable if the Council proceeded by way of its previously proposed Option 2 offer based on its publicly stated estimate of compensation.
- 6.28 It would also mean that it could vest the other interests in CPO1 without further delay which would accord with its stated objective in both CPOs to take possession of land at an early stage following confirmation of the Orders.
- 6.29 Instead, the Council and Countryside have continually found reasons to procrastinate and push back against their own previous offers, thereby extending the period of uncertainty and anxiety to affected parties in direct conflict with the recommendations of the CPO Guidance. No plausible explanation has been provided for the Council's unhelpful approach to negotiations. This may be explained by paragraph 8.12 of the Statement of Case which states that initial Scheme works are not intended to commence until 2025. There is, therefore, no incentive for the Council or Countryside to take possession in advance of this date, particularly in an uncertain property market.
- 6.30 Mr Roberts' approach of questioning the extent of the Owners' rights over the NH Land whilst being deliberately obstructive in refusing to provide details of the relevant contact within NH was also unhelpful and an unnecessary cause of stress and anxiety to the Owners.

- 6.31 Mr Roberts general approach to negotiations has been, for the most part, aggressive and lacks empathy and generally results in increased uncertainty and anxiety which is the direct opposite of the advice in the CPO Guidance.
- 6.32 The fourth bullet point of paragraph 19 of the CPO Guidance states that acquiring authorities should consider “*offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant’s future right to refer the matter to the Upper Tribunal (Lands Chamber))*”.
- 6.33 The Council has actually done the direct opposite of this. It initially put forward a proposal to proceed on the basis of an agreement which would enable a transfer by agreement whilst preserving the rights of both parties to refer the matter to the Tribunal. It had also previously made a public statement about its estimate of the appropriate level of compensation and submitted this as evidence to the CPO1 Inquiry. It then sought to resile from both matters, resulting in unnecessary delay, cost, uncertainty and anxiety.
- 6.34 As a final point with regard to the CPO Guidance, I note that at paragraph 14.32 of his proof, Mr Roberts expresses the view that he has offered the Owners a form of ADR (alternative dispute resolution) by including provision for a voluntary reference to the Upper Tribunal. ADR is described in paragraph 18 of the CPO Guidance as techniques that can save time and money which operate with relative speed and informality. It gives the examples of mediation and early neutral evaluation. The Upper Tribunal is not fast, inexpensive or informal and it is not a form of ADR. ADR is often proposed as a quicker, cheaper and informal alternative to the Upper Tribunal.

7. SUMMARY AND CONCLUSION

7.1 The Owners maintain their objection to CPO2 on the grounds detailed above and summarised as follows:

- a) CPO2 is unnecessary. In particular, the CPO1 Land should not have been included in CPO2;
- b) CPO2 fails to comply with the CPO Guidance and should not be confirmed by the Secretary of State;
- c) the purpose of CPO2 could be achieved by other means – either by way of (1) acquisition of the interests in the existing confirmed CPO1 (by agreement or compulsion) and acquiring the two third party interests in the Additional Land by agreement (as both parties are willing sellers for nominal consideration); or (2) by amending CPO2 to only include the Additional Land;
- d) The Council has failed to demonstrate that the use of CPO powers is necessary as a “*last resort*” to achieve the acquisition of the Additional Land. It appears to be the Council and Countryside’s preferred resort but it is definitely not the last resort as required by the CPO Guidance;
- e) the Council has failed to demonstrate that the purpose of CPO2 cannot be achieved by other means and without the use of compulsory purchase powers additional to those in CPO1;
- f) the Council has not made proper and genuine attempts to acquire all of the interests within CPO2 on reasonable terms and has instead resiled from its own previously offered terms and compensation estimate when the Owners have sought to progress an agreement on this basis;
- g) the Council has failed to demonstrate that there is a compelling case in the public interest and, in particular, that the need for CPO2 is necessary as a last resort; and
- h) confirmation of CPO2 would amount to an unjustified and disproportionate interference with the Owners’ rights under Article 1 of the First Protocol to the European Convention on Human Rights.

7.2 For the reasons stated above the Council has not demonstrated a compelling case in public interest to justify the use of compulsory purchase powers in this case. Accordingly, CPO2 should not be confirmed or, at the very least, CPO2 should be modified to exclude the Owners’ interests in the CPO1 Land.

8. STATEMENT OF TRUTH AND DECLARATION

Statement of Truth

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

Declaration

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

A handwritten signature in black ink that reads "Matthew Bodley". The signature is written in a cursive style with a prominent initial 'M' and a long, sweeping underline.

Matthew Bodley
For and on behalf of Matthew Bodley Consulting Limited

5 December 2023