1 December 2023
Your Ref:
Our Ref: PR/13252

69 Carter Lane
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Matthew Bodley Consulting
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Dear Matt,

YOUR CLIENT – HEAVER – CPO INQUIRY

It appears to me that you are advising your clients to maintain their objection on the basis that you disagree with the financial terms offered by the Council.

As you are well aware, valuation matters are not relevant to the Inquiry which is why I do not discuss these in my evidence beyond setting out the context but, as you seem intent on taking this route, it appears that I need to set out the following comments by way of correcting some apparent misconceptions and misunderstandings on your part.

I understand that your argument relies entirely upon my email dated 25 August 2021 in which I stated that *"I have calculated Rule 2 compensation to your various clients totalling £2,329,550".* It is your position that I am beholden to this statement and cannot now change my position under any circumstances. This is an entirely false argument.

I would also respectfully suggest that such an argument is fatally undermined by the rest of that email which you have failed to acknowledge in any of our exchanges in a classic cherry-picking approach. In this regard, I would remind you of the following extracts from the same email.

*"With regard to Plot 16**, key parts of the Promotion and Option Agreement which are directly relevant to the assessment of market value have been redacted** by your clients and I have therefore **formed my own view** as to what those terms are likely to provide for."*

And

***"In the event that I am provided with an un-redacted copy of the Option** **Agreement** and/or you provide additional justification and evidence to underpin your arguments **I will consider whether there is any material impact upon my advice** to Countryside and the Council. "*

I have (as at 4 May 2023) now been provided with an unredacted copy of the Option Agreement and there has been a material impact on my advice such that I am unable to stand by my views expressed prior to its receipt.

In the absence of an unredacted copy of the Agreement as at the date of that email, I made the assumption that it related to the entirety of your clients' land excluding Tangmere Corner. It is only following the receipt of the unredacted Agreement, that I realised that I had been misled.

In this regard, the following sections were redacted in the version available to me as at that date of my email referred to above.

- Definition of Control Strips (page 3)
- Definition of Eastern Control Strip (page 4)
- Plan No 2 Eastern Control Strip
- Paragraph 3.6 – Purchase of Control Strips
- Paragraphs 18.4 to 18.6 – Treatment of Highway Access Costs
- Schedule 1 – reference to the exclusion of the Control Strip from the Property

None of these issues are remotely commercially sensitive and, if I was a suspicious person, I might conclude that these redactions were deliberate so that the Council or Countryside would not be presented with the true position. In any event, my valuation was based on an incorrect understanding which was entirely due to your clients refusing to provide a full unredacted version or discuss the provisions thereof.

It appeared to me from the redacted version of the Agreement that, on the assumption that your clients' land was available for sale by a willing seller, your clients would no longer have any interest in any part of the TSDL. I therefore took the usual commercial approach, as is adopted across the UK on major developments such as this and assumed that the hypothetical purchaser would approach the Church Commissioners/CC Projects and the Pitts Family and that development would come forward on an equalisation basis as set out in the Memorandum of Understanding dated 30 July 2020. This set out a comprehensive equalisation approach which your clients freely entered into and accepted prior to your appointment.

However, I also recognised that a planning consent had not yet been secured and, in this scenario, the various landowners would need to work together in order to secure an implementable planning consent. As your clients no longer had an interest in the TSDL, in this scenario, it would be a reasonable expectation that the remaining landowners would reach agreement. This precisely what has happened in reality where all the landowners, apart from your clients, have agreed terms on a cooperative basis.

The hypothetical purchaser would have to address the existence of the Promotion and Option Agreement which restricted their ability to pursue their own planning applications. In that regard, I had formed the opinion that Bloor would not exercise their option as the terms of the Agreement were not viable. However, they would want to retain a seat at the negotiating table and potentially frustrate any sale in order to knock down the price to be paid for the land. I therefore took the view that Bloor would be prepared to bid for your clients' interests thereby dissolving the unviable Agreement and enabling them to secure a viable development opportunity.

My assessment of value was therefore based on the key assumptions that:

- The land seller was willing and able to accept the best price regardless as to whether it met their expectations (contrary to your clients' actual approach)
- Your clients would not retain any interest in the TSDL land
- The hypothetical purchaser would progress planning matters on a comprehensive basis
- All the landowners would agree an equalisation approach free from your clients' demand for a ransom payment
- Bloor would bid for and, most probably, secure the freehold interest

Before making the offer to you I had discussed this with the Developer who, ultimately, would be funding the compensation payments, and explained to them the risk that, until I had a full unredacted copy of the Agreement, I could not be sure that there weren't matters in there that would depress the value and render my assumptions incorrect.

The Developer was happy to take the commercial risk that they might be overpaying in order to secure a settlement and on the basis that the terms proposed were voluntary so that they did not constitute a statutory Advance Payment and therefore be prejudicial as part of any future Upper Tribunal Lands Chamber proceedings. In addition, any overpayment could be recovered if future proceedings determined a reduced value.

However, the primary motivation for them was to secure cost and time savings by reaching a commercial agreement without the need for the Inquiry proceedings, bearing in mind that they had already agreed commercial terms with the other landowners, hence their willingness to take a view bearing in mind that your clients were the only party withholding agreement.

It was therefore disappointing that, despite the fact that I had made a generous offer (without knowing all the facts) that allowed your clients to come back and submit a further claim, your clients rejected this ostensibly as you had led them to believe that their land was worth a minimum of £30,000,000. You have yet to explain to me how your clients' land in isolation can possibly be 179% of the land value of the entire TSDL and, nearly three years later, I still await that explanation with interest.

As you know, I tried to re-engage with you following the closure of the First Inquiry but, in view of the lack of response, issued my letter dated 16 December 2022. As I was aware that we had different opinions of value in respect of the land within CPO 1 I did not broach that subject but concentrated on trying to acquire Plot 19E. However, you advised on 23 February 2023 that your client required an Advance Payment of £2,330,000. You then conflated my letter of 16 December 2022 with my email of 25 August 2021 without recognising that I had still not been provided with a full unredacted copy of the Promotion and Option Agreement.

You are aware of my contents of my "without prejudice" email dated 14 March 2023 and, as you have previously questioned why that email is marked "without prejudice" I trust that you do not object to me setting out the following text from that email which is entirely relevant to this matter.

"As we are now considering valuations in accordance with statutory provisions it is incumbent upon your client to provide the documents that an acquiring authority would require to make an advance payment pursuant to the legislation. In this regard, no purchaser would proceed without being provided with an unredacted copy of the Option Agreement regardless as to whether your client considers this to be commercially sensitive information. If you are telling me that the Option Agreement falls away if your clients were to sell the relevant land I would have some understanding but I don't know any prospective purchaser who would purchase land that may be subject to draw down rights by another party without knowing the full terms of those rights.

Similarly, your clients' land is subject to agricultural leases such that a purchaser of the freehold interest could not take immediate possession and would be subject to the terms of those leases.

I would therefore be grateful if you would provide:

1) Unredacted copy of the Option Agreement

2) Full copies of all the tenancy agreements between your client's operational body and the landowning bodies in respect of the entirety of their land.

3) Full details of the fees your client is asking the Council to cover.

In the meantime, the Council is taking advice from agricultural land specialists and as soon as your client has provided the requested documents and information, we will be able to respond."

This was not the first time that I had requested these documents, and you would therefore have been fully aware that, if I was to commit the Council to a formal assessment for the purposes of an Advance Payment, I needed to be furnished with all documents relating to the land to be valued in exactly the same way as a purchaser would.

Bearing in mind that my email dated 25 August 2021 clearly stated that *"in the event that I am provided with an un-redacted copy of the Option Agreement… …I will consider whether there is any material impact upon my advice…"* it should have been clear to you that I would amend my valuation in light of these documents if I considered it appropriate to do so. You should not, therefore, have been in any doubt as to why I wanted these documents and the potential for me to amend my previous assessment of value.

In the meantime, the Council was forced to make the Order on 30 March 2023 because agreement had still not been reached with National Highways or your clients in respect of Plot 19E. This was necessary in order to bring matters to a head and minimise further ongoing delay.

You finally relented and provided an unredacted copy of the Promotion and Option Agreement on 4 May 2023. Having reviewed this, I realised that my assumptions as to what land was included within that Agreement were incorrect. In this regard, it was clear that the Agreement **excluded** rather than included the "Control Strips" such that, if Bloor were to purchase the land included within the Promotion and Option Agreement, your clients would still have control over the grant of comprehensive planning permission and implementation thereof by virtue of being an owner of land within the "red line" planning application boundary. This meant that, if full planning permission on a comprehensive basis was to be secured and implemented, your clients' express agreement would be required.

In this regard, the Church Commissioners/CC Projects and the Pitts Family were happy to proceed on an equalisation basis but your clients were insistent, on the basis of your advice, that they had a ransom position such that, as you confirmed, they would not entertain anything that deprived them of this. However, the point that you have consistently overlooked, is that a ransom can only exist if planning consent for development can be secured. In this regard, only a foolish landowner would assist your client to secure a planning permission that allowed them to be ransomed by your clients.

It is abundantly clear from the history of this project that the Church Commissioners/CC Projects and the Pitts Family are not foolish and it is not reasonable, therefore, to assume that, even if a resolution to grant planning permission, could be secured, all the landowners would reach agreement to enable the grant of an actual planning permission.

In effect, by retaining "Control Strips" within the TSDL and taking a ransom stance your clients killed off any prospect of an implementable comprehensive planning permission being secured in the "no scheme" (i.e., absentia the exercise of compulsory purchase powers) world.

Your response to this has been to argue that your clients could secure implementable planning permission for development on their land in isolation but, apart from a few paragraphs in your evidence to the First Inquiry, you have produced no evidence and have refused to engage with me to discuss planning matters or grant access to your clients' planning consultants. In the meantime, I have taken advice from the Council and the Developer has also commissioned independent planning advice

all of which confirms that planning permission would **not** be granted on your clients' land in isolation from the adjoining land holdings.

In simple terms, my valuation in 2021 assumed that the landowners would work together for mutual benefit and deliver the comprehensive scheme on an equalisation basis for common benefit. However, it is now clear that your clients have the ability, in the "no scheme" world, to retain control over a part of the TSDL such that their agreement would be required in respect of any grant of implementable planning permission and it is also clear that they would not agree terms with the adjoining landowners on anything other than a ransom basis. As history more than adequately illustrates, this would simply result in a standoff between the landowners.

Indeed, it is this standoff between your clients and the other landowners that has led to the Council having to intervene in the first place if the current planning allocation is to come to fruition. As such, your ransom position quickly unravels when faced with reality.

A purchaser of your clients' land would therefore be aware that there was no possibility of persuading your client to accept an equalisation approach in common with the other landowners and there was no prospect of securing planning permission for development of their land in isolation. They would therefore form the opinion that there was only a remote possibility, if any, of securing implementable planning permission for development.

In this regard, I am advised by Batchelor Monkhouse, who are agricultural experts, that the market value on a current use basis disregarding any prospect of development would be £12,000 per acre.

Having discussed this with my client's other consultants and considered the matter carefully, it was apparent to me that, if, as your clients insisted, I took a strict statutory valuation approach for the purposes of making a formal Advance Payment, I could only justify a figure of £12,000 per acre as the market would conclude that the likelihood of obtaining the necessary agreements to enable development either as part of a comprehensive scheme or in isolation from the other landowners was remote. I therefore advised you of this by issuing revised Heads of Terms on 21 August 2023.

You are, of course, already aware of all of this. I should also hope that you are aware of paragraphs 2.3.3 and 2.3.5 of the CPA Claims Protocol which states:

"Parties to a Compensation Claim are expected to… …from time to time review their own positions in respect of the Compensation Claim and to communicate any change in those positions to the other party promptly and in writing… …disclose sufficient information to enable the other party to understand properly the substance of the party's position, the evidence available to support it and any other material information relevant to the Compensation Claim."

I appreciate that this is not technically a compensation claim yet but an Advance Payment is part of the same process. In this context I have reviewed my position, communicated my change in opinion to you and have disclosed the substance of my position. I would respectfully point out that you have not done any of this.

In this context, you are now proposing an Advance Payment of £2,000,000 which equates to £36,000 per acre. You have not provided any evidence or argument to me as to why anyone would pay £24,000 per acre in excess of the current use value bearing in mind the terms of the Promotion and Option Agreement, the known intentions of the other landowners, the lack of any planning permission and the planning policy position. Why would anyone bid so much in excess of the existing use values if there was no prospect of any development being released? Where is your planning evidence/arguments to support this approach?

I am therefore left with the difficulty that you are placing considerable pressure upon me to revert to a valuation that, whilst reasonable in light of the information available to me in 2021, is no longer sustainable having regard to the full disclosure of the Promotion and Option Agreement. You are, in effect, asking me to ignore the facts of this case together with the expressed intentions of your clients based on your advice to them because your clients now wish to resurrect an offer that was previously comprehensively rejected by them.

I would be unprofessional and negligent if I did not amend my valuation advice in light of new evidence that is presented to me and I totally reject your argument that I am inextricably bound to opinions expressed in 2021 regardless as to what new evidence comes to light afterwards. I have no doubt that you would be putting pressure on me to change my opinion if the provision of the unredacted Agreement had led me to increase my valuation so it is disingenuous for you to argue that I can't change my opinion when the evidence leads in a direction that you don't like.

All of these points could have been fully explored and discussed with you and your clients' planning consultant had you engaged with me. In this regard, I do not consider that the Inquiry is the appropriate forum for these debates and I fail to see the relevance of a valuation dispute as to the question as to whether the Order should be confirmed.

In this regard, your clients' objection states, at paragraph 2.6, that they "*…are willing to accept an advanced* (sic) *payment based on the Council's estimate of compensation subject to the right to pursue a compensation claim."* I appreciate that the reference to the "Council's estimate" relates to my email dated 25 August 2021 but that offer would never have been made had your clients provided an unredacted version of the Promotion and Option Agreement. You have my revised offer, as issued after the receipt of that unredacted Agreement, and I await your confirmation that your clients are still "*willing to accept an advanced* (sic) *payment based on the Council's estimate of compensation*" so that we can move onto the receipt and negotiation of your clients' reasoned and evidence compensation claim.

I am happy to discuss valuation matters further according to your availability but I trust that you now understand my position and difficulty with your approach. Your clients will, of course, have the opportunity to submit a fully reasoned and evidenced compensation claim in due course, which I will welcome as I still have no idea as to what your valuation is, the basis of that valuation or the evidence upon which it rests.

Obviously, should it be the case that new evidence and/or facts come to light you have my assurance that, as set out in my email dated 25 August 2021 *"I will consider whether there is any material impact upon my advice to Countryside and the Council. "*

In summary:

- Your clients rejected commercial terms that avoided the exercise of compulsory purchase powers

- Your clients deliberately only provided a redacted version of the Option Agreement forcing me to make assumptions in proposing terms at £2,300,000. Your client rejected these terms.

- Your clients insisted that the payment had to be by way of a statutory Advance Payment and they would only deal with the Council

- You finally provided a unredacted copy of the Promotion and Option Agreement on 4 May 2023 in response to my stance that I could not make an Advance Payment without receipt of this

- It was apparent on review of that unredacted copy that my previous assumptions were no longer valid

- Having taken further advice in respect of planning and specialist agricultural valuation matters in light of the release of the unredacted Promotion and Option Agreement I offered £12,000 per acre on 21 August 2023

- My current valuation fully complies with all the statutory assumptions and has full regard to the known physical and legal factors including the terms of the unredacted Promotion and Option Agreement

- You and your clients' solicitor are applying significant pressure on me to ignore everything that has come to light since 4 May 2023 and pretend that nothing has changed so that your clients can resurrect the previous terms with the benefit of hindsight. However, you haven't presented any new evidence or valuation/planning arguments to challenge my conclusions

- You have consistently refused to provide any opinion of value or engage in respect of valuation and planning matters in complete disregard to the RICS requirements and the CPO Protocol of which I am sure you are fully aware. I have laid out my approach but, apart from informing me that your opinion of value is significantly higher and that I should stick to my previous valuation for the purposes of the Advance Payment, you have provided nothing by way of substance to assist our valuation and planning discussions

I am aware that I have not addressed the other points in your email of 30 November 2023 but, as you are refusing to provide me with a copy of the Licence or make a proposal in respect of costs I propose that we park these issues for the time being. No doubt we can discuss these at our proposed meeting.

In this regard is the proposed meeting still taking place? You have my teams' availability.

I would be grateful if, in the meantime, you would set out your valuation together with the assumptions underpinning it and the evidence upon which you have relied.

Kind regards

Your sincerely,

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