**APP/PCU/CPOPF5540/3326950**

**CHICHESTER DISTRICT COUNCIL**

**THE CHICHESTER DISTRICT COUNCIL (ACCESS TRACK OFF CROOKED LANE, BIRDHAM) COMPULSORY PURCHASE ORDER 2023**

# OPENING STATEMENT FOR THE ACQUIRING AUTHORITY

*Unless otherwise stated, defined terms are as used in the Council’s Statement of Case.*[[1]](#footnote-1)

**Introduction**

1. The evidence of the acquiring authority (“**the Council**”) shows that the requisite[[2]](#footnote-2) compelling case in the public interest for confirmation of the Order is clearly established. As Mr Bristow explains in his proof of evidence[[3]](#footnote-3), the Scheme will contribute to the economic, social and environmental well-being of the area in which the Order Land is situated. Planning permission is in place, as are funding arrangements. Appropriate efforts have been made by the Council to acquire by agreement the land and rights necessary for the Scheme. To the extent that confirmation of the Order will affect rights under Art. 8 of the European Convention on Human Rights (“**ECHR**”) and Art. 1 of the First Protocol to the same, any interference with those rights is in accordance with the law, necessary in the public interest and proportionate.

**Planning matters**

1. In satisfaction of the 2019 Guidance[[4]](#footnote-4), the Council has a clear idea of how it intends to use the Order Land. The purpose of the Order is to acquire the Order Land so that it can be used to provide a road access from Crooked Lane to the Scheme, the latter being the development of 15 affordable homes on land to the west of the Order Land[[5]](#footnote-5) (“**the Housing Site**”). The Order is thus necessary to enable delivery of the Scheme; if the Order is confirmed, the freehold owner of the Housing Site (Martlet Homes Limited: “**Martlet**”[[6]](#footnote-6), a Registered Provider of affordable housing) will construct the 15 affordable homes together with the access road, at its own cost and expense. Each of the affordable homes will be let at a social rent.
2. The purpose pursued by the Council in making the Order fits in with both the Council’s adopted Local Plan and with the NPPF[[7]](#footnote-7). That point is evidenced *inter alia* by the fact that the Council granted full planning permission for the Scheme in 2013[[8]](#footnote-8) and again in 2016 (under s. 73 of the 1990 Act: “**the Planning Permission**”[[9]](#footnote-9)). The Planning Permission has been lawfully implemented and remains extant, as certified by the lawful development certificate granted by the Council on 25 July 2017[[10]](#footnote-10).
3. As well as according with the Council’s adopted Local Plan and with the NPPF, the Scheme accords with the Birdham Parish Neighbourhood Plan, which identifies[[11]](#footnote-11) the Housing Site as one of four sites with planning permission[[12]](#footnote-12) that will enable the indicative 50 unit housing number that is stated for Birdham in the Council’s Local Plan[[13]](#footnote-13) to be met.

**The extent to which the Scheme would contribute to the economic, social or environmental well-being of the area**[[14]](#footnote-14)

1. This aspect of the Council’s case is presented in more detail in Section 7 of Mr Bristow’s proof of evidence[[15]](#footnote-15). As noted above, each of the 15 affordable homes will be let at a social rent, i.e. a “target rent” that is determined through the national rent regime. This typically produces a rent of about 50% of market rent. This is distinct from other forms of affordable housing such as affordable rent (let at rents of about 80% of market rent), intermediate (shared ownership) housing, starter homes and discount market sales. The affordable homes will therefore be available to the most disadvantaged members of the community.
2. The new homes will be allocated by the Council (through a nomination agreement with Martlet) with priority being given to those on the Council’s housing register with a local connection to Birdham Parish. Where no household from Birdham bids for a property, then the “cascade” provisions of the Council’s Allocations Scheme will make the homes available to households on the Council’s housing register in adjacent parishes within the Council’s area.
3. As Mr Bristow explains, there is a significant need for affordable social rented housing to come forward at all levels: at a District level; more locally in the Manhood Peninsula; and at a local Parish level in Birdham. The Council’s Housing Register indicates a need for 19 units of affordable rented accommodation in Birdham[[16]](#footnote-16).
4. It is however important to note that there is not actually any requirement for the Council to show a need for affordable housing in Birdham specifically before the Order can be confirmed. The question is a broader one: whether there is a compelling case in the public interest for confirmation of the Order. The current need for affordable rented housing across the wider district stands at 2,206 units; the need for social rented homes specifically is 278 homes *per annum* across the entire HEDNA[[17]](#footnote-17) study area. The Manhood Peninsula (the HEDNA sub-area within which Birdham Parish sits) has the lowest median household income (£32,400) of the five sub-areas; analysis indicates that over the remainder of the plan period (up to 2029) there will be a significant shortfall in delivery of affordable rental units against the total need of 370 such units[[18]](#footnote-18).
5. It is plain that even if there were no “Birdham-specific” need (which there is, as Mr Bristow has evidenced), the case for confirmation of the Order would still be overwhelmingly compelling having regard to the wider need for affordable housing.
6. In addition to unlocking delivery of the Scheme and thus making a valuable contribution to the supply of much needed affordable housing within the Council’s area, the social well-being benefits that will result from confirmation of the Order include the provision of three bungalows, which will increase the opportunities for elderly / disabled residents to remain within the area. More generally, the support that the Scheme will provide for existing village businesses and facilities will facilitate the continued presence of those businesses/facilities, contributing to the social capital of the residents of Birdham and its surrounding area.
7. Turning to the economic well-being benefits of the Scheme, in addition to construction jobs these include the support that 15 new households will provide to existing village businesses and other facilities.
8. The environmental well-being benefits of the Scheme include the provision of modern, energy efficient homes that will perform well in terms of energy and fuel use and costs. The proximity of the Housing Site to a number of local facilities will also contribute to reduced reliance on the private car.

**Potential alternatives**

1. The purpose for which the Council is proposing to acquire the Order Land cannot be achieved by any other means[[19]](#footnote-19). As Mr Bristow and Ms Poulter explain in their proofs of evidence[[20]](#footnote-20), potential alternative road accesses to the Housing Site via (i) Chaffer Lane (ii) The Saltings and (iii) St James’s Close or Westlands Lane have been considered. All three potential alternative accesses would have significant negative impacts including (i) a significant impact on the Chichester Harbour AONB; (ii) greater impact on the rural landscape and an impact on an increased number of residential properties (owing to their greater length); and (iii) in the case of The Saltings, the demolition of a modern dwelling.
2. Additionally, it does not follow from the fact that outline planning permission was granted on appeal on 9 February 2024 for residential development at Land off Main Road, Birdham (“**the Main Road Site**”)that the broader purpose that underlies the Order (the provision of affordable housing for social rent) can now be achieved by other means.
   1. First, there is no evidence before the inquiry of the Main Road appellant’s intentions (i.e. as to whether Gladman Developments Ltd intends to build out the Main Road Site immediately, or sell the site on, etc.).
   2. Secondly, the Main Road planning permission is an outline planning permission and in Mr Bristow’s view, a period of 12-18 months is likely to be necessary before development of the Main Road Site can commence; the delivery timescale for the Crooked Lane Housing Site is more immediate.
   3. Thirdly, it is unclear how quickly the affordable housing units (and social rented units in particular) of the Main Road scheme will come forward: the Main Road s. 106 obligation permits the developer to allow up to 74 Open Market Units (half the scheme) to be built, sold and occupied before any of the affordable units need to be provided.
   4. Fourthly, the Main Road Site is by reason of its size a “strategic” site and so will be open to “bidders” outside Birdham who might, in certain circumstances, occupy the properties despite not having a local connection. As Mr Bristow explains in his rebuttal, an Affordable Housing Exception Site (also referred to as a Rural Exception Site) such as the Crooked Lane Housing Site prioritises those with a local connection above all others, until there are no bidders left who are able to demonstrate a connection to the parish; then the process moves to the surrounding parishes in the same format; and then to bidders from across the district. In contrast, on strategic sites such as the Main Road Site (even where such sites are located in rural areas), priority may be given to banding rather than local connection, as the sites are considered strategic in size. Therefore on a strategic site, the affordable housing may not necessarily become available to those with a local connection.
   5. Finally, even if there were no longer any need for affordable housing in Birdham (which is not the case), there would remain a serious need for affordable housing at both HEDNA sub-area and district level.

**Funding**

1. The Council can show that all the necessary resources are likely to be available to enable the Scheme to be brought forward (i.e. built out) within a reasonable time-scale[[21]](#footnote-21). This is detailed in the proof of evidence of Ms Poulter[[22]](#footnote-22). The Scheme benefits from various sources of funding, as follows:
   1. Homes England has contracted, via its Strategic Partnership Agreement with Hyde, to provide a fixed rate of grant funding per affordable home for new developments that meet the relevant criteria. One of those criteria is that the development will achieve a start on site by March 2026 and practical completion by March 2028. Those dates are achievable for the Scheme if the Order is confirmed. The grant that will be provided for the Scheme via the Strategic Partnership Agreement is £2.01m.
   2. Hyde has allocated £450,000 of its Recycled Capital Grant Funding, which it holds internally, towards the Scheme.
   3. Approximately £300,000 of funding originally secured through the Rural Housing Partnership Fund remains ring-fenced by the Council specifically for the Scheme.
   4. The balance of the total costs of the Development will be funded by Hyde. Hyde has sufficient funding set aside in its Financial Plan to deliver the Scheme. Hyde’s most recent financial statements confirm that at March 2023 it had a core operating surplus of £57.4m and £873m of available liquidity.
2. The Council additionally notes that Hyde has extensive experience of delivering and managing housing-led developments across the South East. The Council is satisfied that Hyde has the capability and capacity to deliver the Scheme.

**There are no impediments to the implementation of the Scheme**

1. The 2019 Guidance[[23]](#footnote-23) requires the acquiring authority to show “that the scheme is unlikely to be blocked by any physical or legal impediments to implementation”, including the programming of any infrastructure accommodation works or remedial work that may be required; and any need for planning permission or other consent or licence.
2. As already explained, the Scheme benefits from an extant grant of full planning permission. No infrastructure accommodation works or remedial works are required other than (i) the usual utility connections to services in Crooked Lane[[24]](#footnote-24); and (ii) a highways agreement with West Sussex County Council (“**WSCC**”, the highway authority). Detail on the latter is provided by Mr Bristow in his proof of evidence[[25]](#footnote-25).
3. In the light of the above position, the Scheme is unlikely to be blocked by any physical or legal impediments to implementation.

**Negotiations**

1. The evidence of Ms Blackman[[26]](#footnote-26) demonstrates that the Council has taken reasonable steps to acquire all of the land and rights included in the Order, by agreement. First Martlet Homes and subsequently the Council have over a long period of time attempted to reach agreement with those parties who have or claim an interest in or right over the Order Land.

**Objections**

1. 26 objections were received following the making of the Order, of which 21 were non-statutory and five were statutory. As regards the five statutory objections, heads of terms have been agreed with three of the five landowners.
2. The Council has identified ten recurring “themes” within the objections received. Its response to each of those themes is, in summary, set out below[[27]](#footnote-27). The Council notes at the outset however that many of the points raised are points that have in effect already been addressed through the planning process.
   1. “Inappropriate access”; and
   2. “Highway safety”: the proposed access road has already been fully considered and approved as part of the planning process. WSCC as the local highway authority has confirmed that the proposed access road: is sufficiently wide to allow two vehicles to pass; includes speed reducing features; complies with the Manual for Streets guidance; raises no safety concerns in respect of the proposed pedestrian crossing point; and will generate a low volume of vehicular traffic. For all these reasons WSCC raised no objections to the grant of planning permission for the proposed access road. Martlet’s highways consultants have since produced an updated Transport Technical Report which includes an updated Stage 1 Road Safety Audit. That report concludes that the proposed access design is safe and complies with national and local design guidance.
   3. “Unsuitable use of Council powers”: the Council has explained in its evidence how the various legislative requirements together with those of the 2019 Guidance[[28]](#footnote-28) have been satisfied.
   4. “Lack of infrastructure, flooding risk, damage to nature”: this theme is addressed by both Mr Bristow and Ms Poulter in their proofs of evidence. These issues were addressed through the planning process. As regards the risk of flooding, the relevant consultees (the Council’s Drainage Engineer and Southern Water) have confirmed that there are no concerns in relation to (i) the Scheme’s drainage or (ii) risks from flooding. Similarly, neither the Environment Agency nor Natural England raised any objection to the grant of planning permission for the Scheme.
   5. “Unsuitable location and/or no need for affordable housing”: the suitability of the Housing Site for affordable social rented housing has been established through the grant of planning permission for the Scheme. There remains a serious need for affordable housing, as explained above.
   6. “Affordable housing not financially viable”: funding arrangements are in place for the delivery of the Scheme, as also explained above.
   7. “Human rights”: this issue is addressed below. A specific concern having been raised over negotiations being undertaken in advance of the Order being made, the Council would emphasise that negotiations were undertaken in accordance with best practice and the requirements of the 2019 Guidance[[29]](#footnote-29).
   8. “Error in Planning Permission”: there is nothing in this point. The Planning Permission has been lawfully implemented and remains extant. There was no legal challenge to the lawful development certificate that was granted by the Council in July 2017.
   9. “No well-being benefits”: the significant well-being benefits that will result from unlocking delivery of the Scheme are set out clearly in Mr Bristow’s proof of evidence[[30]](#footnote-30).
   10. “Error in CPO process”: the Council is satisfied that the requisite statutory process was followed and that all necessary notices and advertisements were placed. Following the service of notices, an affected party informed the Council that an incorrect e-mail address had been provided on the notices for the submission of objections. The Council e-mailed all affected parties to inform them and provided a correct e-mail address. Further site notices were placed around the area and the objection period was extended to 30 June 2023. Copies of the documents were available within the Council's offices and also online. The Council is satisfied that the compulsory purchase process has been carried out properly and effectively; and that all affected parties have had a reasonable time to consider the impact on them or their property and to make an objection if they so wished.
3. Other concerns raised by individuals and not encompassed within the ten “themes” above are addressed in the Council’s written evidence and can be explored during the inquiry.

**The position under the ECHR; and the public sector equality duty**

1. The Council is satisfied that the purpose for which it made the Order justifies interfering with the rights under the ECHR of those with an interest in the Order land[[31]](#footnote-31). To the extent that confirmation of the Order will affect rights under Art. 8 of and Art. 1 of the First Protocol to the ECHR, any interference with those rights is in accordance with the law, necessary in the public interest and proportionate.
2. The Council has complied with its public sector equality duty (“**PSED**”) under s. 149 of the Equality Act 2010[[32]](#footnote-32): see Section 14 of Mr Bristow’s proof of evidence[[33]](#footnote-33). In particular, the Council’s decision to make the Order was informed by an equality impact assessment (“**EqIA**”), which was reported to Full Council at its 21 March 2023 meeting. The EqIA shows that delivery of the Scheme will have numerous beneficial impacts for individuals in the local area with protected characteristics.

**Conclusion**

1. To conclude, having regard to the 2019 Guidance[[34]](#footnote-34) the Council’s evidence establishes that there is a compelling case in the public interest for confirmation of the Order and the Order should therefore be confirmed.

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1. CD A.16. [↑](#footnote-ref-1)
2. CD A.8 paras. 2 and 12. [↑](#footnote-ref-2)
3. CD D.1. [↑](#footnote-ref-3)
4. CD A.8 paras. 13 and 104. [↑](#footnote-ref-4)
5. The “Scheme” also includes the construction of the access road on the Order Land. [↑](#footnote-ref-5)
6. Martlet is a wholly-owned subsidiary within the Hyde Group of companies (“**Hyde**”) (CD D.1 para. 3.18). [↑](#footnote-ref-6)
7. See CD5.01 (2019 Guidance), para. 106 (first bullet point). Mr Bristow’s proof of evidence (CD D.1) at Section 8 provides further detail. [↑](#footnote-ref-7)
8. Appendix 12 to Bristow proof of evidence – CD D.2. [↑](#footnote-ref-8)
9. Appendix 14 to Bristow proof of evidence – CD D.2. [↑](#footnote-ref-9)
10. Appendix 16 to Bristow proof of evidence – CD D.2. [↑](#footnote-ref-10)
11. Section 3.5, p. 11. [↑](#footnote-ref-11)
12. Given in principle subject to s. 106 obligation. [↑](#footnote-ref-12)
13. Policy 5. [↑](#footnote-ref-13)
14. CD A.8 para. 106, bullet point 2. [↑](#footnote-ref-14)
15. CD D.1. [↑](#footnote-ref-15)
16. Bristow proof of evidence (CD D.1) para. 9.9. [↑](#footnote-ref-16)
17. “Housing and Economic Development Needs Assessment”, undertaken by the Council as part of its Local Plan review. See Bristow proof of evidence (CD D.1) at para. 9.2. [↑](#footnote-ref-17)
18. See Bristow proof of evidence (CD D.1)para. 9.6. [↑](#footnote-ref-18)
19. 2019 Guidance (CD A.8) para. 106, third bullet point. [↑](#footnote-ref-19)
20. CD D.1 and CD D.7, respectively. [↑](#footnote-ref-20)
21. 2019 Guidance (CD A.8) at paras. 13 and 106 (fourth bullet point). [↑](#footnote-ref-21)
22. CD D.7. [↑](#footnote-ref-22)
23. CD A.8, para. 15. [↑](#footnote-ref-23)
24. Bristow proof (CD D.1) at para. 12.9. [↑](#footnote-ref-24)
25. CD D.1 at paras. 12.11 to 12.14. [↑](#footnote-ref-25)
26. CD D.4. [↑](#footnote-ref-26)
27. See Bristow proof Sections 16 and 17 (CD D.1). [↑](#footnote-ref-27)
28. CD A.8. [↑](#footnote-ref-28)
29. CD A.8. [↑](#footnote-ref-29)
30. CD D.1. [↑](#footnote-ref-30)
31. 2019 Guidance (CD A.8), paras. 2 and 12. [↑](#footnote-ref-31)
32. 2019 Guidance (CD A.8), para. 6. [↑](#footnote-ref-32)
33. CD D.1. [↑](#footnote-ref-33)
34. CD A.8. [↑](#footnote-ref-34)