



Compulsory Purchase Order Decision

Inquiry opened on 6 August 2024 and closed on 14 August 2024

Site visit made on 7 August 2024

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Case Ref: APP/PCU/CPOP/L3815/3323287

**The Chichester District Council (Access Track Off Crooked Lane, Birdham)
Compulsory Purchase Order 2023**

- The Compulsory Purchase Order was made under Section 226(1)(a) of The Town and Country Planning Act 1990, and the Acquisition of Land Act 1981 by Chichester District Council (the Acquiring Authority).
- The purpose of the Order is to facilitate the development, redevelopment or improvement of land. The Order will enable the provision of access to the adjacent Crooked Lane Site, to facilitate the construction and delivery of 15 social rented dwellings on the Crooked Lane Site. Martlet Homes Limited will construct the necessary access road on the Order Land, in order to bring forward the Scheme.
- The main grounds of objection were that;
 - The access is inappropriate.
 - The Scheme would result in highway safety issues.
 - There is a lack of infrastructure in Birdham, and the Scheme would not result in any wellbeing benefits.
 - The proposal would be at risk/increase the risk of flooding and would result in damage to the natural environment.
 - That the site is an unsuitable location and/or that there is no need for affordable housing.
 - The affordable housing is not financially viable.
 - The impact of the Scheme on Human Rights and Equalities.
 - Unsuitable use of Council powers.
 - Errors in Planning Permission/planning process;
 - Error in CPO process.
- When the Inquiry opened, there were 5 remaining qualifying objections and 21 remaining non-qualifying objections.
- At the close of the Inquiry, there were 5 remaining qualifying objections and 21 remaining non-qualifying objections.

DECISION

1. The Chichester District Council (Access Track Off Crooked Lane, Birdham) Compulsory Purchase Order 2023 is confirmed.

PROCEDURAL MATTERS AND STATUTORY FORMALITIES

2. On 26 January 2024 the Secretary of State confirmed that the decision had been delegated to an appointed Inspector.
3. The Inquiry sat from 6 August 2024, closing on 14 August 2024, and an accompanied site visit was carried out on 7 August 2024.
4. The Inquiry briefing note¹ clearly explained that it was not the purpose of the Inquiry to reopen or reconsider the planning merits of the scheme/planning permission to which the Order relates.
5. The Acquiring Authority (AA) is Chichester District Council (CDC). At the Inquiry, it confirmed that it had complied with the statutory formalities. The Compulsory Purchase Order (CPO) was made by the AA on 2 May 2023.

THE ORDER LAND AND SURROUNDINGS

6. The Order Land comprises an access track which 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 and is currently overgrown and appears impassable to vehicular traffic. It is gated at the Crooked Lane junction.
7. The Order Land extends from a point on the north-eastern boundary of the Crooked Lane Site, eastwards for a distance of approximately 100 metres to its junction with Crooked Lane.
8. The Order Land lies within the Chichester Harbour Area of Outstanding Natural Beauty ('AONB'). Otherwise, no part of the Order Land lies within any areas designated for nature conservation, including 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.

THE SCHEME

9. The Scheme which the Order will facilitate is the delivery of new affordable social rented homes. The Scheme provides for the construction of 15 affordable dwellings with associated external works, amenity space, landscaping, and associated external works. The size and mix of the dwellings are as follows' 1 x 4-bedroom houses, 3 x 3-bedroom houses, 8 x 2-bedroom houses, 1 x 2-bedroom bungalow and 2 x 1-bedroom bungalow. The affordable housing dwellings will be

¹ Inquiry Briefing Note dated 17 May 2024

for social rent, for occupation by persons who are both on the Council's housing register and have a local connection.

CONSIDERATIONS

10. The Ministry for Housing, Communities & Local Government Guidance on the Compulsory Purchase Process (2024)² (the CPO Guidance) refers to factors which may be considered in deciding whether to confirm a CPO, and I have used these as the structure for the remainder of this decision. I have also considered other matters raised by objectors, but the CPO process is not an opportunity to revisit the merits of the planning permission which has been granted for the Scheme, nor whether sufficient monetary valuations or compensation have been presented by the AA.

National Planning Policy Framework

11. The purpose of the planning system is to achieve sustainable development, meeting the 3 overarching objectives, economic, social and environmental. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield' land.
12. Local planning authorities should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs.
13. The Framework also seeks to significantly boost the supply of homes to support strong, vibrant, and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations. It also sets out that significant weight should be placed on the need to support economic growth and productivity. This is to help build a strong, responsive, and competitive economy.

Planning policy and permission

14. The Scheme is supported by the development plan for the District which comprises of the Chichester Local Plan: Key Policies 2014-2029 and the Birdham Parish Neighbourhood Plan.
15. Planning Permission (Ref: BI/13/01391/FUL) was granted subject to conditions with a S106 agreement for the development underlying the Scheme on 29 November 2013. Subsequently, the Scheme was amended by way of a Section 73 Variation of Conditions permission (Ref: BI/16/01809/FUL) with a S106 Deed

² Replacing the Guidance on Compulsory purchase process and The Criche Down Rules (2019)

of Variation for the development underlying the Scheme being approved 14 October 2016.

16. A Certificate of Lawful Development was issued on 25 July 2017 confirming that planning permission (Ref: BI/16/01809/FUL) was lawfully implemented on or before 29 November 2016 by the carrying out of material operations and, therefore, the development permitted by the planning permission can be lawfully carried out, pursuant to that permission, after 29 November 2016.
17. I have carefully considered the objections relating to the allegations of errors in Planning Permission/planning process. However, these matters are not before me. The correct and only remedy would have been for the objectors to challenge the respective decisions of the local planning authority in the High Court within the prescribed timescale. There is no evidence before me that demonstrates that any High Court challenges were undertaken.
18. Therefore, the evidence³ demonstrates that planning permission consistent with the development plan has been obtained in respect of the Scheme. As such, there are no planning-related impediments to the delivery of the Scheme.

Benefits of the Scheme

19. The AA has set out why the Scheme is needed in Chichester to support the delivery of social, economic and environmental benefits as set out at paragraph 8 of the National Planning Policy Framework.

Social benefits

20. The AA have set out that the CPO Scheme would provide a range of social benefits that include:
 - 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, in order to meet an existing need for affordable housing;
 - Providing such additional affordable social rented housing will help create mixed, balanced, and sustainable communities for local people;
 - The acquisition of the Order Land will enable the Housing Site to be developed to provide 15 (100%) affordable social rented homes for local people, in conformity with national policy, the Local Plan and the Birdham Neighbourhood Local Plan. Therefore, the development of the Scheme has clear social benefits;
 - The Scheme includes three bungalows, as well as a variety of house sizes. The provision of bungalows will widen the opportunities for elderly or disabled residents to remain within the area;

³ POE – Mark Bristow

- The delivery of the Scheme will support increasing diversity within Birdham, by ensuring much needed affordable housing provision for those who struggle to access this on the open market;
- Increased support for local business improves the chances of those businesses remaining viable in the locality. Their continued presence increases the probability of social interactions, retains the quality and diversity of local services, and ensures those less mobile have access to local resources which they can use. Cumulatively these factors improve the social capital of the residents of Birdham and its surrounding area.

Economic benefits

21. The AA state that the Scheme is consistent with the development plan and would contribute to the economic objectives as follows:

- The provision of new affordable housing will not only create and support jobs in the construction sector but will also result in an increase in population, bringing with it enterprise, labour, wealth and income, all of which are necessary for economic prosperity;
- Once completed and occupied, the Scheme will deliver an additional 15 households with associated spending power to support village retailers and businesses in Birdham including the Spar Store, an ATM, the Post Office, the Shell Garage, a vet, plant nursery and garden centre, several pubs and a tearoom. All of these stand to benefit from increased local customers and a potentially increased employee pool;
- The primary school is easily accessible by foot or by bike, and will benefit from increased demand generated by the development;
- The village hall and its facilities (playing fields and a children's play area) are in close proximity to the Scheme and the Scheme will potentially increase local demand and use of these facilities;
- St. James' Church is also close to the Scheme. Planning permission was granted some years ago for the construction of a large multi-purpose series of rooms to extend the church use into the community. Such use would be bolstered by the occupiers of the Scheme;
- Finally, Stirlands Cricket Club along Church Lane welcomes new members of all ages and abilities and may well benefit through additional membership generated from occupiers of the Scheme.

Environmental benefits

22. The AA have set out that the CPO Scheme would provide a range of environmental benefits that include:

- The approved masterplan for the Scheme comprises a sensitively designed small development, interacting sympathetically with its surroundings. Natural site boundaries are respected and enhanced with a strong landscape buffer. The

proposed properties are well spaced and provide generous private garden space for the residents, supplemented by new public green open space;

- The Scheme offers a number of benefits which Martlet Homes intends to employ including, the use of air source heat pumps and photovoltaic panels, together with improvements to the building fabric to enable the homes to achieve an Energy Performance Certificate A rating; making the running costs of the homes more affordable and contributing to reducing the carbon impact of new housing on the Manhood Peninsula and the wider area;
- The Scheme utilises Sustainable Urban Drainage Systems which will reduce runoff rates and the risk of flooding, encourage natural groundwater recharge, reduce pollutants entering watercourses, provide natural habitats and promote biodiversity;
- Finally, the environmental well-being of the area is further aided by the fact that the development site's location is a short distance from a number of local facilities, so that the development provides the ability to walk or ride to school, access play areas, playing fields and a cricket club, without reliance on vehicular transport.

Conclusion

23. The Order Land is in a village location within a District with an identified housing need. The principal benefit of the Scheme is affordable social rented housing, the Scheme also will provide both short term (construction) and long-term economic benefits for Birdham and the wider area. The Scheme also delivers modern energy efficient homes, the provision of natural habitats, and biodiversity measures that ensure that there is an environmental benefit derived from the Scheme.
24. Therefore, given the pressing need to deliver affordable housing in both Birdham and the wider District and the contribution it would make to meeting the District's socio-economic and housing needs, and the substantial benefits in the public interest, there is a strong compelling case for the acquisition of the Order Land.

Funding, viability and deliverability

25. The Council's evidence⁴ sets out in detail how the Scheme will be funded, that it is viable and that there is a reasonable prospect that it will be delivered. The Scheme is to be funded by a grant from Homes England via the Strategic Partnership Agreement. Additional funding sources include Hyde's Recycled Capital Grant Funding and CDC's Rural Housing Partnership Fund. The remainder of delivery costs will be funded by Hyde from its core operating surplus of £57.4m and £873m of available liquidity (March 2023).
26. In terms of delivery the CDC presented evidence that demonstrates that Hyde have an extensive track record of housing delivery in the South-East. CDC set out that 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

⁴ POE Sarah Poulter

open market. The evidence demonstrates that Hyde has the experience, capability and capacity to deliver the Scheme within a reasonable timescale.

27. In reaching my conclusions I have carefully considered the concerns of objectors relating to the availability of funding and timely delivery of the Scheme. However, there was no substantive evidence presented to the Inquiry that contradicts the evidence of the AA in that they have access to the necessary funds to deliver the Scheme and those funds are immediately available upon confirmation of the CPO. Therefore, based on the evidence before me I can conclude that the Scheme is funded and viable meaning that there is a realistic prospect that it will be delivered within a reasonable timescale.

THE OUTSTANDING OBJECTIONS

28. The CPO Guidance sets out that acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted⁵. Paragraph 19⁶ details what acquiring authorities should consider when negotiating. The AA must demonstrate that it has taken reasonable steps to acquire all the land and rights in the Order by agreement. Compulsory purchase is intended as a last resort.
29. At the time the CPO was made, there were 5 qualifying objections and 21 non-qualifying objections. At the close of the Inquiry, there were 5 remaining qualifying objections and 21 remaining non-qualifying objections. The remaining objections are summarised below.

Objection 1: Mr Donald Pick

30. Mr Donald Pick⁷ accepts that planning permission has been granted for the Scheme. However, he objects to the CPO on the basis that he has concerns as to whether the proposed access off Crooked Lane is suitable due to its present width, therefore questioning if an access that meets highways standards can be provided to serve the proposed development.
31. He states that he has enjoyed uninterrupted access for agricultural machinery to his land over the existing track for many years. In doing so he accepts that the track is unregistered and that he has been unable to provide evidence of title, whilst stating that this does not guarantee he does not have a claim to the freehold title over all or part of the access track although it is stated that he has a documented legal right of way over the track.
32. The objection confirms that Mr Donald Pick is in dialogue with the AA and should agreement be reached then the objection would be withdrawn.

Objection 2: Mrs Patricia Frances Humphries, Mr Robert William Stokes, Heather Priest, and Alice Candy

⁵ Tier 1, Stage 3, Paragraph 17

⁶ Tier 1, Stage 3

⁷ Objection to CPO by letter from Henry Adams LLP on behalf of Mr Donald Pick – 27 June 2023

33. Mrs Patricia Frances Humphries, Mr Robert William Stokes, Heather Priest, and Alice Candy⁸ accept that planning permission has been granted for the Scheme. However, they object to the CPO on the basis that they have concerns as to whether the proposed access off Crooked Lane is suitable due to its present width, therefore questioning if an access which meets highways standards can be provided to serve the proposed development.
34. They state that they have enjoyed uninterrupted access to their land over the existing track for many years. In doing so they accept that the track is unregistered and that they have been unable to provide evidence of title, whilst stating that this does not guarantee they do not have a claim to the freehold title over all or part of the access track.
35. The objection confirms that the Mrs Patricia Frances Humphries, Mr Robert William Stokes, Heather Priest, and Alice Candy are in discussions with the AA and should agreement be reached then the objection would be withdrawn.

Objection 3: Linda Corkett – Copperfields, Crooked Lane, Birdham

36. Linda Corkett⁹ objects in relation to the following issues. It is argued that the location is not appropriate and would result in highway safety, flooding/sewerage, and environmental issues. It is also argued that the affordable housing should be located in Chichester. It is stated that the access track will have an adverse effect on the enjoyment of their property.

Objection 4: Anthony John Corkett - Copperfields, Crooked Lane, Birdham

37. Anthony John Corkett¹⁰ objects on the basis that Crooked Lane Birdham is the wrong location for additional affordable housing and the proposed access route along the farm track being opposite the Birdham Primary school will create highway safety issues and is not in the public interest.
38. Mr Corkett further set out that he considers that the track is narrow (3.6 metres wide between the 2 property boundaries) and not possible to build a 4.8-metre-wide road. It is further argued that the track and site flood with a lack of suitable groundwater drainage plans and no flood evacuation plan and that there is a lack of sewerage capacity in Birdham.
39. He disputes the need for 15 Affordable Houses on AONB given other planning applications and appeals which could result in 70 Affordable Houses being built elsewhere in Birdham.
40. He further states that there is a lack of information (eg how the track will be constructed at the Copperfields driveway entrance, services installed, levels of noise, number of planned vehicle movements during the construction phase, 24-hour access required).

⁸ Objection to CPO by letter from Henry Adams LLP on behalf of Mrs Patricia Frances Humphries, Mr Robert William Stokes, Heather Priest, and Alice Candy – 27 June 2023

⁹ Objection to CPO by email from Linda Corkett – 24 May 2023

¹⁰ Objection to CPO by letter from Anthony John Corkett - 22 June 2023

41. Mr Corkett suggests that there are potential alternative accesses to the Crooked Lane Site.

Objection 5: Mrs Mabel Evans – Hedgecox, Crooked Lane Birdham

42. Mrs Mabel Evans¹¹ objects on the basis that she considers that there is doubt as to the financial ability of the developer to bring forward a site in accordance with the powers granted by the CPO. It is further argued that the Council have failed to consider alternatives to the Scheme. The objector does not accept that meaningful negotiation has been attempted and the AA has failed to meet the standards set out in CPO guidance to engage with objectors. It is also argued that the Public Sector Equalities Duty in relation to the impact on elderly persons has not been fulfilled.

Non-Qualifying Objections

43. As set out above there are 21 remaining non-qualifying objections¹². The objections largely focus on the granting of planning permission for the Scheme and allege errors in the Planning Permission/planning process. In this context the objectors consider that the Scheme's access road is inappropriate/sub-standard, and that its provision and use would result in highway safety issues. The Scheme would not result in any economic, environmental, or social benefits. The proposal would be at risk/increase the risk of flooding and would result in damage to the natural environment including the AONB. That the site is an unsuitable location and/or that there is no need for affordable housing. The affordable housing is not financially viable. The impact of the Scheme on Human Rights and Equalities. Unsuitable use of Council powers and misuse of the CPO process.

REASONS

44. I am mindful that the purpose of compulsory purchase powers is to help to deliver positive change. However, I also recognise that it can be worrying to discover that land/property which you own or occupy or have a connection to is to be compulsorily acquired. Furthermore, I am fully aware that the law and procedures relating to compulsory purchase are complex, which can be daunting. However, my conclusions must be solely based on the evidence presented to me both in writing and in evidence at the Inquiry.

CPO Process - Notification

45. The Council¹³ confirmed that notification in accordance with the statutory CPO process set out in legislation was carried out, and that all necessary notices and adverts were placed. They further confirm that the notification process was carried out properly and effectively, and that all affected parties have had reasonable time to consider the impact on them or their property, and to make an objection if they chose to do so.

¹¹ Objection to CPO by letter from Blandy and Blandy Solicitors on behalf of Mrs Mabel Evans - 20 June 2023

¹² Including Birdham Parish Council, Birdham Village Residents Association, Sally-Anne Evans, Guy Tremayne and Paul Kirkin

¹³ POE Virginia Blackman

46. I have been directed by objectors to the site notice at the entrance to the access route dated 10 May 2023 and the public notice in the Chichester Observer dated 18 May 2023 highlighting that objections could be submitted by post or via email. The email address on the original site/public notices was incorrect. When the Council was alerted to the issue it was corrected and a new site notice with the correct email address was posted with an extended objection deadline date of 30 June 2023. Whilst the typographical error was unfortunate, the Council has complied with the requirements of Section 11 of the Acquisition of Land Act 1981. The provision of an e-mail address was additional to the requirements set out and the notices provided the requisite information to allow any interested party to make representation.
47. It was questioned as to whether the Bishop of Chichester should have been notified directly. However, there was no substantive evidence provided at the Inquiry that demonstrated that the Bishop of Chichester as holding any right or interest in the Order Land, nor was any interest identified by the specialist land referencers. Moreover, the site and press notices would have brought the Order to the attention of parties not so identified.
48. Therefore, based on all the available evidence I am satisfied that the AA carried out detailed and methodical engagement to ensure that all affected parties were notified of the CPO and the Inquiry.

CPO Process - Negotiation

49. The Council's evidence¹⁴ is detailed and demonstrates that they have fully complied with the CPO guidance; demonstrating that they have taken reasonable steps to acquire all the land and rights included in the Order, by agreement, this was initially by Martlet Homes and then by the Council. The evidence clearly sets out that the AA 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. Moreover, it establishes that heads of terms have been agreed with 2 of the 5 statutory objectors and with a third landowner.
50. Notwithstanding this, I have carefully considered the representations of Sally-Ann Evans who argued that insufficient steps have been taken by the AA to negotiate with her mother (Mrs Mabel Evans). However, the evidence before me including that provided by Sally-Ann Evans at the Inquiry confirmed that their engagement and offers were made by the AA over a substantial period of time. It was also confirmed that the negotiations were terminated by Mrs Mabel Evans by email on the 28 April 2022, where she stated "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." I therefore conclude that Mrs Mabel Evans' communication was unambiguous, in making clear that, further negotiation was not possible.
51. Therefore, based on the evidence before me I consider that the AA have adequately demonstrated that they entered meaningful negotiation with the objectors and all other parties subject to the Order. In reaching this conclusion I

¹⁴ POE Virginia Blackman

accept that collectively the objectors' connection with the Order Land would have made any negotiation very difficult. In this respect I can fully understand their unwillingness to sell their interest in the land or being unable to reach an agreement in terms of their valuation. However, a failure to ultimately reach an agreement does not mean that the negotiation process was flawed. Therefore, I conclude that the AA have taken reasonable steps to acquire all the land and rights included in the Order by agreement.

Alternatives

52. The Objectors have suggested the Scheme could be implemented without the need to acquire their interests. Arguing that the Council as Acquiring Authority have failed to adequately consider alternative access arrangements. However, it is clear from the evidence, that 3 alternative routes to the site were considered. These were Chaffer Lane, The Saltings, and St James's Close or Westlands Lane.
53. Having carefully considered all the evidence including the representations of the objectors I have no reason or justification to disagree with the findings of the Council. I therefore conclude that the 3 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. Moreover, it was confirmed that the 3 potential alternative accesses would also be significantly more costly than the Scheme access (via Crooked Lane). This would be highly likely to result in less funding available to provide affordable housing. Consequently, the 3 alternative accesses do not amount to genuine alternative proposals that would achieve the same purposes for which the AA is proposing to acquire the land.
54. The objectors also sought to argue that as outline planning permission¹⁵ had been granted on appeal on 9 February 2024 for residential development at Main Road, Birdham, this represents an alternative for the provision of affordable housing. However, there are 3 clear reasons why the site at Main Road would not amount to a genuine alternative proposal to the Scheme. 1. The permission is outline and no evidence was produced that identified an end developer (housebuilder), consequently a timescale for the implementation of the Main Road site could not be established. 2. The outline permission's Section 106 planning 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, therefore this is likely to lead to a further delay in the provision of the affordable housing. 3. The size of the Main Road site means that it is identified as a strategic site. As such, due to differences in allocation criteria the affordable housing may not necessarily become available to those with a local Birdham connection. This is fundamentally different to the Crooked Lane exception site where the 15 affordable dwellings were submitted and approved specifically to help contribute towards meeting the identified need for affordable housing at Birdham¹⁶.

¹⁵ Appeal ref: APP/L3815/W/23/3319434

¹⁶ POE and rebuttal - Mark Bristow

55. Therefore, for these main reasons the Main Road site does not amount to a genuine alternative proposal that would achieve the same purposes for which the AA is proposing to acquire the land to deliver the 15 affordable dwellings at the Crooked Lane Housing Site. As such, there are no alternative proposals that would achieve the same purposes for which the AA is proposing to acquire the land.
56. In reaching my conclusion I have carefully considered the objectors representations regarding the delivery of affordable housing elsewhere across the district including but not exclusively Chichester and Tangmere. However, there was limited information in terms of delivery, nomination rights and how affordable housing at these other locations would address the identified affordable housing need in Birdham. Thus, these do not amount to genuine alternative proposals that would achieve the same purposes for which the AA is proposing to acquire the land.

Planning Matters

57. Issues relating to the grant of planning permission for the Scheme are a central theme to both the qualifying and non-qualifying objections. As set out above and in my pre-Inquiry briefing note it was not the purpose of the Inquiry to reopen or reconsider the planning merits of the Scheme/planning permission to which the Order relates. Notwithstanding this, I will briefly address each of the main planning issues raised for completeness.
58. Objectors raised several highway issues arguing that the Scheme's access road is inappropriate/sub-standard, and that its provision and use would result in highway safety issues including concerns relating to the nearby school and nursery. However, the highway design and impact of the Scheme was fully considered at the planning application stage. Moreover, there is no objection to the Scheme from the West Sussex County Council the local highway authority.
59. It was argued by objectors that there was a lack of infrastructure, flood risk and/or damage to nature/environment. However, these matters were correctly considered at the planning application stage. Dealing with the risk of flooding, the Council's Drainage Engineer and Southern Water confirmed that there are no concerns in relation to drainage or risks from flooding. In relation to the Scheme potentially harming nature or the local environment including the AONB, these issues were again considered during the consideration and determination of the planning application, furthermore, neither the Environment Agency nor Natural England raised any objection to the grant of planning permission.
60. Objectors sought to argue that the Order Land amounted to an "unsuitable location" for housing. However, the Local Planning Authority through granting planning permission determined that the location was suitable for affordable housing as a Rural Exception Site. The decision was reached after considering all the evidence and representations including those advanced by their own Design and Implementation Manager.
61. There were also concerns raised in relation to the impact of the Scheme on living conditions¹⁷, both during the construction phase and thereafter once the

¹⁷ Tony and Linda Corkett and Mrs Mabel Evans, represented by Sally-Ann Evans

affordable homes are occupied. However, these again are matters that would have been part of the overall consideration of the proposal during the planning application stage. Moreover, I was reassured at the Inquiry that the AA was genuine in seeking to ensure that any noise, impact, or disruption during the construction phase would be minimised. Furthermore, once the affordable homes are occupied any potential noise or disturbance beyond the legally established thresholds would be adequately addressed by environmental legislation.

62. In conclusion, whilst I have some sympathy with the objectors in that they appear to be genuinely concerned about the impact of the Scheme on Birdham, there is no substantive evidence before me that demonstrates that there has been a material change in circumstances since planning permission was granted. Consequently, I can only conclude that the planning matters raised have been appropriately considered as part of the planning process for the Scheme and do not lead me to a different conclusion in my consideration of the Order.

COMPENSATION

63. As set out above the issue of compensation is not a matter for the Inquiry. The amount of compensation that should be payable, if not agreed, is a matter for the Upper Tribunal (Lands Chamber).

HUMAN RIGHTS AND EQUALITIES

64. Article 1 of the First Protocol to the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 and, in the case of the dwellings, Article 8 of the Convention apply in the consideration of this CPO. The CPO Guidance¹⁸ sets out when confirming an order, authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. As addressed above, there is a compelling case in the public interest for acquisition of the properties subject to the CPO. The comprehensive benefits of the CPO Scheme could not be achieved without acquisition of the land and interfering with the individual's rights.
65. Therefore, given the significant public benefits that would be provided, this represents a compelling case to justify interfering with Article 1 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998 and, Article 8 of the Convention.

Public Sector Equality Duty

66. I am bound by the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010, and as a public authority I must comply with the PSED. It is my duty personally to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

¹⁸ Tier 1, Stage 1, Paragraph 2

- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

67. The AA carried out an Equalities Impact Assessment (EIA) in March 2023¹⁹.
68. The EIA identified that one or more of the third-party owners or reputed owners may fall within the protection of the Equality Act 2010 as they are elderly. However, it concluded that the Council have no evidence of a disproportionate impact on any third-party owner or reputed owner due to age. The evidence shows no potential for discrimination and that all opportunities to promote equality have been taken. The EIA concludes that no negative equality impact would result from the Scheme.
69. To comply with PSED it is the duty of public authorities to have 'due regard' to consider the three aims when making decisions. This means two things; 1. It is a duty to ensure that any decision giving rise to any negative impacts in relation to the three aims is informed and made with regard to any less harmful alternative outcome. 2. It is a duty to seek to achieve a positive outcome in respect of the three aims where possible.
70. Therefore, based on all the evidence before me I have no reason or justification to disagree with the findings of the EIA (March 2023). In reaching this conclusion I am mindful that the provision of 15 affordable dwellings in Birdham would be likely to have valuable and positive life changing impacts for individuals in the local area with protected characteristics including the elderly. Consequently, I conclude that the processes put in place by the Council are proportionate and there are no further reasonable measures that can be taken.

CONCLUSION

71. The Scheme underpinning the CPO is wholly in accordance with the development plan and has the benefit of planning permission. I am satisfied that the Scheme would substantially contribute to the achievement of the promotion or improvement of the economic, social and environmental wellbeing of the area, and that these purposes could not be achieved by other means, such as through alternative proposals. Financial resources are in place for the Scheme. The Order would interfere with the human rights of the objectors, but I consider that the interference is proportionate and that there is a strong public interest in ensuring that the provision of 15 affordable dwellings in Birdham takes place. Overall, and having taken all matters into account, I conclude that there is a compelling case in the public interest for the acquisition of the Order Land.
72. For the reasons given above and having regard to all matters raised I therefore conclude that The Chichester District Council (Access Track Off Crooked Lane, Birdham) Compulsory Purchase Order 2023 be confirmed.

Jameson Bridgwater
INSPECTOR

¹⁹ POE Mark Bristow

APPEARANCES

The Acquiring Authority:		
Ms Heather Sargent - Counsel	Instructed by Legal Services, Chichester District Council	
They called		
	Mark Bristow	Principal Affordable Housing Officer - Chichester District Council
	Virginia Blackman	National Head Site Assembly & Compulsory Purchase - Avison Young
	Sarah Poulter	Regional Development Director – Hyde Group
Objectors		
	Tony and Linda Corkett	Copperfields, Crooked Lane, Birdham
	Mrs Mabel Evans, represented by Sally-Ann Evans	Hedgecox, Crooked Lane, Birdham
	David Williams	Birdham Village Residents Association
	Cllr Timothy Firmstone	Birdham Parish Council
	Guy Tremayne	Local Resident
	Paul Kirkin	Local Resident

INQUIRY DOCUMENTS *(submitted during the Inquiry)*

Date	Document
6 August 2024	The AA's Opening Submissions
6 August 2024	BVRA Statement of Case
7 August 2024	Tony Corkett Summary of Case
7 August 2024	AA Note – CPO Statutory Provisions
14 August 2024	The AA's Closing Submissions
14 August 2024	Tony and Linda Corkett Final Submissions
14 August 2024	Mrs Mabel Evans, represented by Sally-Ann Evans - Final Submissions