**APP/PCU/CPOPF5540/3326950**

**CHICHESTER DISTRICT COUNCIL**

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

**CLOSING SUBMISSIONS ON BEHALF OF THE ACQUIRING AUTHORITY**

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

**Introduction**

1. The Order was made by the Council under s. 226(1)(a) of the Town and Country Planning Act 1990 (“**the 1990 Act**”). Its purpose is to acquire the Order Land so that the land 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[[2]](#footnote-2) (“**the Housing Site**”).
2. The main grounds of objection were[[3]](#footnote-3):
	1. Inappropriate access;
	2. Highway safety;
	3. Unsuitable use of Council powers;
	4. Lack of infrastructure, flooding risk, damage to nature;
	5. Unsuitable location and/or no need for affordable housing;
	6. Affordable housing not financially viable;
	7. Human rights;
	8. Error in Planning Permission;
	9. No well-being benefits; and
	10. Error in CPO process.
3. At the close of the inquiry, the number of remaining objections is the same as when the inquiry opened, i.e. five remaining qualifying objections and 21 remaining non-qualifying objections.

**Procedural matters and statutory formalities**

1. 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[[4]](#footnote-4), 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.
2. At the inquiry, Mr Corkett queried whether the Order had been properly advertised. That point was duly addressed by the Council in its *Note […] Addressing Statutory Provisions in Relation to Compulsory Purchase Orders* (7 August 2024), submitted to the inquiry. The short point is that the Council has complied with the requirements of s. 11 of the Acquisition of Land Act 1981 (“**the 1981 Act**”); the inclusion of an e-mail address was over and above those requirements. Moreover, as Ms Blackman explained, any person who submitted an objection to the e-mail address provided will have received a “non-delivery/failure” notification and will then have had the opportunity to submit an objection to the Department of Levelling Up etc. by post, in the usual way.
3. At the inquiry, Ms (Sally Anne) Evans queried whether the Bishop of Chichester ought to have been personally notified. However, specialist land referencers did not identify the Bishop as holding any right or interest in the Order Lane. The purpose of the site notice and the press notice is to bring the Order to the attention of parties not so identified (and thus not personally notified).
4. 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.

**The Order Land and surroundings[[5]](#footnote-5)**

1. The Order Land is shown coloured pink on the Order map. It is situated within the administrative area of the Council and comprises an access track that runs between the site boundaries of two properties fronting Crooked Lane, Birdham. The two properties are Copperfields to the north and Hedgecox to the south. The access track sits at a lower level than the adjacent properties.
2. The Order Land extends from a point on the north-eastern boundary of the Housing Site, eastwards for a distance of approximately 100 metres to its junction with Crooked Lane. Crooked Lane is a highway maintainable at the public expense, for which the local highway authority is West Sussex County Council (“**WSCC**”).
3. The Order Land has, in the past, been used as a vehicular access track from Crooked Lane to adjacent farmland. In addition, part of the Order Land (nearest Crooked Lane) is used as a means of access by the owners of Copperfields, to gain access to and from their property, from and to Crooked Lane.
4. The Order Land lies within the Chichester Harbour National Landscape (formerly “Area of Outstanding Natural Beauty”: “**the AONB**”). Otherwise, no part of the Order Land lies within any area designated for nature conservation (e.g. a Site of Special Scientific Interest, a Special Area of Conservation or a Special Protection Area). In addition, no part of the Order Land is within any Local Landscape Area; and no part of the Order Land is included within any World Heritage Site, Registered Battlefield, Listed Building, Registered Park or Garden, Common, Village Green or Public Open Space.
5. As regards the current ownership of the Order Land, the schedule to the Order identifies those parties with a known or claimed interest or known or claimed rights in or over the Order Land, including areas of unknown ownership (as recommended in para. 217 of the 2019 Guidance[[6]](#footnote-6)). The schedule has been prepared based on information gathered through inspection of Land Registry title documents, further land searches and enquiries, site inspections and the responses to notices issued under s. 5A of the 1981 Act.

**The Scheme**

1. The Order is necessary to enable delivery of the Scheme. If the Order is confirmed, the freehold owner of the Housing Site (Martlet Homes Limited: “**Martlet**”[[7]](#footnote-7), a Registered Provider of affordable housing) will construct the 15 affordable homes together with the access road. Each of the affordable homes will be let at a social rent.

**The purpose pursued fits in with the adopted Local Plan and the NPPF**

1. In satisfaction of the 2019 Guidance[[8]](#footnote-8), the Council has a clear idea of how it intends to use the Order Land. As Mr Bristow explains at Section 8 of his proof of evidence[[9]](#footnote-9), the purpose pursued by the Council in making the Order fits in with both the Council’s adopted Local Plan and with the NPPF[[10]](#footnote-10). That point is evidenced *inter alia* by the fact that the Council granted full planning permission for the Scheme in 2013[[11]](#footnote-11) and again in 2016 (under s. 73 of the 1990 Act: “**the Planning Permission**”[[12]](#footnote-12)). 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[[13]](#footnote-13). That is a complete answer to the “Error in Planning Permission” ground of objection.

The Local Plan

1. The Council’s adopted Local Plan (“**the Local Plan**”)is the *Chichester Local Plan: Key Policies 2014-2029*, which was adopted by the Council on 14 July 2015.
2. Policy 4 of the Local Plan makes provision for the Council to deliver 7,388 homes over the period 2012–2029. Strategic development locations are allocated in the Local Plan to accommodate 3,250 homes. The remaining requirement was to be allocated in subsequent Development Plan Documents and Neighbourhood Plans.
3. Policy 5 of the Local Plan requires small scale housing sites to be identified within Parishes. In the case of Birdham, a requirement for 50 homes is identified. The Scheme satisfies part of that requirement.
4. Policy 35 of the Local Plan deals with Affordable Housing Exception Sites. The policy provides that where there are no available and deliverable sites within a settlement, affordable housing may be permitted on exception sites outside of settlement boundaries, provided that certain criteria are met. In cases where a settlement has a defined boundary (as is the case in Birdham) those criteria include: that the scheme provides 100% affordable housing; meets an identified local need by households with a ‘local connection’ to the parish; there are insufficient sites available and deliverable within the settlement boundary; and the proposed scheme is deliverable and will be properly managed by a Registered Provider. The Housing Site meets those criteria and has been accepted by the Council as a Rural Exception Site.
5. The Scheme accords with the relevant housing policies of the Local Plan.
6. Turning to the AONB, Policy 43 of the Local Plan provides that the impact of individual proposals and their cumulative effect on the AONB and its setting will be carefully assessed. Planning permission will be granted where certain criteria have been met including: the natural beauty and locally distinctive features of the AONB are conserved and enhanced; proposals reinforce rather than detract from the distinctive character and special qualities of the AONB; development does not lead to the coalescence of settlements or undermine the integrity or predominantly open and undeveloped rural character of the AONB and its setting; and the scheme is appropriate to the economic, social and environmental well-being of the area. Mr Bristow’s evidence is that the Scheme is consistent with Policy 43, which policy was considered and taken into account by the Council during the consideration and determination of the planning applications for the Housing Site.

Emerging Local Plan 2021 - 2039

1. The Local Plan is currently under review and the emerging Local Plan was submitted to the Planning Inspectorate for examination in May 2024. The Local Plan review increases the overall level of housing (and affordable housing) allocations across the plan area. It also continues the existing Rural Exception Sites policy. It does not propose any further development in Birdham.

Birdham Parish Neighbourhood Plan

1. As well as according with the Council’s adopted Local Plan (and with the NPPF – see below), the Scheme accords with the Birdham Parish Neighbourhood Plan (“**the Neighbourhood Plan**”[[14]](#footnote-14)), which identifies[[15]](#footnote-15) the Housing Site as one of four sites with planning permission[[16]](#footnote-16) that will enable the indicative 50 unit housing number that is stated for Birdham in the Council’s Local Plan[[17]](#footnote-17) to be met. Policy 17 of the Neighbourhood Plan[[18]](#footnote-18) (“Housing Need”) also requires social and affordable housing to be allocated in accordance with the Council’s Allocations Scheme.

The NPPF

1. The National Planning Policy Framework (“NPPF”) was updated in December 2023 and provides a framework within which locally prepared plans can provide for sufficient housing and other development in a sustainable manner. It sets out a presumption in favour of sustainable development and promotes the creation of sustainable inclusive and mixed communities. It provides that planning policies should make sufficient provision for housing (including affordable housing). In more detail:
	1. Para. 60 of the NPPF states that to support the Government’s objective of significantly boosting the supply of homes it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed, and that land with permission is developed without unnecessary delay.
	2. Para. 64 provides that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required.
	3. Para. 67 provides that strategic policy making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need can be met over the plan period.
	4. Para. 69 states that strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites taking into account their availability, suitability and likely economic viability.
	5. Para. 70 provides that small and medium sized sites can make an important contribution to meeting the housing requirement of an area.
	6. Para. 82 provides that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs, including proposals for community-led development for housing. Further, local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.
	7. Finally, para. 83 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.
2. Mr Bristow’s evidence is that the Scheme is in conformity with the housing policies of the NPPF.
3. Turning to national policy in relation to AONBs, para. 182 provides that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs; and that the scale and extent of development within AONBs should be limited. Para. 183 provides that when considering applications for development within AONBs, planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. In considering such applications local planning authorities should include an assessment of the need for the development. Mr Bristow’s evidence is that the Scheme is consistent with these policies, which were taken into account by the Council, during the consideration and determination of the planning applications for the Housing Site.
4. In conclusion, the Scheme is supported by the statutory development plan (being the Local Plan together with the Neighbourhood Plan) and by the NPPF.
5. Mr Corkett contended that Plot 2 falls outside the red line boundary of the Planning Permission. That is not accepted (the position is as depicted in Appendix 1 to Ms Blackman’s proof of evidence[[19]](#footnote-19)) but in any event there is no need for Plot 2 to fall within the red line boundary of the Planning Permission, since it lies within the public highway such that it will come within the s. 38 / s. 278 agreement that is to be entered into between Martlet and WSCC as local highway authority[[20]](#footnote-20).

**The extent to which the Scheme would contribute to the economic, social or environmental well-being of the area**[[21]](#footnote-21)

1. This aspect of the Council’s case is presented in more detail in Section 7 of Mr Bristow’s proof of evidence[[22]](#footnote-22). It is important to note at the outset that s. 226 of the 1990 Act empowers the Council to acquire land compulsorily if it thinks that the development is likely to contribute to the achievement of the promotion or improvement of (i) the economic well-being of its area; or (ii) the social well-being of its area; or (iii) the environmental well-being of its area (the phrase employed is “one or more”). That said, the Council’s evidence shows clearly that the Scheme will contribute to the achievement of all three objectives.
2. 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. The significant public benefit that results from social housing is evidenced in detail in Appendix SP23 to Ms Poulter’s rebuttal, which is a piece of research (updated in 2024) that evidences a social value per tenancy of £18,051 *per annum* and also explains the benefit to stakeholders such as the NHS, the police and the local education authority.
3. 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.
4. 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[[23]](#footnote-23).
5. 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[[24]](#footnote-24) 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[[25]](#footnote-25).
6. Mr Corkett, Mr Tremayne and the Parish Council all accepted that there is a need for affordable housing to come forward in Birdham to meet local needs; Mr Williams (for the BVRA) accepted that there was what he terms a “very modest” need in Birdham but a “huge” need district-wide. It is plain that even if there were no “Birdham-specific” need (which there is, as Mr Bristow has evidenced and as most of the objectors properly acknowledge), the case for confirmation of the Order would still be overwhelmingly compelling having regard to the wider need for affordable housing.
7. Several objectors referred to the need position on the (mistaken) understanding that only households in Bands A to C could properly be said to be in affordable housing need. As Mr Bristow explained, that is incorrect; households in Band D are also on the housing register. Nor has there been any change in position in this regard (contrary to the suggestion from Mr Williams): see e.g. para. 6.9 of the planning officer’s report to Committee[[26]](#footnote-26) on planning application 13/01391/FUL (for the Scheme, in 2013), which explains that (at that point in time) there are 39 households listed on the Council’s housing register that have a local connection to the parish of Birdham, with 10 being in Bands A to C and 29 being in Band D.

1. 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.
2. 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. Mr Corkett was, with respect, wrong to suggest that the construction jobs would not contribute to the economic well-being of the Council’s area in the event that the Scheme were built out at the same time as the Main Road (Gladman) site. As Mr Corkett ultimately acknowledged, the more houses one builds, the greater the economic benefit; the economic benefit is scalable if the Scheme and the Main Road scheme are considered together.
3. 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.
4. In conclusion, the Scheme will make a significant contribution to the social, economic and environmental well-being of the Council’s area and that being so, there is plainly a compelling case in the public interest for the acquisition of the Order Land.

**Funding, viability and deliverability**

1. As Ms Poulter confirmed in her oral evidence, the Scheme is funded and viable and there is a realistic prospect that it will be delivered within a reasonable time-scale. In particular, 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[[27]](#footnote-27). This is detailed in the proof of evidence of Ms Poulter[[28]](#footnote-28). 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. In the 2022-2023 financial year Hyde started building 2,105 new homes and completed 625[[29]](#footnote-29). Its delivery in the region since 2018 has provided (or will provide once complete) homes for up to 2,682 people who are unable to afford housing on the open market (the Scheme itself will provide homes for up to 61 people who are currently on the Council’s housing waiting list).
3. The Council is satisfied that Hyde has the capability and capacity to deliver the Scheme.
4. The apparent suggestion from certain objectors that the fact that the CPO process has not yet been concluded indicates that Hyde will not be able to deliver the Scheme in line with the time-scales given by Ms Poulter in her evidence is without foundation. The progress that was made by Martlet in relation to the Housing Site between April 2013 and July 2017 is detailed by Ms Poulter in Section 2 of her proof of evidence; Mr Bristow in his proof of evidence then explains how the CPO process has progressed from 2018 onwards. Ms Blackman was correct to note that work in relation to the Housing Site has been ongoing for most of the period since 2013, notwithstanding the intervention of the Covid 19 pandemic. Moreover, the 2019 Guidance is clear that compulsory purchase is intended as a last resort[[30]](#footnote-30). It was not, therefore, open to Martlet and the Council simply to launch into the CPO process prior to having explored other options.
5. The time-frame given by Ms Poulter is realistic; in particular, her evidence was that Hyde had previously succeeded in procuring a contractor within two months of the grant of the relevant planning permission.

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

1. The 2019 Guidance[[31]](#footnote-31) 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[[32]](#footnote-32); and (ii) a highways agreement with WSCC. Detail on the latter is provided by Mr Bristow in his proof of evidence[[33]](#footnote-33).
3. In the light of the above position, the Scheme is unlikely to be blocked by any physical or legal impediments to implementation.

**The outstanding objections**

1. As explained at the outset of these closing submissions, 26 objections were received following the making of the Order, of which 21 were non-statutory (/non-qualifying) and five were statutory (/qualifying).
2. As Ms Blackman confirmed in her oral evidence, heads of terms have been agreed with two of the five statutory / qualifying objectors (Mr Pick; and Mrs Humphries et al.) and also with a third landowner (Mr Way, who did not object to the making of the Order).
3. The substance of some of the points of objection that are being pursued by other objectors has been addressed above. Human rights and the PSED are addressed in separate sections below. The remaining objection “themes” previously identified by the Council[[34]](#footnote-34) are addressed here in turn.

Planning points

1. Of the objection “themes” identified by the Council and not already addressed above, the following are points that were considered prior to the Planning Permission being granted:
	1. Inappropriate access;
	2. Highway safety;
	3. Lack of infrastructure, flooding risk, damage to nature; and
	4. Unsuitable location.
2. The Council’s position on these grounds of objection is that it has (as local planning authority) previously considered the points raised, in the course of determining the applications for planning permission for the Scheme. Its conclusion having done so was that planning permission should be granted.
3. Objectors (in particular, Mr Corkett) purport to identify material changes in circumstances since planning permission was granted for the Scheme. As to those:
	1. The recent grant of planning permission for up to 150 houses on the Main Road site is addressed below, in considering potential alternatives to compulsory acquisition.
	2. Mr Corkett argues that Birdham Primary School has become busier since the school nursery moved on site and that as a result there is an increased highway safety risk. However, 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 that 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. WSCC’s position as local highway authority has not changed, notwithstanding any increase in the number of children using the primary school site: WSCC is not objecting to the Scheme coming forward.
4. As to objections founded upon a perceived lack of infrastructure, flooding risk and/or 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. The “unsuitable location” ground of objection is baseless. The suitability of the Housing Site for affordable social rented housing has been established through the grant of planning permission for the Scheme. Mr Corkett referred repeatedly to the view expressed by the Council’s Design and Implementation Manager that the Housing Site is “in a relatively isolated location poorly connected to the rest of the village via a narrow, poorly overlooked track” (etc.). However, ultimately the Council as local planning authority decided that planning permission for the Scheme should be granted, notwithstanding the view expressed by the Design and Implementation Manager. It is also important to emphasise that Rural Exception Sites tend by their very nature to be delivered in sensitive areas because the entire point of the Rural Exception Site concept is that the benefit of providing affordable housing means that exceptionally it is appropriate for them to come forward in locations that would not be suitable for market housing.
6. There has not been any material change in circumstances since planning permission was granted for the Scheme that means that a different conclusion should now be reached on any of the “planning points” raised in the objections to the Order.

Unsuitable use of Council powers

1. The Council has explained in its evidence how the various legislative requirements together with those of the 2019 Guidance[[35]](#footnote-35) have been satisfied. This ground of objection appears in reality to be a disagreement as to whether there is a compelling case in the public interest for compulsory acquisition.

**Engagement and the conduct of the negotiations**

1. The evidence of Ms Blackman[[36]](#footnote-36) 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. Heads of terms have been agreed with two of the five statutory objectors and also with a third landowner (above).
2. Whilst Ms Evans remains of the view that insufficient steps have been taken to negotiate with her mother (Mrs Mabel Evans), she recognised in her oral evidence that engagement had taken place for the best part of nine years. On 28 April 2022 Mrs Evans e-mailed Ms Blackman to say: “Thank you for your letters of 22 February and 26 April 2022. I do not wish to take you up on your offer to meet with you as I have nothing to discuss with you. Yours sincerely” (etc.). As Ms Blackman explained, her instructions throughout were to negotiate by agreement. Mrs Evans having made her wishes clear, further negotiation was not possible.
3. Avison Young negotiated on the basis of the compensation that objectors would be entitled to following compulsory acquisition if they could substantiate their title claims before the Tribunal. At no point did Ms Blackman or Avison Young “threaten” anyone.

**Potential alternatives**

1. The purpose for which the Council is proposing to acquire the Order Land cannot be achieved by any other means[[37]](#footnote-37). As Mr Bristow and Ms Poulter explain in their proofs of evidence[[38]](#footnote-38), 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 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. All three potential alternative accesses would also be significantly more costly than the Scheme access (via Crooked Lane)[[39]](#footnote-39). Hyde is a not-for-profit organisation that reinvests any surplus that it makes; thus even if the additional cost associated with provision of one of the potential alternative accesses could be absorbed, the result would be less funding available to provide affordable housing.
3. Next, it does not follow from the fact that outline planning permission was granted on appeal on 9 February 2024 for residential development the Main Road sitethat 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 (“**Gladman**”) intends to build out the Main Road Site immediately, or sell the site on, etc.). The evidence before the inquiry is that Hyde intends to build out 15 homes on the Housing Site immediately if the Order is confirmed; conversely, there is (as Mr Corkett acknowledged) no evidence of any party being committed to bring forward the Main Road site in accordance with any particular time-scales. Mr Bristow’s evidence to the inquiry was that he had experience of Gladman seeking and securing planning permission but not of Gladman actually delivering housing; whereas he had experience of Hyde actually delivering housing, including affordable housing. It should also be noted that the Main Road planning permission is for “up to” 150 houses, hence the ultimate quantum of affordable housing that might be delivered on the Main Road site is not yet known. Furthermore 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. It is not accepted that Gladman could “come back in two months” as Mrs Corkett suggested; that is not a realistic time period for approval of reserved matters, etc.
	2. Secondly, 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.
	3. Thirdly, the Main Road Site is by reason of its size a “strategic” site and so will be open to “bidders” outside Birdham who might occupy the properties despite not having a local connection. As Mr Bristow explains in his rebuttal[[40]](#footnote-40), an Affordable Housing Exception Site / 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. This point was acknowledged at para. 6.16 of the planning officer’s report to Committee[[41]](#footnote-41) on planning application 13/01391/FUL (for the Scheme, in 2013), which explains that “[t]he application for 15 affordable dwellings has been submitted specifically to help contribute towards the pressing and longstanding need for affordable housing at Birdham.  There are 39 households in need of which 29 are new home seekers and transfers in band D of the housing need register.  Other affordable dwellings provided under the FAD policy in Birdham only give priority to local people in need in bands A-C.  Local people in band D will not therefore have their need met by other sites and will be wholly reliant on exception sites like this one at Crooked Lane”. In reality therefore the Main Road site is not an alternative for those in Band D with a local connection to Birdham, whose affordable housing need can only be met by the Crooked Lane Housing Site.
	4. 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. It should be noted that the inspector who granted planning permission for the Main Road site on appeal did so in circumstances where the Neighbourhood Plan (which is part of the statutory development plan for Birdham) makes clear[[42]](#footnote-42) that planning permission has already been granted[[43]](#footnote-43) for 79 homes in Birdham (including the Scheme), meaning that “the indicative housing numbers of about 50 homes, allocated by [the Local Plan], will be met”. The Main Road inspector nevertheless concluded that the case for the Main Road scheme remained sufficiently strong to justify the granting of planning permission.

**Human rights**

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[[44]](#footnote-44). 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. On the latter point (proportionality), it should be noted that it is proposed to regrant rights of way over the access road following compulsory acquisition.
2. As explained above, there is a compelling case in the public interest for acquisition of the Order Land. The benefits of the Scheme cannot be realised without acquiring the land and thus without interfering with the ECHR rights of those with an interest in the Order Land. In view of the compelling case in the public interest for compulsory acquisition, the interference is justified.
3. A specific concern having been raised over negotiations being undertaken in advance of the Order being made, the Council would again emphasise that negotiations were undertaken in accordance with best practice and the requirements of the 2019 Guidance[[45]](#footnote-45).

**The PSED**

1. The Council has complied with its public sector equality duty (“**PSED**”) under s. 149 of the Equality Act 2010[[46]](#footnote-46): see Section 14 of Mr Bristow’s proof of evidence[[47]](#footnote-47). 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.

**Potential modifications to the Order**

1. The Inspector’s power to modify the Order is explained in the Council’s *Note […] Addressing Statutory Provisions in Relation to Compulsory Purchase Orders* (7 August 2024), submitted to the inquiry.
2. The only potential modification to the Order of which the Council is aware is the potential addition to Table 2 of the Schedule to the Order[[48]](#footnote-48) of (1) Anthony John Corkett and (2) Linda Mary Corkett as “Other qualifying persons under section 12(2A)(b) of the Acquisition of Land Act 1981 – not otherwise shown in Tables 1 & 2”, in respect of a right of way over Plot 5. Mr and Mrs Corkett’s claimed right of way over Plot 4 is noted in Table 2 but their claimed right of way over Plot 5 is not so noted (at present) because it was not identified (by them) in the *Requisition for information* form.
3. The Council has no objection to the modification of Table 2 of the Schedule to the Order so as to show Mr and Mrs Corkett’s claimed right of way over Plot 5. It reiterates however that inclusion within the Schedule would not change the land ownership position. If the Order is modified it will still be necessary for Mr and Mrs Corkett to prove their title claim (in respect of the claimed right of way over Plot 5 and their other claimed interests in the Order Land) before the Tribunal in order to receive compensation in respect of their claimed interests in the Order Land.

**Conclusion**

1. To conclude, the Council’s evidence shows that the requisite[[49]](#footnote-49) compelling case in the public interest for confirmation of the Order is clearly established. 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 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.
2. Having regard to the 2019 Guidance[[50]](#footnote-50), the Order should therefore be confirmed.

HEATHER SARGENT

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13 August 2024

1. CD A.16. [↑](#footnote-ref-1)
2. The “Scheme” also includes the construction of the access road on the Order Land. [↑](#footnote-ref-2)
3. See Bristow proof of evidence, Sections 16 and 17 (CD D.1). [↑](#footnote-ref-3)
4. Bristow proof of evidence para. 16.47 ff. (CD D.1). [↑](#footnote-ref-4)
5. See the Council’s Statement of Case (CD A.16) at para. 2.1 ff. [↑](#footnote-ref-5)
6. CD A.8. [↑](#footnote-ref-6)
7. Martlet is a wholly-owned subsidiary within the Hyde Group of companies (“**Hyde**”) (CD D.1 para. 3.18). [↑](#footnote-ref-7)
8. CD A.8 paras. 13 and 104. [↑](#footnote-ref-8)
9. CD D.1. [↑](#footnote-ref-9)
10. 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-10)
11. Appendix 12 to Bristow proof of evidence – CD D.2. [↑](#footnote-ref-11)
12. Appendix 14 to Bristow proof of evidence – CD D.2. [↑](#footnote-ref-12)
13. Appendix 16 to Bristow proof of evidence – CD D.2. [↑](#footnote-ref-13)
14. CD C.4. [↑](#footnote-ref-14)
15. Section 3.5, p. 11. [↑](#footnote-ref-15)
16. Given in principle subject to s. 106 obligation. [↑](#footnote-ref-16)
17. Policy 5. [↑](#footnote-ref-17)
18. CD C.4, p. 33. [↑](#footnote-ref-18)
19. CD D.5. [↑](#footnote-ref-19)
20. Para. 12.11 of Mr Bristow’s proof of evidence (CD D.1) refers. Additionally, planning permission is granted for the work under Class A of Part 9 of Sch. 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. [↑](#footnote-ref-20)
21. CD A.8 para. 106, bullet point 2. [↑](#footnote-ref-21)
22. CD D.1. [↑](#footnote-ref-22)
23. Bristow proof of evidence (CD D.1) para. 9.9. [↑](#footnote-ref-23)
24. “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-24)
25. See Bristow proof of evidence (CD D.1)para. 9.6. [↑](#footnote-ref-25)
26. Appendix SP13 to Poulter proof of evidence (CD D.8). [↑](#footnote-ref-26)
27. 2019 Guidance (CD A.8) at paras. 13 and 106 (fourth bullet point). [↑](#footnote-ref-27)
28. CD D.7. [↑](#footnote-ref-28)
29. Poulter proof, para. 7.6. [↑](#footnote-ref-29)
30. CD A.8 para. 2. [↑](#footnote-ref-30)
31. CD A.8, para. 15. [↑](#footnote-ref-31)
32. Bristow proof (CD D.1) at para. 12.9. [↑](#footnote-ref-32)
33. CD D.1 at paras. 12.11 to 12.14. [↑](#footnote-ref-33)
34. Listed at para. 2 above. [↑](#footnote-ref-34)
35. CD A.8. [↑](#footnote-ref-35)
36. CD D.4. [↑](#footnote-ref-36)
37. 2019 Guidance (CD A.8) para. 106, third bullet point. [↑](#footnote-ref-37)
38. CD D.1 and CD D.7, respectively. [↑](#footnote-ref-38)
39. Poulter proof of evidence at para. 3.7 (CD D.7). [↑](#footnote-ref-39)
40. CD D.10. [↑](#footnote-ref-40)
41. Appendix SP13 to Poulter proof of evidence (CD D.8). [↑](#footnote-ref-41)
42. CD C.4 at Section 3.5. [↑](#footnote-ref-42)
43. Subject to s. 106 obligations. [↑](#footnote-ref-43)
44. 2019 Guidance (CD A.8), paras. 2 and 12. [↑](#footnote-ref-44)
45. CD A.8. [↑](#footnote-ref-45)
46. 2019 Guidance (CD A.8), para. 6. [↑](#footnote-ref-46)
47. CD D.1. [↑](#footnote-ref-47)
48. A copy of the Schedule can be found in Appendix 1 to Ms Blackman’s rebuttal (CD D.11). [↑](#footnote-ref-48)
49. CD A.8 paras. 2 and 12. [↑](#footnote-ref-49)
50. CD A.8. [↑](#footnote-ref-50)