
THE TOWN AND COUNTRY PLANNING ACT 1990 AND
THE ACQUISITION OF LAND ACT 1981

CHICHESTER DISTRICT COUNCIL
(TANGMERE) (NO 2) COMPULSORY
PURCHASE ORDER 2023

**SUPPLEMENTARY REBUTTAL STATEMENT
OF EVIDENCE**

OF

PETER ROBERTS FRICS CENV

ON BEHALF OF

CHICHESTER DISTRICT COUNCIL

1.0 REBUTTAL – THE HEAVER OBJECTORS

- 1.1 I have been provided with a Rebuttal Statement of Evidence from Mr Bodley on behalf of Bosham Limited and Shopwyke Limited (the “Heaver Objectors”) and set out my comments as follows:
- 1.2 Whilst Mr Bodley states that he understands the role of an expert witness, he primarily focuses on questioning my professionalism and motives. In contrast to Mr Bodley, I have sought to concentrate on the issues raised by him that are directly relevant and, hopefully, helpful to this Inquiry.
- 1.3 My lack of comment in respect of a particular comment or issue should not be taken as acceptance thereof or that I am in agreement with Mr Bodley in any way.

Mr Bodley’s Scope of Evidence

- 1.4 Mr Bodley states at paragraph 1.20 of his statement that:
“The Owner’s objection to CPO 2 is not about the amount of compensation”.
- 1.5 If this statement was correct, agreement would have been reached by now.
- 1.6 In reality, this objection is primarily, if not exclusively, founded on a dispute as to the amount of compensation due to his client comprising, firstly, the land value and, secondly, the amount to be paid, if any, in respect of professional fees.
- 1.7 In this context, terms have been negotiated that allow for an initial payment and determination of the final amount by the Upper Tribunal Lands Chamber but agreement has not been reached in respect of that initial payment and the timing thereof. I do not consider it to be controversial for me to take the view that the initial payment is, by its very nature, part of the compensation to be paid and, ergo, the objection is clearly mainly, if not solely, about the amount of compensation.
- 1.8 Contrary to Mr Bodley’s assertion at paragraph 2.13 of his statement, the Council is more than prepared to agree a straightforward purchase of the required land but not at his suggested minimum value of £30,000,000 or even £12,000,000. Both these figures are completely unsupported and are not credible.
- 1.9 In this regard, I have repeatedly asked Mr Bodley to tell me what his actual opinion of value (as opposed to his negotiating position) is and to allow me to engage with his client’s supporting consultants to try and start to agree matters but he has consistently refused.
- 1.10 In this context, I note that Mr Bodley confirms at paragraph 1.13 that:

“...I have been assisted by other members of the Owner’s professional team which includes Savills, Quod, Mosaic Urban Design and Materplanning, i-Transport, PG Consulting Civil and Infrastructure Engineers, Ashurst LLP and Counsel.”

- 1.11 It is clear from this statement that his unwillingness to reveal his position on valuation matters is by choice rather than through a lack of appropriate support. This means that his valuation, to the extent that he has carried one out, and any supporting evidence including in respect of planning matters, has been protected from scrutiny by the Council and cannot therefore be tested.
- 1.12 His approach has been to request an initial payment followed by a reference to the Upper Tribunal Lands Chamber but without any indication as to what he might be asking the Tribunal to determine.
- 1.13 I have accommodated his wishes and tried to reach agreement but the simple fact is that we don’t agree the value of the initial payment and he is not prepared to accept my/the Council’s opinion of value whilst being unprepared to share his.
- 1.14 I have fully engaged with Mr Bodley but, apart from the shifting positions on the part of Mr Bodley’s clients as to whether they require the service of compulsory acquisition notices following the confirmation of the Order or a voluntary reference, the two key issues are still the amount of the fees to be claimed by Mr Bodley’s clients and the initial payment.
- 1.15 With respect to the first point, all my offers have been rejected by Mr Bodley but no information was provided as to what fees were being claimed until 21:27 PM on 6 December 2023 which is far too late to be considered properly. Previous to this, Mr Bodley has effectively left me negotiating with myself.
- 1.16 With regard to the amount to be paid as an initial payment, the position is that I have made offers on different bases having regard to the circumstances and the information available to me at the time of making those offers. Whilst it is clear that Mr Bodley doesn’t agree with any of my opinions of value I do not know whether or not he agrees with the factual matrix upon which each valuation is based.
- 1.17 There is no dispute, whatsoever, that I proposed an initial payment prior to the First Inquiry of circa £2,300,000. However, Mr Bodley and his client rejected this offer.
- 1.18 Whilst he/his client clearly regret not accepting that offer, the important point that is central to this matter, is that this offer was based on the information available to me at that point in time.
- 1.19 That information included a redacted copy of the Promotion and Option Agreement that was in force over his client’s land in favour of Bloor. It was only after receipt of the unredacted copy of this

Agreement that I realised that the factual matrix was not as I had previously assumed such that my previous valuation was no longer sustainable.

- 1.20 I had assumed that Mr Bodley understood this but, as he has continued to try to hold me to the 2021 offer, I set out the position to him in detail on 3 December 2023.
- 1.21 Nothing in that letter would have been news to him and, bearing in mind that his evidence was submitted on 5 December 2023, he had time to take this into account when drafting his evidence. However, he has completely ignored it and maintained the mantra that I have “resiled” from my previous offer as if that is a bad thing for an expert to do and suggesting that I have ulterior motives for doing so.
- 1.22 As Mr Bodley should be aware, it is essential that a valuer and/or expert changes their position when the facts and the evidence changes. In this regard, I would be in error if I stood by a valuation despite the factual matrix changing or new evidence coming to light and there is plenty of Court decisions criticising experts for not changing their opinions when the facts and evidence changes. I cannot therefore agree with the approach that Mr Bodley is asking me to take and, ultimately, my duty is to the Inquiry not Mr Bodley or his client.
- 1.23 The simple position is that I have changed my previous decision because the factual matrix has changed. That is entirely appropriate behaviour and I would be correctly criticised by any Court/Tribunal/Inquiry if I hadn’t done so.
- 1.24 It should not be forgotten that Mr Bodley was requesting an Advance Payment which is a statutorily defined payment that represents 90% of the Council’s opinion of value. There is no ability for the Council to make an Advance Payment on any other basis than their own opinion.
- 1.25 It was factually the case that my opinion of market value had changed in light of new information and therefore my assessment of the Advance Payment changed accordingly. As I state in the attached letter, had I been in possession of that information prior to the First Inquiry, I would not have recommended the higher offer.
- 1.26 Other than expressing his displeasure at my approach, nothing has been provided to me by Mr Bodley by way of valuations or evidence for my consideration.
- 1.27 I have attached a copy of this letter at **Appendix 1**.
- 1.28 There is nothing sinister in the Advance Payment being reduced and there is nothing else I can do but maintain my position in circumstances whereby Mr Bodley refuses to accept my change of

opinion and yet will not even provide even an opinion of value let alone supporting information of his own.

- 1.29 I have asked Mr Bodley to provide me with access to his client's planning consultants, bearing in mind that the valuation exercise is driven by the planning assumptions but he has refused. If he changes his approach, I will take into account anything that is provided to me if this new information has a material impact on my recommendation to the Council.
- 1.30 In simple terms, whilst Mr Bodley denies this, the maintenance of the objection appears to be mainly, if not wholly, intended as a tactic to try and force the Council to increase their financial offer to a level beyond which can be justified on the basis of the existing information and evidence.
- 1.31 Agreement has not been reached simply because I cannot advise the Council to meet his aspirations and no evidence has been provided to me by Mr Bodley to assist me to change my recommendation to the Council.
- 1.32 If Mr Bodley was serious in trying to agree valuation matters he would have disclosed his position and supporting evidence by now and I could have taken it into account and engaged with him on this.

National Highways

- 1.33 I asked Mr Bodley and his clients to provide evidence to me as to the existence of access rights to the A27 over land owned by National Highways. This was **not** because I disputed such rights but because **no** evidence had been provided to me by him or his client despite the issuing of Land Interest Questionnaires and requests from me. Bearing in mind our dispute in respect of valuation matters, I considered it important to have the correct information so that I could take legal advice.
- 1.34 In the absence of any assistance from Mr Bodley or his client, it was necessary for me to approach National Highways to establish the position with them. It was National Highways who provided me with copies of the relevant documents and I then passed these onto to Mr Bodley in the spirit of openness.
- 1.35 At face value, these documents did not support Mr Bodley's contentions and I therefore made this point to him asking for further evidence. I also asked National Highways to confirm their understanding of the position to me. I do not consider this to be remotely unreasonable and is just part of any due diligence exercise particularly bearing in mind the levels of value being contended for. It is entirely appropriate that I relied on the advice provided to me by both National Highways

and my legal advisors and, whilst I appreciate that Mr Bodley did not agree with that advice he did not provide any evidence or argument to counter that advice.

- 1.36 Once I become aware that the Council needed to acquire land from National Highways, I engaged with their internal surveyor who did not seem particularly familiar with the process. Her initial reaction was that the Council would have to secure another Order before they would be prepared to transfer the land but I eventually persuaded her to appoint agents to engage with me.
- 1.37 National Highways were clearly aware that Mr Bodley's clients were arguing that they had a ransom position and took the view that any ransom should be shared with them. However, following professional advice, they accepted that, in the "no scheme" world there was no ransom as no development would come forward absentia the exercise of statutory powers.
- 1.38 Heads of Terms were proposed that recognised that their land had nominal value in the "no scheme" world but an incentive was agreed in order to smooth negotiations. It was at this point that Mr Bodley started asking for details of the settlement. Bearing in mind that no settlement had been completed I saw no reason to enter into a tripartite negotiation but took instructions on the point in any event.
- 1.39 National Highways made it very clear that they did not want to end up being in the middle of negotiations between Mr Bodley's client and the Council and I respected their request in this regard. I appreciate that Mr Bodley clearly wanted to get involved but, at the end of the day, the negotiations were between the Council and National Highways and I was not prepared to put my relationship with National Highways at risk just to satisfy Mr Bodley.
- 1.40 In this regard, I note that Mr Bodley appears to have been provided with details of my correspondence with National Highways but National Highways did not provide any details to the Council as to their discussions with Mr Bodley's client other than to write to me expressing their disappointment that, according to Ashurst, the Council was trying to block access to Mr Bodley's client's land. This accusation was entirely false and I note that Mr Bodley does not challenge my evidence on this point.
- 1.41 I was aware that Mr Bodley's client was placing pressure on National Highways to explicitly record certain rights of access on the title of the land to be transferred. I considered that this was not a reason to pause the sale to the Council as the land would be sold with the benefit of any existing rights and Mr Bodley's client would have every opportunity to present arguments and evidence to, ultimately, the Upper Tribunal Lands Chamber to demonstrate the existence of such rights to the Council as part of their compensation claim.

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- 1.42 As is already set out in the evidence, Mr Bodley's client decided, rather than arguing these points at the Upper Tribunal Lands Chamber, to injunct the transfer of the National Highways land to the Council. I presume that this was so that they could apply pressure to National Highways to grant explicit rights of access prior to any transfer to the Council.
- 1.43 I understand that the injunction has been lifted but it remains the case that there is now insufficient time for the Council to re-engage with National Highways to transfer the required land and the previous draft terms will need to be reviewed in light of the change of circumstances. In any event, there is no certainty that the transfer will be completed in sufficient time prior to the intended implementation of the development.

Approach to Negotiations

- 1.44 It is apparent that Mr Bodley does not consider that I have negotiated in good faith and he provides extensive copies of correspondence in an attempt to prove his point.
- 1.45 I am content that when this correspondence is taken as a collective whole, it is abundantly clear that there have been extensive attempts to reach agreement and that I have complied with all the relevant standards expected from valuers and expert witnesses. I accept that agreement has not been reached but it has not been for lack of effort on the Council's part.
- 1.46 His assertions that there has been insufficient engagement, bearing in mind his refusal to discuss even basic valuation and planning principles or reveal his opinion of value, and that I have acted inappropriately are not credible. However, I see no benefit to these proceedings in responding to his various criticisms.
- 1.47 Notwithstanding this, the point that must be stressed is that the Council can only enter into agreements that fully align with their statutory duties and obligations. There are valid reasons that fully justified the offers at the times they were made which Mr Bodley could not have been ignorant of.
- 1.48 Mr Bodley and his client will have to present their own assessments of value in due course if they wish to pursue their ransom argument. As part of that I hope that Mr Bodley would make his client's consultants, as listed at paragraph 1.13 of his Statement, available for negotiations so that we can move toward a proper reasoned settlement.
- 1.49 The other point that has been overlooked by Mr Bodley is that the Developer is incurring significant cost and delay as a result of having to go through these proceedings. They were happy to agree

commercial terms on either an optionality approach or an outright purchase to avoid these proceedings.

- 1.50 It is entirely usual for an option approach to be taken when land assembly is uncertain but, notwithstanding the other points made by Mr Bodley, the real reason in my mind, that this approach was rejected by Mr Bodley was because he has convinced himself that his client has a ransom position simply because his client's land abuts the A27 without any consideration as to whether the market perceives that such a ransom exists and/or pay a premium having regard to all the facts of this case.
- 1.51 There is no benefit whatsoever to either the Council or the Developer in deliberately avoiding reaching agreement and for Mr Bodley to imply that I have acted improperly to try and prevent agreement is illogical. In this regard, agreement would have been reached had Mr Bodley lowered his expectations as to the initial payment bearing in mind that the Council has never objected to the role of the Upper Tribunal Lands Chamber such that his client has never been offered terms that would leave them short or restrict their ability to argue their position.
- 1.52 In this context, I note that Mr Bodley does not explain how maintaining the current impasse would be to the advantage of either the Council or the developer which further underlines the point that his comment is not credible.
- 1.53 It is notable that there has been extensive and detailed negotiations on a "without prejudice" basis since 4 December 2023 such that they are not referred to within my evidence. However, it is clear that there remains significant issues both with pre-existing issues and new matters that have come now come to light.
- 1.54 I should point out that, as happened at the First Inquiry, the only remaining objections at the opening of this Inquiry comprise this objection and the objections submitted in respect of the Tangmere Medical Centre by the Other Heaver Objectors.
- 1.55 There is no reason for the objections submitted in respect of the Tangmere Medical Centre to be maintained bearing in mind that there is no known dispute and the terms offered by the Council are on materially the same basis as those approved by the Inspector at the Original Inquiry. Furthermore, engrossments were issued for completion by the Other Heaver Objectors on 14 November 2023 but, 23 days later, they have still not been signed and are still awaited.

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- 1.56 It is therefore, once again, the case that all objections have been withdrawn except those made by Mr Bodley's client(s). Such a high success rate is, in my opinion, solid evidence of my/the Council's approach in this matter.
- 1.57 As a final comment I would refer back to sections 3 and 5 of my main Proof of Evidence which set out the history of negotiations prior to this Inquiry. Mr Bodley glosses over these events but they cannot be ignored as they clearly set out that the Council and the Developer have been trying to reach agreement with Mr Bodley's clients since 2018 and the other landowners had tried to reach agreement prior to this. As such, neither I nor the Council are the common denominator in the failure to secure full site assembly.
- 1.58 Regardless as to whether or not my valuation approach is reasonable, both the Council and the Developer have been happy that valuation disputes can be determined by the Upper Tribunal Lands Chamber such that there has been no attempt to prevent Mr Bodley's clients from being able to claim their full entitlement.
- 1.59 In this regard, matters concerning the amount of compensation are not material to the confirmation of this Order and it is clear that confirmation of this Order is required in order that the Heaver Objectors can have the matter determined at the appropriate forum bearing in mind that they have confirmed that they are willing to make their land available.

2.0 CONCLUSIONS

2.1 There is nothing in Mr Bodley's Statement that leads me to change any of my conclusions as set out in my previous Rebuttal Statement and evidence.

2.2 The facts of this matter are:

- Agreements have been reached with all other landowners and parties benefiting from rights in the Order Map with the exception of National Highways.
- It has not been possible to agree final terms with National Highways due to the injunction only being lifted relatively recently.
- Other than those objections submitted by Ashurst on behalf of the Heaver Objectors and the Other Heaver Objectors there are no outstanding statutory objections.
- Engrossments were issued in respect of the objections made on behalf of the Other Heaver Objectors on 14 November 2023. The Council are still awaiting their signature and return.
- The two main issues in dispute between the Council and the Heaver Objectors are the amount of initial compensation to be paid in respect of the land and the reimbursement of costs.
- Disputes in respect of compensation are not relevant to this Inquiry.
- This Order is required in its entirety as it cannot be guaranteed that agreement with National Highways and Mr Bodley's client will be reached nor that the Original CPO will not expire prior to the confirmation, free from challenge of the Order.
- The Order is also required in case history repeats itself and it transpires that Plots 19A and F are not adopted highway.
- The same approach has been taken with Mr Bodley and his client as with all the other parties with whom agreements have been reached.
- The Council's engagement with landowners and affected parties has been successful with the sole exception of the Heaver Objectors and the Other Heaver Objectors. This is clear testament to the approach taken by the Council's intentions to only exercise compulsory purchase powers as a last resort and exhaust all efforts in achieving this.

3.0 STATEMENTS OF TRUTH

3.1 I confirm that the statements set out at paragraphs 2.10 and section 15 of my evidence also apply to this Supplementary Rebuttal Statement.

A handwritten signature in blue ink, appearing to be 'PR', enclosed within a blue circular scribble.

Peter Roberts FRICS CEnv 7 December 2023