

Seaward Properties Limited

Chichester District Council (Tangmere) Compulsory Purchase Order 2020

Proof of Evidence of Jonathan Stott MRICS

23 August 2021

## 1. INTRODUCTION

- I. I, Jonathan Stott, have been a professional member of the Royal Institution of Chartered Surveyors (“RICS”) since 2009 and I am also an elected member and former Chair of the Compulsory Purchase Association. I hold a Bachelor of Arts degree in Planning and International Development from the University of Liverpool and I am a named contributor to the RICS Professional Statement for Surveyors advising in relation to compulsory purchase and compensation. I have 17 years’ professional experience, all of which have been in the field of compulsory purchase and compensation.
- II. I am the Managing Director of Gateley Hamer Limited, a property consultancy providing advice relating to compulsory purchase and compensation. I initially joined the business in 2013 to establish the Compulsory Purchase and Compensation team, having previously worked at Ardent Management for nine years, also undertaking compulsory purchase work.
- III. My experience includes advising acquiring authorities and claimants alike. I have advised Local Authorities, other public sector bodies and developers through the promotion and implementation of compulsory purchase powers, most recently including Leicester City Council (Leicester Waterside), Highways England (various Development Consent Orders) and London Borough of Redbridge (Ilford town centre regeneration). I have also advised over 100 developers and businesses affected by compulsory purchase, including over 50 parties affected by High Speed 2 as well as parties impacted by housing, regeneration and highways CPOs.
- IV. I have given evidence as an Expert Witness at public local inquiries, Development Consent Order examinations, House of Commons Select Committees and in the Upper Tribunal (Lands Chamber).

## 2. MY ROLE ADVISING SEAWARD PROPERTIES LIMITED

- I. I am instructed by Seaward Properties Limited (“Seaward”) of Metro House, Northgate, Chichester, West Sussex, PO19 1BE to advise in respect of its interest in land included in the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 (the “Order”).
- II. The Order is being promoted by Chichester District Council (the “Council”) in connection with the proposed development of the area known as the Tangmere Strategic Development Location (“TSDL”). The proposed development is a housing led scheme for up to 1,300 homes, an expanded village centre, primary school, open space, community facilities, associated infrastructure and other associated works (the “Scheme”) which it is intended will be undertaken by Countryside Properties (UK) Limited (the “Developer”).
- III. Seaward’s interest in the site affected by the Order (“the Tangmere Site”) arises from the two agreements:

- a) Development and Project Management Agreement dated 1 September 2004 between (1) A John Pitts (2) The Agricultural Mortgage Corporation plc (3) Barclays Bank plc (4) Seaward Properties Limited which relates to freehold title WSX28377; and
- b) Option Agreement dated 13 December 2011 between (1) W Roger Pitts (now deceased) and Deidre J Pitts (2) Seaward Properties Limited (3) Andrew John Pitts (4) The Agricultural Mortgage Corporation Plc and (5) Barclays Bank plc which relates to freehold title WSX345601

IV. I was originally instructed by Seaward in March 2020 to advise in relation to its compensation entitlement in the event that the Order was confirmed and the land subject to the above-referenced agreements compulsorily purchased. I have subsequently been instructed to present evidence to the public local inquiry into the Order in support of the objection submitted on Seaward's behalf by Irwin Mitchell LLP, by demonstrating that the Council is premature in pursuing compulsory purchase powers and that the land in which it has an interest does not need to be compulsorily acquired because there is an alternative means of bringing about the objective of the order.

V. I confirm that in preparing my evidence I have complied with the duties owed by me to the inquiry in my role as an expert witness.

### 3. SEAWARD'S INTEREST IN THE ORDER LAND

I. Seaward has an active option agreement over land including in the Order owned by the Pitts family, summarised as follows:

- a) Option agreement dated 13 December 2011 between William Roger Pitts & Deidre Jane Pitts (1) Seaward Properties Limited (2) Andrew John Pitts (3) The Agricultural Mortgage Corporation (4) and Barclays Bank Plc (5)
- b) Covers land to the east of the Order land
- c) Agreement dated 13th December 2011 for an initial option period of 5 years + a 5-year second option period + 2-year third option period
- d) Agreement expires 12th December 2023
- e) Land purchase price at 87.5% of market value less planning costs
- f) Minimum price payable to landowner £300,000 per gross acre of land.

II. In addition, Seaward has a Development and Promotion Agreement over other land included in the Order with Mr John Pitts, summarised as follows

- a) Development and Project Management Deed between Andrew John Pitts (1) The Agricultural Mortgage Corporation (2) Barclays Bank Plc (3) and Seaward Properties Limited (4)
- b) Covers land to the north west and land to the south of Tangmere Road
- c) Agreement dated 1 September 2004, due to expire 1 September 2021

- d) Grants Seaward the right to promote the land for residential development
- e) Requires the sale of the land if planning permission is secured
- f) Gives Seaward the option to purchase 50% of developable land
- g) Provides that the remainder of the developable land must be sold on the open market.

#### 4. BACKGROUND AND CURRENT POSITION

- I. Seaward do not object to the principle of development in accordance with the adopted and emerging planning policy (as set out in the Council's Statement of Reasons). Indeed, it has been Seaward's intention to develop those areas of the Order land within which they hold an interest (as set out above). Seaward have been seeking to achieve development for a number of years pre-dating the Order, as evidenced by the fact that it submitted a planning application in 2013 (Ref: TG/13/03804/OUT) for the "Development of 50 dwellings with ancillary car parking, landscaping and open space, with access from Church Lane" on the land to which the option agreement related.
- II. Unfortunately, the Council's intervention through the appointment of the Developer and the threat of compulsory acquisition has caused uncertainty and acted as an impediment to achieving development on the Order land. I understand that the threat of compulsory acquisition coupled with the Council's reluctance to engage with any landowner/developer seeking to bring forward a freestanding phase of the TSDL has deterred Seaward from incurring planning and promotion costs at risk, which would ultimately be abortive in the event the Order land is compulsorily acquired.
- III. In view of the circumstances, following the Council's appointment of the Developer, I understand that Seaward has negotiated draft Heads of Terms for a network of agreements, including with the Developer and the Pitts landowners. The proposed agreements involve Seaward surrendering its interest to enable Mr A John Pitts and the Pitts family to enter into a hybrid option/promotion agreement with the Developer, and the Developer granting Seaward an option to buy a serviced site for 100 dwellings, which it would then develop.
- IV. I am informed that the Developer has been responsible for all negotiations and that the Council has had no direct involvement and, although the negotiations have proven to be very protracted, I understand Seaward remain willing to enter into the suite of agreements for which terms are agreed.

#### 5. POINTS OF OBJECTION

- I. My clients' points of objection are set out in the letter of objection submitted by Irwin Mitchell LLP on 9 December 2020. I expand upon a number of those points of objection below, having regard for how the Council's promotion of the CPO, and its conduct generally, accords with the requirements of the MHCLG's "Guidance on Compulsory purchase process and The Crichel Down Rules" (July 2019) (the "Guidance").

**The Order is unnecessary because there is an alternative means of bringing about the Council's objectives**

- II. The main purpose of the Order is that the Tangmere Site can be developed for housing. The intended scheme identified in the Statement of Reasons is: *“The development of the TSDL [The Tangmere Strategic Development Location as identified within the Chichester Local Plan: Key Policies 2014 – 2029] to deliver at least 1,000 homes (consistent with the figure identified in the Local Plan) and up to 1,300 homes (consistent with the figure identified in the Emerging Local Plan), expanded village centre, school, open space, community facilities, associated infrastructure and other associated works. (“the Scheme”)”*.
- III. Section 1 of the Guidance deals specifically with CPOs made under section 226 of the Town and Country Planning Act 1990, as is the case here. Paragraph 106 sets out matters of relevance which the Secretary of State will take into account when deciding whether to confirm a CPO under the 1990 Act. Bullet point 3 of that paragraph states that a relevant consideration is whether the purposes of the acquiring authority could be achieved by any other means, including the appropriateness of any alternative proposals put forward by owners of the land.
- IV. It is clear in this case that the three principle landowners – the Pitts family, the Heavers and the Church Commissioners – are intent on developing the Order land for housing, and the objectives of the Order could be achieved without the use of compulsory purchase powers.
- V. All three of the above parties are promoting, or have entered into agreements for, the promotion of their land for development. The above-mentioned agreements between Seaward and the Pitts Family are clear evidence of this and I am aware that the Council has received further evidence of the same from other objectors. In particular, I understand that the Heaver Family has entered into an option agreement with Bloor Homes Limited in relation to the land within their ownership.
- VI. Furthermore, I understand that the three principle landowners, together with Bloor, entered a Memorandum of Understanding (“MoU”) in July 2020 which commits the parties to work together to achieve the shared aim of bringing forward a policy compliant development of their land holdings within the TSDL and states that they have the necessary resources and expertise to achieve this. Seaward share that objective and by virtue of its agreements with the Pitts family is, in effect, committed to the terms of the MoU.
- VII. At paragraphs 5.25-5.31 of the Statement of Reasons the Council explains that the Order is necessary because the owners of the Tangmere Site have been unable to collaborate and agree a plan for its comprehensive development. The commitments incorporated within the MoU somewhat undermine the Council’s assertion and it is clear that were it not for the disruption and distraction of the CPO being promoted, and the uncertainty that has caused, the principle landowners, together with Seaward and Bloor, would very likely have agreed a plan for comprehensive development by now, in accordance with the masterplan endorsed by the Council, and indeed those parties are committed to that objective.

- VIII. Alternatively, my clients are also willing to participate in a joint venture arrangement with the Council and/or the Developer to facilitate development and have made the Council and the Developer aware of their willingness to do so. I understand the same is also true of the principle landowners and Bloor.
- IX. In the circumstances it is clear that the Order fails to satisfy the statutory requirements of section 226(1)(a) of the Town and Country Planning Act 1990 on the basis that the compulsory acquisition of the Order land is not required in order for development to be facilitated and the purposes of the acquiring authority could be achieved by other means.
- X. At the very least the CPO has been promoted prematurely and more time should be allowed prior to it being confirmed, to enable the principle landowners (together with Seaward and Bloor) to demonstrate that they are able to deliver development that achieves the Council's objectives.

**There have been inadequate attempts to acquire the interests in the Tangmere Site by agreement**

- XI. Seaward's letter of objection explained that negotiations between the Council and the principle landowners, together with Seaward and Bloor, were ongoing in December 2020. I understand that remains the case and negotiations are at an advanced stage, such that it is anticipated that agreements will be completed presently.
- XII. Insufficient time has been allowed for these negotiations to progress to completion and it is Seaward's case that the Order should not be confirmed until the negotiations have run their course. Seaward is committed to using reasonable endeavours to ensure the agreements to which it is to be party to are completed by, say, 31st December 2021. The CPO should not be confirmed prior to that date and it is Seaward's case that the CPO should not be confirmed if such agreements are completed, on the basis that there would be no basis for the Council to use compulsory purchase powers in that case.
- XIII. In the circumstances, with agreements being so close to being completed, it cannot be said that compulsory purchase is being used as a "last resort" as paragraph 2 of the Guidance makes clear should be the case.

**There is no guarantee that compulsory acquisition will facilitate the development of Order Land**

- XIV. In addition to the points of objection referenced in the Irwin Mitchell letter of 9<sup>th</sup> December, having reviewed the Development Agreement ("DA") entered into between the Council and the Developer, in my opinion there is no guarantee that compulsory acquisition will facilitate the development of Order Land, not least because:
- a) it is apparent that, in the context of the DA, there is significant uncertainty as to the financial viability of the Scheme and,

b) because there is no contractual commitment on the Developer to deliver the scheme.

XV. In these regards there is a significant difference between the picture that the Council has sought to convey through its Statement of Case and the contractual reality of the DA.

XVI. One clear example of this is that, at 7.12 of the Statement of Case, the Council states that "*Once the CPO has been confirmed, the Council will take possession of the entirety of the Order Land within 6 months.*" In contrast, the DA makes provision for the Order Land to be acquired within 3 years from the date of confirmation of the Order, with an option for the Developer to terminate the DA if in its opinion the Scheme is not financially viable.

XVII. The DA, entered on 5 February 2019, sets out the "Common Objectives" of the Council and the Developer as:

a) adherence to adopted planning policy; and

b) optimising the development of the TSDL such that value is maximised.

XVIII. However, I note that:

a) The DA does not commit the Developer to build out the Scheme, in whole or part, other than a broad obligation to use "reasonable endeavours" to deliver a vaguely defined "Development". The DA also fails to commit the Developer to delivering the Scheme within any specific timeframe.

b) The determination provisions at clause 5.2(c) allow the Developer to terminate the DA if, in its opinion, it is no longer viable. That includes if, in its reasonable opinion, the Developer considers that the cost of delivering the Scheme (including the cost of paying compensation to third party landowners) means it is not able to satisfy its objective of maximising value.

c) Clause 3.3 of the DA gives the Developer the deciding vote in respect of the negotiations for the acquisition of third-party land interests. Any acquisition must, in the Developer's opinion, be reasonable in the context of the Common Objectives (which include the maximisation of value).

XIX. Having considered these points, I have referred back to the Guidance. In doing so I note that:

a) The fourth bullet point of paragraph 106 of the Guidance states that "*the greater the uncertainty about the financial viability of the scheme..... the more compelling the other grounds for undertaking the compulsory purchase will need to be*", whilst

- b) Paragraph 14 of the Guidance states that *“only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years”*.

XX. In this case, it is clear that it is the Developer’s opinion of viability that will decide whether or not the scheme proceeds and, on the basis that I understand certain of the landowners consider the Developer has proposed terms that undervalue their interests, in the event that compulsory acquisition powers are exercised and compensation is assessed under the Compensation Code, it seems perfectly feasible that the Developer will decide that it is unable to maximise value, whereby it could walk away from the DA on the basis that in its opinion the Scheme is not financially viable. That scenario would presumably result in there being limited to no prospect of the Scheme being delivered and potentially leave the Council liable for paying compensation in relation to any land it has acquired pursuant to the CPO. It is not at all clear that the Council has the resources available to pay such compensation.

XXI. In view of:

- a) the lack of certainty that the scheme will be delivered, due to the fact that in my opinion there appears to be a reasonable prospect that the Developer will consider that the Scheme is not financially viable when faced with paying fair compensation under the Compensation Code,
- b) the high prospect that the Council’s objectives could be achieved by the existing landowners without the use of compulsory purchase powers, and
- c) attempts to acquire interests by agreement have not yet been exhausted and are proceeding positively

in my opinion the CPO has been promoted prematurely, the DA does not provide sufficient certainty in terms of Scheme delivery, and there are insufficient grounds for the CPO to be confirmed.

## 6. STATEMENT OF TRUTH AND DECLARATION

### Statement of Truth

- I. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

### Declaration

- II. I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.

- III. I confirm that I understand and have complied with my duty to the inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- IV. I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- V. I confirm that I have no conflicts of interest.
- VI. I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the inquiry.
- VII. I confirm that my report complies with the requirements of the Royal Institution of Chartered Surveyors (RICS), as set down in the RICS practice statement Surveyors acting as expert witnesses, and the RICS Professional Statement Surveyors advising in respect of compulsory purchase and statutory compensation.



Jonathan Stott MRICS

27 August 2021