

BOSHAM LIMITED AND SHOPWYKE LIMITED

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

Summary Rebuttal Statement of Evidence of

Matthew Bodley

5 December 2023

Ref: APP/PCU/CPOP/L3815/3321240

1. INTRODUCTION

- 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. I have over 33 years' professional experience, 29 of which have been in the field of compulsory purchase and compensation.
- 1.2 My evidence demonstrates that CPO2 is not necessary insofar as it relates to the land owned by Bosham Limited and Shopwyke Limited (the "**Owners**").
- 1.3 The Owners accept that their property interests are included in the confirmed CPO1 which enables the Council to acquire the majority of their land. They also accept that the Additional Land which appears to form the rationale for CPO2 is also required, but they are willing to transfer this land to the Council on terms which appear to have been agreed with Mr Roberts.
- 1.4 The Owners have no objection to their land being acquired on reasonable terms. The Owners' objection is not about compensation. 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; (ii) CPO2 should have been confined to the land outside of CPO1; and (iii) there has been a blatant failure to comply with the CPO Guidance and to seek to enter into meaningful negotiations.
- 1.5 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 land could be subject to confirmed CPO powers by a further three years.
- 1.6 It is accepted that there is a significant difference of opinion as to the quantum of the compensation. This does not need to be agreed 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 on this basis for over a year.
- 1.7 The Council already has the power to acquire all interests in CPO1 and has stated that agreements have been reached with all other parties. Therefore, in respect of CPO1 the Council and/or Countryside has the benefit of agreements and/or a confirmed CPO to acquire all interests.
- 1.8 The Owners are agreeable to a voluntary transfer of their interests which fall outside of CPO1 for a nominal consideration, provided that the transfer is linked to the acquisition of the entirety of their landholdings. They are currently continuing in their attempts to try to agree terms with the Council to achieve this.
- 1.9 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 for CPO2. The Council's approach to negotiation does not meet the requirements of the CPO Guidance.

- 1.10 As the Owners are agreeable to a sale of their land by agreement and the remainder of the land within CPO2 is already within CPO1 or, in the case of the only other interest outside of CPO1, terms have been agreed, CPO2 is unnecessary.
- 1.11 The only other interest outside of CPO1 is owned by National Highways (“NH”). The Owners land has an unrestricted right of access across the NH Land. This was subject to legal proceedings between the Owners and NH. These have recently been settled in the Owners’ favour and the access right has been formalised by way of an Access Deed, a copy of which has been provided to the Council. The proceedings have been discontinued meaning that NH is free to transfer its land to the Council in accordance with the terms which I understand have been agreed.

2. SUMMARY OF NEGOTIATIONS

- 2.1 The Owners have been attempting to reach an agreement based on the principles first offered by Mr Roberts in May 2022. An agreement was drafted based on these terms 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 agreement structure. Mr Roberts has made incorrect and misleading statements as to the status of his compensation estimate, seeking to make out that it was a commercial offer as opposed to the compensation estimate that it clearly was. He has said that the offer was made by Countryside (not the Council), which is also not true. He has also sought to conceal the offer by stating that it was without prejudice despite the fact it was submitted as evidence to the CPO1 inquiry.
- 2.2 He has repeatedly found reasons not to reach agreement, previously citing a lack of information about the Bloor Option. 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 over the land. Assurances have been given that vacant possession can be delivered on transfer.
- 2.3 Mr Roberts’ approach has consistently been to delay, obfuscate and avoid any commitments on the part of the Council.

3. GROUNDS OF OBJECTION

- 3.1 The principal Grounds of Objection are:

CPO2 is Unnecessary

- 3.2 CPO2 is unnecessary as CPO1 is already confirmed over the majority of the CPO2 Land. There are only two parties with interests outside of the CPO1 Land, namely the Owners and NH, and both have confirmed their agreement to sell their land outside of CPO2 for nominal consideration.
- 3.3 It is not clear what efforts, if any, have been made by the Council to acquire Plots 19A and 19F. These plots comprise public highway and the Council requires them for

highway purposes. There is no need for the Council to own these plots to achieve this purpose.

There are Alternative Means of Delivering the Scheme

- 3.4 The majority of the CPO2 Land is already included in the confirmed CPO1 meaning there is a clear alternative to CPO2. With regard to the interests which fall outside of CPO1 both landowners are willing to dispose of their interests by agreement.
- 3.5 Alternatively, CPO2 could be amended to exclude the CPO1 Land. CPO1 will remain operable until 22 December 2024.
- 3.6 It is neither necessary nor proportionate for the Council 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

- 3.7 As summarised in the previous section, the Council has not made genuine attempts to acquire the Owners' interests by agreement without recourse to CPO2.
- 3.8 There have been two recent inspector's decisions not to confirm CPOs, where it was stated that the acquiring authorities were not able to demonstrate that they had made adequate attempts to acquire interests by agreement.
- 3.9 These decisions demonstrate that where an acquiring authority has not made genuine attempts to acquire interests by agreement, the use of CPO powers is not justified.
- 3.10 CPO2 is premature and unnecessary and cannot be said to be a measure of last resort.

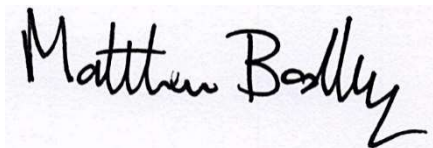
CPO2 Fails to Comply with the CPO Guidance

- 3.11 The Council has failed to comply with the CPO Guidance in respect of its attempts acquire CPO2 interests by agreement. It has also failed to mitigate uncertainty and stress by "*keeping any delay to a minimum by completing the statutory process as quickly as possible*". Its decision to make CPO2 less than halfway through the operable life of CPO1 is in direct conflict with this guidance.
- 3.12 Instead, the Council's approach would extend the period of uncertainty.

4. SUMMARY AND CONCLUSION

- 4.1 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;

- c) the purpose of CPO2 could be achieved by other means – either by (1) acquisition of interests in CPO1 pursuant to CPO1 and acquisition of the two additional interests by agreement; or (2) by amending CPO2 to only include the Additional Land;
 - d) 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;
 - e) the Council has not made proper and genuine attempts to acquire all of the interests within CPO2 by agreement on reasonable terms;
 - f) the Council has failed to demonstrate that there is a compelling case in the public interest and, in particular, that the CPO2 is necessary as a last resort; and
 - g) 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.
- 4.2 Accordingly, CPO2 should not be confirmed or, at the very least, CPO2 should be modified to exclude the Owners' interests in the CPO1 Land.

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 tail on the 'y'.

Matthew Bodley
For and on behalf of Matthew Bodley Consulting Limited

5 December 2023