

Appendix 1 to the Statement of Evidence of Andrew Frost

Glossary:

Ashurst -	who act for Shopwyke and Bosham
ATP -	Aylward Town Planning (who act for Heaver Homes Ltd/John Heaver)
BH –	Bloor Homes (who hold option over much of HV land)
BS –	Ben Simpson, Drivers Jonas Deloitte - DJD - (who act for Church Commissioners) – subsequently becoming CJ
CC –	Church Commissioners
CDC –	Chichester District Council
CJ –	Carter Jonas (who act for Church Commissioners)
CW –	Colin Wilkins, Savills (who acts for HV and CS East Ltd/CS South Ltd)
DJB -	Davitt Jones Bould (who act for CDC)
DJD –	Drivers Jonas Deloitte (who act for the Church Commissioners and the Pitts family)
HA –	Henry Adams (who acts for the Pitts family)
HV –	Herbert George Heaver
JL -	James Leaver, Knight Frank (instructed by CDC on valuation & CPO advice)
LB –	Luken Beck (who act for Seaward Properties)
NJ -	Nigel Jones, Chesters (who acted for CS South Ltd & CS East Ltd)
NLP –	Nathaniel Lichfield and Partners (who act for CC)
NP –	Neighbourhood Plan for Tangmere
OC/RC -	Osborne Clarke/Russell Cooke (who act for Countryside Properties)
OK -	Oliver King (who acts for John Heaver)
JW –	John Weir, Church Commissioners
Pitts -	The Pitts Family (Deirdre Jane Pitts, Michael Williams Pitts, Diana May Pitts, Valerie Ann Young, Andrew John Pitts)
Savills –	Savills (who act for HV and CS East Ltd/CS South Ltd and BH)
SP –	Seaward Properties (who have an option over some of Pitts land)
TPC –	Tangmere Parish Council
Consortium -	landowners (CC, HV, Pitts, owners of Tangmere Business Park) and their advisors/representatives

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By Email

Mr T Goode
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Our reference JLW1096562O49242629.1JLW

5 May 2020

Dear Mr Goode

Without Prejudice and Subject to Contract

Tangmere Compulsory Purchase Order

We write further to telephone calls and emails between Nicholle Phillips and Dan Hagger of Countryside ("CPUK") and your client's agent Colin Wilkins of Savills.

Your client has stated they do not wish to negotiate a tripartite agreement, instead preferring an alternative proposal which involves mutually exclusive agreements between (i) your client and CPUK; and (ii) your client and Bloor to vary their option.

Heads of Terms for a voluntary agreement were most recently issued to your client on 24 February 2020. These were offered on the basis that the agreement for your client's interest and the Bloor variation would be completed simultaneously.

Contrary to your client's position, Bloor has stated they are willing to negotiate a tripartite agreement with CPUK and your client. In our view a tripartite agreement is the appropriate way for this to be dealt with. It has always been made clear that it is the preference of CPUK to enter into a tripartite arrangement with your client and Bloor, given the Acquiring Authority's ("AA") duty to undertake meaningful negotiations with all those with an interest in the land in accordance with CPO Guidance.

Therefore we require clarity on your client's alternative proposal if it is to be considered further. In our view any arrangement must provide certainty that it can secure both your client's and Bloor's interests.

In order to progress matters, please can you reply in writing to this letter to address the following:

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1. Set out in detail the legal arrangement proposed between CPUK and your client, which will deliver their and Bloor's interests. Please also clarify what legal agreements and undertakings will be required to deliver your clients proposals.
2. If a legal arrangement could be entered into, please confirm what certainty your client can provide that this legal arrangement will also deliver Bloor's interest.
3. Set out the precise timeframes for the delivery of the arrangement you are proposing, to the point that both your client's and Bloor's interests are secured.
4. Provide an explanation of how the legal arrangement will not breach the terms of the existing option agreement between your client and Bloor.
5. Provide an explanation how the AA's duties are satisfied under the Guidance in undertaking your proposal, given the requirement for meaningful negotiations with all parties.
6. If your legal arrangement could be entered into, your client's view on how the AA should deal with any objection submitted against the CPO by Bloor, if the reason for the objection is insufficient engagement or that no deal has been reached with Bloor through your client's proposals.
7. Please set out in detail reasons for your client's reluctance to enter into a tripartite agreement.
8. Please can you confirm how the Shopwyke Limited, Bosham Limited interests and the CS East Limited and CS South Limited land interests will be delivered within or alongside the proposed arrangement above.
9. In addition to the above, please provide any further information regarding your proposed arrangements which we need to be aware of in our consideration.

Yours faithfully



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**WITHOUT PREJUDICE
SUBJECT TO CONTRACT**

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FAO John Webster

ashurst

Dear Sirs

**Tangmere Compulsory Purchase Order
Our client: Shopwyke Limited and Bosham Limited
Your client: Countryside Properties (UK) Ltd (CPUK)
Tangmere Strategic Development Location (TSDL)**

We refer to your letter dated 5 May 2020.

Our client's starting position is that the proposed compulsory acquisition of its interest in land within TSDL is unnecessary. It is capable of bringing forward its land for development in accordance with Policy 18 of the Local Plan and Tangmere Parish Council's Neighbourhood Plan and in a way which is consistent with the recently adopted Masterplan.

As your client is aware, our client has the benefit of an option agreement with Bloor Homes dated 21 December 2012 (the "Bloor Option") and it is confident that not only can it facilitate bringing forward a scheme on its land, it has a development partner with a proven track record of delivering development. In addition to this, there are ongoing negotiations with the other major landowners and there is a realistic prospect of agreement being reached which will facilitate the comprehensive delivery of the proposals for TSDL.

As you are no doubt aware, a compulsory purchase order ("CPO") should only be made where there is a compelling case in the public interest. The confirming authority will expect the acquiring authority to demonstrate that it has taken reasonable steps to acquire all of the land and rights included in the CPO by agreement. It is however acknowledged that it is sometimes appropriate to progress the compulsory purchase process in tandem with private treaty negotiations but the use of CPO powers should be a last resort.

It should not be overlooked that the original impetus for the CPO was not that the principal landowners could not agree to a Masterplan, but the existence and the inability to deliver the control strips were the overriding issues compromising a collaborative approach for the promotion and delivery of a comprehensive scheme for the TSDL. Our client has subsequently negotiated, at its own expense, agreements to deliver the control strips to facilitate the delivery of the TSDL. This is the key component for the promotion and delivery of the TSDL and which have been offered by our client for assignment to your client, at no cost, as part of the current discussions. It should be noted that the control strips have always been available; this issue has been resolving the value to be attributed to the control strips within the context of the vital role that the play in unlocking the TSDL for development.

There have been ongoing negotiations between our respective clients with a view to agreeing mutually acceptable terms for the disposal and acquisition in our client's interests in TSDL. Your client has been aware of the existence of the Bloor Option prior to submission of its offer dated 7 November 2018. Your client was provided with a redacted copy of this document on 21 June 2019.

Our client has been consistent in its approach with negotiating with your client; it has stated that, notwithstanding the inappropriateness of the use of compulsory purchase powers, it is willing to negotiate with your client and enter into a private treaty agreement for the sale of its interests in the TSDL. It has also made it clear to your client that it cannot and will not seek to breach the terms of the Bloor Option and therefore any terms agreed will need to make allowances for the Bloor Option. In accordance with your client's offer dated 7 November 2018, our client has negotiated in good faith to agree terms with your client and, once these terms are agreed, negotiate with Bloor with the aim of securing a variation to the Bloor Option which brings it into line with the terms agreed between our respective clients. This approach is consistent with your client's offer and was discussed and agreed at a meeting with your client on 9 January 2020. Following that meeting work has progressed on heads of terms. Unfortunately, the negotiations on those heads of terms have stalled as a consequence of a number of factors, the primary one being your client's reluctance to underwrite the reasonable and proper costs of our client associated with responding to your client's offer, negotiating the heads of terms and subsequent agreement. This is notwithstanding the oral confirmation given on behalf of your client on 9 January 2020 that these costs would be covered. You advised in your letter dated 5 May 2020 that your client now wishes to enter into a tripartite agreement which includes Bloor. After circa 18 months of negotiation and draft terms in circulation which our client believes can be agreed relatively quickly, our client's preference is to continue as previously agreed and agree terms with your client before concluding negotiations with Bloor.

Our client was intending to propose some relatively minor amendments to the heads of terms issued by your client on 24 February 2020. It is still willing to issue a formal response but prior to doing so, requires the resolution of the position concerning the costs undertaking. Notwithstanding this, and in order to seek to progress the negotiations, we have been instructed to respond to the questions raised in your letter.

- 1. Set out in detail the legal arrangement proposed between CPUK and your client, which will deliver their and Bloor's interests. Please also clarify what legal agreements and undertakings will be required to deliver your clients proposals.**

As will be seen to our response to question 4 below, our client is proposing to agree terms with your client which are conditional upon a variation to the Bloor Option. In the event that it is not possible to agree terms with Bloor to vary the Bloor Option, your client would be able to proceed with the compulsory acquisition of all of the interests in our client's land subject to an undertaking that any acquisition of our client's interest would be in accordance with the commercial terms agreed between our respective clients and contained within the conditional agreement.

- 2. If a legal arrangement could be entered into, please confirm what certainty your client can provide that this legal arrangement will also deliver Bloor's interest.**

There is no **absolute** certainty that the legal arrangements proposed by our client would secure Bloor's interest. It would however secure our client's interests. Our client believes that it is more likely to be able to agree a variation to the Bloor Option with the benefit of an agreement with your client. The correspondence between our client and Bloor indicates a willingness on the part of Bloor to agree to a variation of the Option Agreement.

The legal arrangements outlined in response to question 1 would provide your client with a degree of certainty that it could, if necessary, seek to acquire the Bloor interest through the use of compulsory purchase powers.

- 3. Set out the precise timeframes for the delivery of the arrangement you are proposing, to the point that both your client's and Bloor's interests are secured.**

We are not in a position to provide precise timeframes for the delivery of the arrangements proposed. We understand that the proposed CPO is unlikely to be made until Autumn 2020. This means that there is a window of at least four months within which to agree terms with your client and then seek to negotiate the variation of the Bloor Option. If our respective clients are unable to reach agreement, your client would still have a period of time within which to negotiate with Bloor in advance of the making of the CPO. You will, of course, appreciate that negotiations can continue with our client and Bloor post the making of the CPO.

4. Provide an explanation of how the legal arrangement will not breach the terms of the existing option agreement between your client and Bloor.

The Bloor Option with Bloor permits our client to enter into a disposal agreement with a third party (including CPUK) so long as it is conditional on compliance with the pre-emption at clause 16.3 of the Bloor Option and the pre-emption period expiring without the pre-emption being exercised the first of the following happening (see clause 16 of the Bloor Option). Clause 4.1(a) permits disposals in accordance with clause 16.

There is nothing in the Bloor Option which prevents agreements being conditional upon other conditions as well as compliance with the pre-emption at clause 16.3.

In this case we suggest that the agreement between our client and CPUK would be conditional on the first of the following happening;

- an agreement being made with Bloor to vary the terms of the Bloor Option; or
- compliance with the pre-emption at clause 16.3 of the Bloor Option and the pre-emption period expiring without the pre-emption being exercised.

We suggest neither our client nor CPUK is permitted to trigger the pre-emption provisions in the Bloor Option whilst discussions with Bloor to vary the Bloor Option are ongoing. If the agreement to vary the terms of the Bloor Option is not finalised by an agreed longstop date then either our client or CPUK can terminate the agreement before the pre-emption provisions in the Bloor Option are triggered but our client would expect that any future acquisition of its interest in the TSDL land pursuant to a CPO would be consistent with the commercial terms agreed with your client. Indeed, as noted in response to question 1, the acquiring authority would retain the right to effectively override the Bloor Option through the use of compulsory purchase powers.

5. Provide an explanation how the AA's duties are satisfied under the Guidance in undertaking your proposal, given the requirement for meaningful negotiations with all parties.

We are unaware of the steps taken by the acquiring authority to negotiate with all interested parties. We are however aware that your client has entered into negotiations with Bloor. The timeframes outlined in response to question 3 would provide time for further meaningful negotiations with Bloor.

6. If your legal arrangement could be entered into, your client's view on how the AA should deal with any objection submitted against the CPO by Bloor, if the reason for the objection is insufficient engagement or that no deal has been reached with Bloor through your client's proposals.

We are not in a position to speculate about the nature to any objection from Bloor. We envisage that the acquiring authority's primary objective would be to reach agreement with the party that **owns** the land; this is our client. Once the terms are agreed with our client there could be further meaningful negotiations with Bloor. It would not be unreasonable to explain to an Inspector/the Secretary of State that the acquiring authority has engaged with Bloor, but in the first instance, focused its attention on the landowner in anticipation that once

terms were agreed there would be further negotiations with other parties with an interest in our client's land (including Bloor) with the aim of acquiring their respective interests by agreement.

7. Please set out in detail reasons for your client's reluctance to enter into a tripartite agreement.

The terms proposed by your client are fundamentally different to the commercial terms contained in the Bloor Option. A tripartite agreement would effectively result in rendering the existing Bloor Option redundant. This would not be acceptable to our client due to the considerable time and expense incurred negotiating with your client to date; the considerable progress our respective clients have made to agree terms; and our client's belief that heads of terms can be agreed relatively quickly. Further, from experience, tripartite negotiations are typically more complicated and time consuming and rather than the parties 'starting afresh' with a new agreement that includes Bloor our client believes the most effective way of agreeing terms with your client and Bloor prior to the CPO being made would be by adopting a three stage approach:

1. Agreement between our respective clients; followed by
2. Negotiations with Bloor to vary the Bloor Option agreement to ensure that it is consistent with the terms agreed between our respective clients; and
3. Your client would then be in a position to enter into detailed negotiations with Bloor to agree the arrangements for identification of land to be transferred to Bloor, cost and timing of delivery of infrastructure to service the plots and timing for drawdown of plots.

8. Please can you confirm how the Shopwyke Limited, Bosham Limited interests and the CS East Limited and CS South Limited land interests will be delivered within or alongside the proposed arrangement above.

The Shopwyke Limited, Bosham Limited, CS East Limited and CS South Limited land interests would all be included in the agreement between our respective clients. Our client's amendments to the draft heads of terms explain how this would be achieved.

Your client has been provided with details of title to all of the interests referred to above.

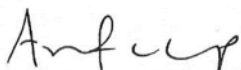
9. In addition to the above, please provide any further information regarding your proposed arrangements which we need to be aware of in our consideration.

We have nothing further to add.

To the extent that your client has any remaining questions about how our client's proposals would work, can you please provide a clear explanation of the specific reasons which would prevent the negotiations proceeding in the manner suggested by our client.

As you will see from the above, the starting point is for our respective clients to agree to the heads of terms and then proceed with the negotiation of the agreement. This process can start as soon as our client receives the promised undertaking for payment of its reasonable costs.

Yours faithfully



Ashurst LLP

By Email

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Our reference JLW1096562O49798971.1JLW

26 June 2020

Dear Mr Goode

Without Prejudice and Subject to Contract

Tangmere Compulsory Purchase Order

Thank you for your letter of 14 May 2020, which has been given careful consideration by CPOK and Leading Counsel. We have the following comments to address the points made in your letter.

CPO

We note your comments that compulsory acquisition of your client's interests is unnecessary, given your client's desire to facilitate a scheme on its land, either independently or together with that of other landowners within the TSDL. We note that despite what you have stated in your letter, to date no substantive evidence has been provided to either CPOK or the Acquiring Authority which would demonstrate that such scheme is a realistic and deliverable prospect. In this regard we would ask you to confirm the current progress of discussions and/or agreements between your client and other landowners within the TSDL and when development could be expected to be delivered.

Regarding your comments on the 'strip land' in the ownership of CS South Limited and CS East Limited, it is our understanding that this land has effectively always been in the control of your client and that these interests were originally created by the Heaver family. The impetus for the CPO, as is noted in the committee report which preceded the 5 March 2020 resolution to proceed with the CPO, is the failure of the landowners to deliver a scheme for the comprehensive development of the TSDL over a significant number of years.

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Tripartite Discussions

Your letter states that *"You advised in your letter dated 5 May 2020 that your client now wishes to enter into a tripartite agreement which includes Bloor"*. In so saying, we understand you to be inferring that CPUK changed its basis of negotiation in May 2020. We do not accept such suggestion. Rather, and to be clear, it has always been the case that CPUK has required 'delivery' of Bloor Homes Ltd and Bloor Holdings Limited ('Bloor') as part of any arrangement with your client.

In this context, we note that in correspondence from Colin Wilkins of Savills to Nicholle Phillips of CPUK, Mr Wilkins expressly confirmed *"my client's stated position has always been that Bloor needs to be included in a tripartite arrangement"* and that his client *"wants to continue to work with Countryside to agree terms with you and to facilitate a tripartite agreement with Bloor Homes"* (email of 9 September 2019 timed at 16.18pm). Further, Mr Wilkins subsequently asked that a meeting be arranged *"to discuss the legal framework required to allow the three parties to enter into a tripartite agreement."* (email of 18 September 2019 timed at 14.32pm).

As such, it is not only our position that a tripartite arrangement is appropriate; rather we had understood it was your client's position also. It is also noted that the most recent correspondence with Bloor has stated in writing their preference to enter into a tripartite agreement.

You have now confirmed through your letter of 14 May 2020 that your client's proposal cannot be conditional on the delivery of Bloor. Further, it acknowledges there is no certainty on the delivery of Bloor under your client's proposal. This is a departure from the position that CPUK has been seeking since the issuance of Heads of Terms in November 2018, and that CPUK had thought to be common ground with your client.

Costs

Your letter alleges that CPUK has been reluctant to *"underwrite the reasonable and proper costs of our client associated with responding to your client's offer, negotiating the heads of terms and subsequent agreement. This is notwithstanding the oral confirmation given on behalf of your client on 9 January 2020 that these costs would be covered"*.

We do not accept this representation of events.

CPUK has consistently offered to provide an undertaking for your client's legal costs on commercial terms. This is what was discussed and offered by CPUK in the meeting on 9 January 2020. You will be aware that standard commercial terms typically entail that a sum for costs is agreed upon settling the Heads of Terms to proceed with the drafting of the legal agreement.

However, this is not what is being sought by your client. Rather, your client has sought advance agreement that an open ended undertaking be given for unknown and unlimited costs, without any explanation as to how the interests in the 'strips' would be delivered, or any commitment that the Bloor interest would be secured. Your client stated that these explanations and amended Heads of Terms would only be revealed if the requested undertaking was provided.

A summary breakdown of your costs was provided in April 2020, which was significantly in excess of what might ordinarily be considered 'reasonable' costs for settling a hybrid agreement in respect of a residential development site of this nature.

The summary breakdown would appear to include time already billed. These costs have been incurred without knowledge of CPUK and not to any 'pre-agreed' level. We also note duplication and doubling up of time between two surveyors from different firms, seemingly carrying out the same task. Further, no narrative has been provided to substantiate whether the costs relate to Heads of Terms, or any other costs relating to advice given in relation to the TSDL or the CPO more generally. As you will be aware, it is not reasonable for CPUK to be expected to pay for the costs of the preparation of any objection to the CPO or advice in anticipation of an objection being made.

Your proposal

CPUK cannot accept the proposal you have suggested in your letter of 14 May 2020. It does not give CPUK or the Acquiring Authority any confidence that both your client's and Bloor's interest will be secured. Instead, it puts the CPO (and ultimate delivery of development) at risk.

Your proposal is unduly complex to deliver. It requires three separate rounds of negotiation between (1) our clients; (2) your client and Bloor; and (3) CPUK and Bloor. This is not a simplified approach in comparison to the negotiation of a tripartite agreement. There is no comfort given in your letter that terms with Bloor could ever be reached in such an arrangement, in fact your proposal assumes circumstances whereby it is acceptable for Bloor's interests to remain and be subject to CPO.

Way forward

In light of this, CPUK proposes the following alternatives:

Option 1) A direct agreement to obtain the Heaver interest under which completion will be conditional upon entering into a deed of variation with Bloor relating to the existing option agreement (the "Bloor Option") in a form acceptable to CPUK. Terms for this arrangement are attached and will be familiar to your client.

Option 2) A tripartite agreement between CPUK, Bloor and Heaver predominantly based upon the same commercial terms as proposed in Option 1 and conditional upon the termination of the Bloor Option. Terms for this arrangement are attached.

Option 3) A direct agreement to obtain 100% of the Heaver interest for the same discount to Market Value and Minimum Price as in Option 1 and 2. Completion will be conditional upon the termination of the Bloor Option. CPUK would carry out its own direct negotiations with Bloor at the same time which would also be conditional on the termination of the Bloor Option. This alternative arrangement has also been put forward to Bloor.

Any of the options above will include land currently in the ownership of CS South Limited and CS East Limited, Bosham Limited and Shopwkye Limited. CPUK have confirmed that in progressing with these Options they would be prepared to offer a solicitor's undertaking to cover your client's proper and reasonable costs in negotiating the same up to a cap of £30,000 plus VAT, payable upon signing the Heads of Terms.

Yours faithfully



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3 August 2020

**SUBJECT TO CONTRACT
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FAO John Webster

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Dear Sirs

**Tangmere Compulsory Purchase Order
Our client: Shopwyke Limited and Bosham Limited
Your client: Countryside Properties (UK) Ltd (CPUK)
Tangmere Strategic Development Location (TSDL)**

We refer to our letter dated 3 July 2020. We have now had an opportunity to take further instructions from our client.

CPO

We do not accept that there has been a failure to provide the Acquiring Authority with substantive evidence to demonstrate the existence of an alternative scheme and that such a scheme is a realistic and deliverable prospect.

As you are aware, our client has entered into an Option Agreement with Bloor to facilitate the development of land that it controls within the TSDL. An indicative scheme has been prepared and there have been extensive attempts to enter into pre-application discussions with the Acquiring Authority. Unfortunately, the Acquiring Authority has been unwilling to reciprocate; it has been focused on a solus solution for the TSDL which is the appointment of your client as a development partner tasked with responsibility for achieving the comprehensive development of the TSDL.

Our client is of the view that its proposals are capable of being delivered in a manner which is consistent with the TSDL policy - including the current Masterplan. The issue appears to be one of whether the policy for the TSDL imposes a pre-requisite requirement for the development to be facilitated in a comprehensive manner under the overall control of a single developer. We do not think that this is the case.

We note that the Acquiring Authority has made repeated reference to the failure of the landowners to bring forward a comprehensive proposal for TSDL outside the CPO process – suggesting that this has been promised since 2010 but to date nothing has been delivered. It appears that the justification for requiring a single developer is that the Acquiring Authority considers it essential that development comes forward comprehensively in order to provide certainty over delivery of the infrastructure requirements for planned residential development and to guarantee that such infrastructure be delivered in a cohesive and co-ordinated manner.

Our client is of the view that these objectives can be met without the need to appoint a single master developer and, more importantly, without the need to pursue the proposed CPO.

Our client has continued negotiations with the other TSDL landowners and has recently signed a MOU with the landowners aimed at facilitating the comprehensive development of the TSDL without the need for a CPO. The intention is for the TSDL landowners to either work up a more detailed scheme based on the current Masterplan or formulate an alternative, policy compliant, Masterplan and submit proposals to the Council for approval. There will be a framework agreement/collaboration agreement aimed at enabling the individual landowners to bring forward the development of their respective land holdings in the knowledge that terms have been/will be agreed for ensuring that the infrastructure required for TSDL is delivered in a timely and comprehensive manner. The MoU makes provision for agreeing detailed arrangements for formulating a "Joint Strategy" aimed at meeting the "Shared Objectives" which are based on the planning policy framework for the TSDL. This includes a masterplan, land equalisation and a procurement and delivery strategy to ensure timely delivery of the infrastructure. This can all be achieved without the forced appointment of a master developer.

In this regard it should be noted that the landowners own and control the land within the TSDL and have agreed to make their land available for development. The landowners intend to work together to deliver the infrastructure and appoint a range of housebuilders to build out the serviced parcels thus ensuring even wider variety, choice, competition and speed of delivery.

In short, our client will, along with the other TSDL landowners, demonstrate to the Acquiring Authority, the Inspector and the Secretary of State, that it is not necessary to use compulsory purchase powers in order to enable the Council to achieve its policy aspirations for the TSDL.

The historical ownership of the "strip land" is irrelevant. Your letter dated 5 May 2020 requested details of how the "strip land" can be delivered by our client. Title information has been provided and it has been demonstrated that the key parcels of land needed to facilitate a comprehensive scheme are now within our client's control and will be available to our client and the other TSDL landowners to enable comprehensive development. Therefore, one of the perceived barriers to comprehensive delivery and justification for the proposed CPO has been removed.

Tripartite Discussions

There appears to be a clear misunderstanding of the historical discussions between our respective clients. Your letter is very selective in the extraction of correspondence which made reference to a timetable for a sequence of discussions aimed at our respective clients agreeing terms followed by negotiations with Bloor to vary the Bloor Option Agreement (and to ensure that Bloor Option Agreement was consistent with the arrangements agreed with your client for the allocation and drawdown of land) and then entering into a tripartite agreement to effectively amalgamate the agreed terms.

Our client has never accepted that it would be agreeable to heads of terms which render an agreement with your client conditional upon delivery of a variation to the Bloor Option Agreement. Our client's position has been that it would be willing to agree terms with your client and then seek to vary the Bloor Option Agreement but that, if such variation was not achievable, your client and, more importantly, the Acquiring Authority, would retain the right to effectively override the Bloor Option Agreement through the CPO.

As far as we are concerned, our client's position has been consistent:

1. It will seek to agree terms with your client to enable the acquisition of its land (including the 'strip land') on acceptable commercial terms;
2. Once such terms are agreed, effect any necessary amendments to the existing Bloor Option Agreement to ensure that there is consistency with any terms agreed with your client for the allocation and drawdown of land;

3. In the event that points 1 and 2 are achieved enter into a tripartite agreement to effectively amalgamate the agreed terms into a single document;
4. In the event that it is not possible to agree an acceptable variation with Bloor, rely on the agreement agreed under point 1 and use the CPO to override the Bloor Option Agreement.

This sequence of events is outlined in our letter of 14 May 2020 – see paragraph 7.

Costs

One of the constant themes in the communication from the Acquiring Authority has been the engagement with landowners and the desire to acquire by way of private treaty.

Our client has indicated that it would be willing to enter into a private treaty agreement with your client, subject to agreeing acceptable terms.

Our client's position is that it should be entitled to recover all costs incurred engaging with Countryside relating to the proposed acquisition of its land. These negotiations are being undertaken in the shadow of the proposed CPO and are costs which will be reclaimed at some point in the process – either as part of a private treaty agreement, or as a consequence of a successful objection to the CPO or as part of the overall compensation to be paid for the forced acquisition of our client's land.

In order to negotiate terms from an informed position our client has taken appropriate professional advice. Prior to your client's appointment as master developer of the TSDL, our client had appointed King & Co to advise on the self promotion of its land known as Tangmere Corner which it intends to develop itself, and Savills to advise on the remainder of its interests in the TSDL which Bloor Homes are obliged to promote and which it intends to sell. Our client is only seeking reimbursement of the costs associated with taking advice on your client's offers, negotiating terms and, in the event an agreement can be reached, documenting it. This is not unreasonable. Any costs directly attributable to the renegotiation of the Bloor Option Agreement will not be borne by your client and if your client is still agreeable for Tangmere Corner to be excluded from the sale, with our client having the flexibility previously discussed to develop it, then no further advice is required from King & Co in relation to our respective clients' agreement.

Our client has not invited these discussions with your client. If our client is to incur expense, it wishes to have its costs underwritten by your client. This is not an unreasonable position. Indeed, the reluctance to underwrite our client's reasonable costs is contrary to the spirit of the CPO Guidance which stresses the importance of the CPO process being a last resort and that reasonable steps should be taken to avoid compulsory acquisition. We are therefore at a loss to understand why your client considers it to be unreasonable to agree to underwrite the costs and encourage our client to enter into negotiations with the aim of agreeing heads of terms and a subsequent legal agreement to enable our client's interests in the TSDL to be acquired by way of a private treaty agreement rather than through the CPO process.

We do not think that an Inspector or the Secretary of State would support the approach that has been adopted by your client and it is direct conflict with the messaging from the Acquiring Authority that your client is trying to enter into meaningful negotiations with all landowners and that CPO is a last resort.

For the record, our client is not seeking an open-ended undertaking for unknown and unlimited costs. Our client has provided your client with a summary breakdown of costs incurred to date and has offered to provide more detail explaining these costs and a cost estimate for future negotiations. There is clearly a difference of opinion as to what amounts to "reasonable" costs. Our client has a right to be reimbursed all costs reasonably and genuinely incurred as a consequence of any attempt by either your client or the Acquiring Authority to acquire its interests in the TSDL. It is a matter for our client to decide how it secures its advice – the requirement on the part of our client is to ensure

that any costs incurred are reasonable and are as a direct and natural consequence of the proposed acquisition of its land. Our client has no objection to its costs being subject to assessment by a third party.

We note that you have made various observations on the summary breakdown provided by our client and object to these being incurred without your client's prior approval. We also note that there is objection to our client using the services of two surveyors from different firms, but as explained above this is due to our client owning two sites within the TSDL, each with a different promotion strategy that pre-dates your client's involvement. With respect, none of these are reasons for resisting the reasonable request from our client for its costs to be underwritten by your client.

Our objective is to move away from the debate concerning a costs undertaking in order to focus on negotiating of heads of terms and a subsequent legal agreement.

Your client's offer of an undertaking up to a cap of £30,000 plus VAT to be given upon the signing of the heads of terms is unacceptable. Our client wishes to ensure that all reasonable costs incurred to date and likely to be incurred in the future in relation to the negotiation of terms for the acquisition of its interests within the TSDL are borne by your client. In this regard, our client's historical costs to date amount to £104,000 (plus VAT). Our client would not have incurred these very significant costs had it marketed its land for sale themselves. The incurring of these costs and their significant level is a direct result of your client's approach and their protracted approach to negotiations.

Our client would be amenable to receiving payment of £80,000 (plus VAT) in respect of its costs to date and agreeing a cap of £60,000 (plus VAT) in connection with the negotiation of heads of terms and the drafting of the related agreement(s). This proposal is put to you on the basis that your client agrees the enclosed heads of terms without further negotiation and documenting the agreement is straightforward and achieved within the next eight weeks. If negotiations continue to be protracted then our client's advisers will have to revert to charging on an uncapped hourly basis.

Our Proposal

Our letter of 14 May 2020 set out a clear contractual arrangement for enabling the Acquiring Authority and your client to proceed with confidence that our client's interests in the TSDL (including the "strip land") could be acquired without the need to proceed with a CPO. Our client is fairly confident that variations can be agreed to the Bloor Option Agreement to bring that agreement in line with terms agreed with your client relating to the allocation and drawdown of land. It has, however, made it clear that there is no absolute certainty that this would be achievable – hence the fallback of using a CPO to override the Bloor interest in the TSDL. We also note that your client has been in direct communication with Bloor. We trust that your client is not seeking to do anything that will jeopardise our client's ability to secure the variations to the Bloor Option Agreement!

We understand that the Acquiring Authority is intent on proceeding with making a CPO – our proposal helps the Acquiring Authority by de-risking the CPO process and providing certainty that key interests in the TSDL (including the "strip land") can be acquired without the need to rely on the CPO.

Way Forward

Notwithstanding the absence of a clear explanation from you as to why our proposals are unacceptable, our client has considered your client's alternative proposals.

We note that your letter enclosed heads of terms for two options. For the record, neither set of heads of terms would be acceptable to our client and we fail to see why your client is now seeking to make significant reductions to the payments and commercial terms set out in the heads of terms your client issued on 24 February 2020 – especially at a time where the demand for strategic land is increasing and there is a premium for sites which have the benefit of an allocation in a local plan. This is not evidence of a party seeking to made a genuine attempt to negotiate and comply with the CPO Guidance.

Our client would be agreeable, in principle, to progressing with Option 1 subject to revisions set out in the enclosed heads of terms, payment of its historical fees capped at £80,000 (plus VAT) and an undertaking in respect of future fees at a cap of £60,000 (plus VAT).

Your response to this will provide a clear indication about whether or not your client has a genuine intention to negotiate a mutually acceptable private treaty agreement or, instead, incur the time, cost, delay and uncertainty of acquisition through the CPO which would ultimately serve only to increase the costs and compensation to be paid to our client.

We look forward to hearing from you.

Your faithfully

A handwritten signature in cursive script, appearing to read "Ashurst LLP", written in black ink on a white background.

Ashurst LLP

Enc

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oliver@kingandcompany.co.uk

WITHOUT PREJUDICE

Dear Andrew

5 August 2020

Re: Tangmere Strategic Development Land ("TSDL"); and other matters

I am conscious that I have not yet provided you with a detailed response to your letter dated 10 January 2020. During the intervening period I see that the Council has progressed the CPO process and following the meeting of Council on 3 March 2020 there is an in principle authority to make the proposed CPO. Covid-19 has obviously delayed progress so I assume that Council will wish to review and refresh its decision.

I will respond to your specific requests for further information.

Nature of my client's interest in the TSDL

John Heaver represents the Heaver family in the TSDL arrangement, who own via two companies (Bosham Limited and Shopwyke Limited) the land shown on the attached plan **SK012**. These land interests include:

- The dark blue shaded land; the northern section; and
- The brown shaded land; "Tangmere Corner".

John Heaver is a director and shareholder of Bosham and Shopwyke Limited.

The transfers referred to above are enclosed as evidence of my client's title. I assume that you are already in possession of most of this information through the land referencing undertaken by the Council.

Further, John Heaver has negotiated options for Bosham Limited and Shopwyke Limited to acquire the control strips which are held by CS South Limited and CS East Limited. My client is able to share redacted copies of the options with the Council and I enclose copies for your reference.

As an aside, copies of these options, as well as details concerning the ownership of my client's land being held by Bosham Limited and Shopwyke Limited were provided to Daniel Haggard, Senior Land Manager at Countryside, on 09 April 2020 via Colin Wilkins at Savills. Further, you are aware that Bloor Homes have an option over my client's land shaded blue on plan SK012 and the parties jointly provided a redacted copy of the Option Agreement to Countryside in May 2019.

The Heaver family have developed many residential and commercial buildings in the Chichester area over many decades and they have founded a business known as Heaver Homes Limited to focus on residential development. Heaver Homes Ltd is John Heaver's business which intends to play a key role in the delivery of new homes in the Chichester District. Whilst the business has the potential to be engaged in many opportunities across the significant family estate and through relationships with third party landowners, Heaver Homes' current interest is in supporting the delivery of TSDL but limits its interest to Tangmere Corner as presented through the pre-app process to CDC throughout reciprocal discussions in 2019.

During private treaty discussions with Countryside both parties (Countryside and John Heaver) have agreed that Tangmere Corner can be delivered by Heaver Homes. Countryside are willing to allow Heaver Homes to progress its detailed application at the appropriate time, in accordance with Countryside TSDL objectives, with each party reserving mutual rights where required.

Masterplan

It is acknowledged that the Council's planning policy position for the TSDL emphasises the need for the site to be planned in a coordinated way through a comprehensive masterplanning process. The current approved Masterplan is, in my client's view, an example of how the Council's policy objectives can be delivered. My client is of the view that its proposals are capable of being delivered in a manner which is consistent with the TSDL policy - including the current Masterplan. The issue appears to be one of whether the policy for the TSDL imposes a pre-requisite requirement for the development to be facilitated in a comprehensive manner under the overall control of a single developer. I do not think that this is the case. However, I am keen to make it clear to you that my client is willing and able to come forward with a freestanding proposal for land within its control (including the control strips) in a manner which is consistent with the approved Masterplan and in a way which does not undermine the Council's policy objectives. This would include either payment of contributions towards the delivery of infrastructure and/or carrying out the works for delivering infrastructure. My client would also offer to make land available to enable the wider TSDL to be developed.

My Client's Proposals

There is a consistent theme in your letters and in the Council's justification for the CPO to the effect that the Council has been engaging with principal landowners within the TSDL for a period of sum 10 years with a view to securing the timely delivery of the entire TSDL and that nothing has happened. The suggested solution is direct intervention by the Council through a CPO alongside the appointment of Countryside.

As you are aware, the TSDL was eventually allocated in the adopted local plan in 2015. This paved the way for bringing forward proposals in the knowledge that there was a clear planning policy framework in place. My client has the benefit of an Option Agreement with Bloor Homes and as part of the arrangements with Bloor, has sought to engage with the Council in pre-application discussions aimed at securing planning permission for land within its control in a way which does not prejudice the comprehensive development of the remainder of the TSDL. As noted above, my client's proposal would enable provision for appropriate delivery of infrastructure and wider community benefits. The Council has been reluctant to engage with my client. This appears to be on the basis that the Council is of the view that the only way in which the TSDL policy objectives can be delivered is through the Council taking control of all of the land and appointing a third party developer to take responsibility for delivering the development.

In order to address this and to avoid an unnecessary CPO my client has entered into further negotiations with all other principal landowners. I am pleased to report that all parties have recently concluded an MoU, aimed at facilitating a comprehensive development of the TSDL without the need for a CPO.

The intention is for the TSDL landowners to either work up a more detailed scheme based on the current Masterplan or formulate an alternative, policy compliant, masterplan and submit proposals to the Council for approval. There will be a framework agreement/collaboration agreement aimed at enabling the individual landowners to bring forward the development of their respective land holdings in the knowledge that terms have been/will be agreed for ensuring that the infrastructure required for the TSDL is delivered in a timely and comprehensive manner. The MoU makes provision for agreeing detailed arrangements for formulating a "Joint Strategy" aimed at meeting the "Shared Objectives" which are based on the planning policy framework for the TSDL. This includes a masterplan, land equalisation and a procurement and delivery strategy to ensure timely delivery of the infrastructure.

Following the recent completion of the MoU the next step will be for the landowners to enter into further direct dialogue with the Council with the intention of formulating an agreed planning strategy and timetable for securing planning permission for a scheme which meets the Council's policy objectives for the TSDL, including the delivery of infrastructure. The benefit of the MoU approach is that it avoids the need for a CPO and all of the landowners are willing to commit to making their land available and agreeing an equalisation arrangement that will facilitate comprehensive development. This approach also has the benefit of opening up the market to a wider number of developers and hopefully ensuring that housing is delivered in a shorter period of time, once the landowners have put in place the necessary infrastructure to provide serviced plots. This approach removes the risk and uncertainty of the Council underwriting the costs of acquiring all of the interests in the TSDL without absolute certainty that Countryside can and/or will commit to guaranteeing comprehensive development.

I would welcome an opportunity to meet with you (with the representatives of the other principal landowners) to explain our proposal in further detail and to discuss an indicative timetable. I would also like to use the meeting to explain why the proposed CPO of my client's land is unnecessary and that there are clear alternative options for the Council to pursue.

Control Strips

It appears that the ownership of the control strips is of great interest to the Council and is seen as one of the reasons why the Council needs to use its CPO powers. As you will have seen from my response above, my client has an option to acquire the control strips and these parcels of land will be made available for the TSDL development (on a voluntary basis), as part of the equalisation arrangements with the other principal landowners.

No impediment of the development of the TSDL

I stand by my previous comments that there is no impediment of the development of the TSDL and that no CPO is required. Hopefully this letter demonstrates to you that my client, along with the other principal landowners, is willing and capable of promoting a scheme which complies with the Council's policy objectives for the TSDL – including comprehensive development. This view is expressed to you without prejudice to my client's primary position that it can and should be able to come forward with its own scheme for development of land within its control, subject to this scheme being compliant with the approved Masterplan for the TSDL.

Countryside

I maintain that my client is able to submit an application for development within the TSDL which is consistent with the approved Masterplan. To the extent that this view is rejected by the Council, the recently concluded MoU is a significant step to putting in a clear framework for comprehensive development of the TSDL. Alongside all of this my client recognises that the Council has appointed Countryside as its development partner and that there is a threat of a CPO.

My client's main objective is to facilitate the development of its land for housing. There is no in-principle objection to seeking to conclude a sale of my client's interest to Countryside in terms that are commercially acceptable. Any such sale would need to be reflective of the fact that my client already has a contractual relationship with Bloor Homes and that any agreement would need to be subject of the terms of the Bloor Option Agreement.

My client received HoTs from Countryside on 24 February 2020. These terms were generally acceptable save for the need to negotiate the minimum purchase price and premium. Unfortunately Countryside sought to impose some preconditions relating to the Bloor Option Agreement, the control strips and costs which have made it impossible to conclude a deal. There has been further correspondence with Countryside. It appears that the issues relating to the Bloor Option Agreement and the control strips are capable of being resolved. There is however a fundamental issue over costs and I would welcome the Council's assistance.

My client's position is that it should be entitled to recover all costs incurred engaging with Countryside relating to the proposed acquisition of its land. These negotiations are being undertaken in the shadow of the proposed CPO and are costs which will be reclaimed at some point in the process – either as part of a private treaty agreement, or as a consequence of a successful objection to the CPO or as part of the overall compensation to be paid for the forced acquisition of my client's land. My client has provided Countryside with details of costs incurred to date and an estimate for negotiating and concluding a sale agreement. If and when my client receives a satisfactory and meaningful undertaking, it will willingly engage with Countryside with the aim of agreeing terms for the sale of its land within the TSDL (excluding Tangmere Corner) by way of private treaty and has recently provided Countryside's lawyers with detailed comments on the HoTs aimed at progressing the negotiations.

Conclusion

I hope that I have answered your questions and that you now have a clear understanding of my client's position.

There are essentially three options:

1. Support my client's proposal for a freestanding application for the development of its land – such application would be consistent with the approved Masterplan and would have the benefit of certainty that there would be an immediate start on site due to the fact that there is already a contractual relationship in place with Bloor Homes. As part of this option my client would also make provision for the delivery of appropriate infrastructure and ensure that the control strips are available for the wider development of TSDL; or
2. Engage with my client and the other principal TSDL landowners with the aim of implementing the strategy set out in the MoU; or

3. Encourage your development partner to adopt a more serious and appropriate approach to negotiations starting by offering to provide my client with a meaningful costs undertaking.

I look forward to hearing from you.

With kind regards,

A handwritten signature in black ink, appearing to read 'O. King', with a long horizontal stroke extending to the right.

Oliver King MRICS
Managing Director, King & Co

By Email

Mr T Goode
Ashurst
London Fruit & Wool Exchange
1 Duval Square
London
E1 6PW

Our reference JLW1096562O49798971.1JLW

20 August 2020

Dear Mr Goode

Without Prejudice and Subject to Contract

Tangmere Compulsory Purchase Order

Thank you for your letter of 3 August 2020. We address your points following the headings within that letter.

CPO

The assertions you have made in this section are noted but cannot be considered fully without a copy of the Memorandum of Understanding ("MoU") being provided.

We requested a copy of the MoU from you on 4 August 2020. No copy has been provided since. The MoU has also been requested by the Acquiring Authority from Oliver King on 10 August 2020.

We would ask that you provide a copy of the MoU without delay.

Tripartite Discussions

Our client maintains their position as set out in our letter of 26 June 2020 regarding the status of discussions between the parties. Our letter of 26 June 2020 also clearly rejects your proposals which you have sought to return to in your letter of 3 August 2020.

Osborne Clarke LLP

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Costs

We note your intention to move away from a debate on costs undertakings to focus on negotiating Heads of Terms and a subsequent legal agreement. This is welcomed.

However, we maintain our concerns on the significant costs incurred and requested, as made within our letter of 26 June 2020. We note that you have made a substantial reduction to these costs. Regarding the arguments within your letter, it is not stated within the CPO guidance that all costs can be recovered in any event and indeed where costs can be recovered in the CPO process it is for well-defined and distinct reasons.

CPUK has considered the work required to be undertaken to conclude matters and the progress made to date with both your client and Bloor on the financial terms. The attached amended Heads of Terms sets out the structure going forward which it considers is capable of delivery together with provisions regarding Professional Fees. This reflects the commercial undertaking which CPUK has consistently offered for a deal and site of this nature. The attached amended Heads of Terms sets out the following:

An undertaking will be provided to meet Landowner's reasonable legal and surveyor fees as follows:

1. *A contribution of £50,000 (plus VAT) towards your client's costs accrued to date from the appointment of CPUK as the Development Partner on behalf of the Council. This will be paid upon exchange of the proposed Hybrid Option Agreement;*
2. *Costs anticipated in negotiating the proposed Hybrid Option Agreement with a cap of £60,000 (plus VAT). This sum will be payable upon exchange of the proposed Hybrid Option Agreement. Any undertaking following agreed Heads of Terms will not be paid if the Landowners materially change the terms of these Heads of Terms.*

Your Proposal

We have clearly rejected your proposal in our letter of 26 June 2020. To reiterate:

"CPUK cannot accept the proposal you have suggested in your letter of 14 May 2020. It does not give CPUK or the Acquiring Authority any confidence that both your client's and Bloor's interest will be secured. Instead, it puts the CPO (and ultimate delivery of development) at risk.

Your proposal is unduly complex to deliver. It requires three separate rounds of negotiation between (1) our clients; (2) your client and Bloor; and (3) CPUK and Bloor. This is not a simplified approach in comparison to the negotiation of a tripartite agreement. There is no comfort given in your letter that terms with Bloor could ever be reached in such an arrangement, in fact your proposal assumes circumstances whereby it is acceptable for Bloor's interests to remain and be subject to CPO."

Way forward

Attached is a revised set of Heads of Terms for Option 1 (being the unamended Option 1 from our letter dated 26 June 2020).

This requires the simultaneous exchange of a Deed of Variation (or new separate agreement) between the Landowners and Bloor. Prior to exchange, the two agreements will be shared between CPUK and Bloor to ensure compatibility, save for confidential commercial terms being redacted.

CPUK is confident that given the progress it has made on the financial terms with both your clients and Bloor that these Heads of Terms can be agreed prior to the making of the CPO at the end of September 2020.

Given that the Acquiring Authority intends to proceed with the timetable to make the CPO at end of September 2020, the parties will be required to enter into a signed undertaking for the delivery of the conditional agreement on the terms set out within the signed Heads of Terms and confirming that your client will not object to the CPO.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Webster', written in a cursive style.

Osborne Clarke LLP

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26 August 2020

**BY EMAIL
WITHOUT PREJUDICE
SUBJECT TO CONTRACT**

Osborne Clark LLP
One London Wall
London
EC2Y 5EB

FAO: John Webster



Dear Sirs

Tangmere Compulsory Purchase Order

Thank you for your letter dated 20 August 2020 together with the revised Heads of Terms.

We have taken instructions from our client and respond as follows:

CPO

Our assertions concerning the CPO are a matter for the Acquiring Authority to address, not your client. We are in the process of seeking authority of the other Landowners to share the Memorandum of Understanding ("**MoU**") with the Acquiring Authority and will revert to the Acquiring Authority in due course.

Tripartite Discussions

There is clearly a difference of opinion between our respective clients. We will not waste further time and money debating the point. The question to address is whether there is a material desire on the part of your client (and the Acquiring Authority) to agree terms to enable our respective clients to enter into a private treaty agreement for the voluntary sale and purchase of the Property which will be conditional upon securing a variation to the existing Bloor Option Agreement?

Costs

We appear to be making some progress. Our client has already offered a significant concession in respect of its historic fees and will not accept a contribution of anything less than £80,000 (plus VAT).

The cap of £60,000 (plus VAT) for negotiating the Hybrid Option Agreement has been proposed on the clear understanding and expectation that the agreement will be exchanged by 16 October 2020 (the original date was 28 September 2020). Our client reserves the right to revisit the cap if its costs increase as the consequence of the negotiation of the agreement extending beyond this period.

Our proposal

Error! Unknown document property name.

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You have failed to provide any convincing argument to support the contention that our proposals put the CPO at risk. Conversely, the absence of an agreement with our client would serve to put confirmation of the CPO at risk – this is for the simple reason that our client would object to the CPO and provide Inspector and Secretary of State with clear reasons as to why the Acquiring Authority has failed to satisfy the requirements of Section 226.

Our client has never provided any guarantee that it will agree terms with Bloor to vary the Bloor Option Agreement. It is however hopeful that this will be achievable – the fallback for the Acquiring Authority would be reliance upon the CPO. As noted in our letter of 3 August 2020, our client is working on the assumption that your client is not seeking to do anything that will undermine its negotiating position with Bloor.

Way Forward

We note that your client is seeking confirmation that our client will not object to the CPO. Our client is agreeable to inclusion of this condition in the Heads of Terms but it will only become binding on our client once the Hybrid Option Agreement has been exchanged. As you will see from the amended Heads of Terms, our client will require a direct covenant from the Acquiring Authority not execute any confirmed CPO or compulsorily acquire any of the Property and/or Tangmere Corner.

The amended Heads of Terms are enclosed. We are of the view that it would be far more cost effective for our respective clients to engage directly rather (or through their agents) than conducting negotiations of the Heads of Terms between solicitors.

Yours faithfully



Ashurst LLP

Enc

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08 October 2020

WITHOUT PREJUDICE

Robin de Wreede
Davitt Jones Bould
12-14 The Crescent
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TA1 4EB

ashurst

Dear Sirs

Tangmere Compulsory Purchase Order
Our Client: Shopwyke Limited and Bosham Limited
Your Client: Countryside Properties (UK) Ltd (CPUK)
Tangmere Strategic Development Location (TSDL)

We refer to your letter dated 7 September 2020 addressed to Oliver King of King & Co. in response to Mr. King's letter to Andrew Frost dated 28 August 2020.

Thank you for copying us into your letter. We are of the view that in light of the impending Compulsory Purchase Order (CPO) it would be more appropriate for us to respond to you on behalf of our client. We will use the same headings as per the previous correspondence but start with an initial observation that there is a clear inconsistency in the Council's approach and messaging; we are of the view that the Council's policy objectives for the TSDL can be achieved through the key landowners working together and that this does not necessitate the use of compulsory purchase powers. Unfortunately, the correspondence and instructions from our client indicate an unwillingness on the part of the Council to enter into meaningful negotiations with individual landowners. Instead, the Council appears to have adopted a mindset that the only way in which the policy aspirations for the TSDL can be delivered will be through the appointment of a single development partner to act as a master developer. Our client disagrees with this approach. It appears that there has been a clear reluctance on the part of the Council to enter into discussions with the aim of exploring how our client, alongside the other landowners, could secure a freestanding planning permission for development of land within its ownership and control whilst, at the same time, not undermining or prejudicing the development of the remainder of the TSDL.

Our client has attempted to engage with the Council but these attempts have been rebuffed. Instead, it appears that the Council has fixed on a single solution which is the promotion of a CPO. The recent negotiations between our client and the other landowners which resulted in the exchange of a Memorandum of Understanding (MoU) is evidence of the fact that there is a willingness, desire and ability on the part of the landowners to facilitate the delivery of a policy compliant scheme for the TSDL and that this can be achieved without the need for a CPO.

We note that there are several instances in your letter where you indicate a willingness on the part of the Council to discuss proposals with all interested parties. We are unaware of any attempt by the Council to make direct contact with our client to meet and discuss the points raised in Mr. King's letter of the 28 August 2020. Indeed, Mr. King explicitly invited Mr. Frost to schedule a meeting to discuss both our client's proposals and the landowners' proposals in further detail; no invitation has been forthcoming.

Nature of the Heaver Family interest in the TSDL

We have nothing to add other than to note that it appears that Mr. Frost has failed to make contact with Mr. King in order to arrange a mutually convenient time to meet to discuss our client's proposals for Tangmere Corner.

Masterplan

We note your comments but can you provide confirmation that the Council would not be contractually obligated to Countryside to resist any alternative policy compliant scheme for the TSDL? In this regard, please provide us with a copy of the development agreement, CPO cost indemnity agreement and other contractual documentation in place between the Council and Countryside relating to the development of the TSDL.

TSDL Comprehensive Redevelopment

We disagree with your observation that there has been a willingness on the part of the Council to engage in dialogue with other landowners. It appears to us that over the course of the past two years, the Council has been focussed on engaging with Countryside and this has been at the expense of our client and other landowners. As noted above, Mr. Frost has not been in contact with Mr. King or our client to discuss other options for delivering a policy compliant development of the TSDL.

Piecemeal Development

Our client is looking forward to the opportunity to meet with the Council to discuss options for an alternative policy compliant masterplan scheme. In this regard, we repeat our request for you to provide copies of the relevant contractual documentation. This will assist in providing comfort to our client that the Council's contractual relationship with Countryside does not constrain or prevent it from entering into discussions for proposals which have the effect of delivering an alternative policy compliant scheme for the TSDL.

MoU and Process

All of the key landowners within the TSDL have engaged, appointed professional advisers and negotiated a MoU aimed at delivering a policy compliant scheme for the TSDL and avoiding the need for a CPO. This is a significant material consideration to be taken into account in advance of proceeding with the proposed CPO.

With respect, the Council is not in a position to understand the full materiality of the MoU without first affording the respective landowners the opportunity to meet to discuss their intentions. A reasonable and rational acquiring authority would have welcomed the fact that the key landowners had invested time and money in entering into a MoU and would, as a minimum, have afforded an opportunity to ascertain whether the MoU provided a realistic and timely route to enabling the Council to achieve the policy aspirations for the TSDL without the need to pursue a CPO.

We would invite your client to reconsider its decision and, as a minimum, afford an opportunity for actual engagement with our client (and the other landowners) in advance of making the proposed CPO.

Negotiations with Countryside

Our reading of the letter from the Council enclosed with your letter serves only to reinforce the point made by Mr. King that the Council has ceded responsibility for the development of the TSDL to Countryside. The letter makes it clear that the Council has entered into a development agreement with Countryside; this implies that Countryside has been appointed by the Council to negotiate the acquisition of land interests within the TSDL and that whilst the Council does not preclude our client, or any other party, making direct contact at any stage, such contact is within the context of the

Council having an existing contractual relationship with Countryside. In other words, it appears that the Council is constrained by the terms of its contractual relationship with Countryside which we assume is aimed at enabling Countryside to acquire all interests within the TSDL. In such circumstances, why would the Council be willing to entertain or support an alternative proposal from either one or all of the other TSDL landowners which demonstrates how its/their land can come forward for delivery of a policy compliant scheme for the TSDL without the need to transfer landownership to Countryside?

We are hopeful that the contractual documentation requested earlier in this letter will demonstrate that the Council has not ceded total control to Countryside and retains the right to either delay or withdraw from the development agreement in circumstances where it is clear that there is not a compelling case in the public interest to justify the compulsory acquisition of land and that the Council has not fettered its ability to act independently of Countryside without fear of being required to either compensate or reimburse Countryside for any costs/fees incurred.

Turning to the specific points raised in your letter, we would welcome further information as to why the Council has concluded that it "is satisfied that Countryside is acting appropriately and in accordance with the relevant CPO guidance". In particular, why is Countryside resisting a request from our client for reimbursement of the reasonable and proper fees incurred to date in negotiating heads of terms? Furthermore, why is it unreasonable for our client to seek a costs undertaking for reimbursement of all of its reasonable and proper costs associated with negotiating a private treaty agreement for the "voluntary" transfer of its land interests to Countryside?

It appears to us that Countryside is seeking to be somewhat draconian in its approach to negotiations and is using the threat of a CPO (and the support of the Council) as a means of trying to force our client into compromising the nature and quality of its legal and commercial advice by imposing a totally unreasonable cap on fees. This is clearly not within the spirit of the CPO guidance and the Council should, in our opinion, intervene and instruct its development partner to act reasonably. By doing so, the Council (and Countryside) would potentially benefit from the prospects of enabling the successful conclusion of a private treaty agreement which would remove our client as an objector to the proposed CPO.

Your letter indicated that the Council considers it to be appropriate to respond to two specific points:

1. *Deal Structure*

Notwithstanding its reluctance to involve itself in resolving the question of costs, the Council considers it appropriate to provide detailed comments on the proposed deal structure. This is somewhat ironic. There appears to be little difference between our client, Countryside and Bloor concerning the deal structure – the intention is to effect simultaneous exchange of separate agreements between (1) Countryside and our client; and (2) Bloor and our client (with the possibility of Countryside also being a party to Bloor agreement). This deal structure is in line with what was proposed by Countryside in November 2018. We are surprised that the Council is of the view that it is unduly complex.

We note the observation that this deal structure provides no certainty that Bloor's interests will be acquired; we are of the view that simultaneous exchange affords the Council with certainty that Bloor's interests will be acquired. If, however, it transpires that it is not possible to effect simultaneous exchange, the Council would still have the benefit of the certainty of the acquisition of our client's interests in the TSDL land and this would significantly de-risk the prospect of it failing to secure confirmation of the CPO.

Please note that the financial terms have not been agreed and we disagree with your suggestion that it is the proposed deal structure that appears to be causing the delay.

2. *Undertaking from the Acquiring Authority*

Your comments are noted.

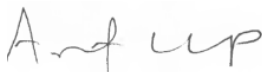
We have no objection to the Council entering into a separate standalone undertaking – our objective is to ensure that there is certainty about how the acquiring authority would use its CPO powers in respect of our client's land. There is no objection to the undertaking being conditional upon our client complying with the terms with any private treaty agreement entered into with Countryside (and potentially a separate agreement between our client, Bloor and Countryside). Furthermore, there is no objection to the Council exercising CPO powers in respect of any unknown interests which may arise, subject to the use of CPO powers in such an instance not overriding any contractual terms agreed between our client and Countryside. We do not accept that such undertaking would be subject to the proviso that it does not prejudice or fetter the Council's discretion in exercise of its functions as a local authority – the purpose of the undertaking is to have certainty that the Council **will not** exercise CPO powers in respect of our client's interest in the TSDL in circumstances where our client has complied with contractual terms agreed with Countryside.

Conclusion

We are of the view that our client has a very strong case for resisting the proposed CPO. However, as is clear from this letter, our client would be willing to enter into an agreement with Countryside to sell its interests in the TSDL (with the exception of Tangmere Corner) on commercially acceptable terms, starting with an appropriate costs undertaking. The Council, as the acquiring authority, is ultimately responsible for ensuring that its development partner acts reasonably and within the spirit of the CPO guidance and does not abuse its position. In this regard, it is clear to us that there is a need for the Council to become more directly involved in the negotiations – otherwise there is a risk that positions will become polarised and our client's resources and attention will move away from seeking to negotiate an agreement to focusing on opposing the proposed CPO. In this regard, we look forward to receiving the contractual documentation requested above.

Finally, we note that the Council has now formally resolved to make the proposed CPO. Unfortunately, the report considered by Full Council on 22 September 2020 was somewhat one-sided and failed to provide Members with a fair and complete account of the negotiations with our client and other landowners. We put you on notice that the deficiencies in the report will be drawn to the attention of the Council and ultimately the Secretary of State, if our client is faced with no option other than to pursue an objection to the CPO.

Yours faithfully



Ashurst LLP

CC Oliver King of King & Co

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By E-mail: trevor.goode@ashurst.com

Our ref: 00180726/1
Your ref:

16 October 2020

Without Prejudice and Subject to Contract

Dear Mr Goode

Tangmere Compulsory Purchase Order

We write further to your letter of 26 August 2020.

We note you have wished for negotiations to revert to the surveyors appointed by our clients however there are two points of principle which need to be addressed.

Deal Structure

As we have repeatedly stated, our client is not prepared to proceed with your client's preferred deal structure, which could allow a situation to occur whereby there is only an agreement between CPUK and your client and the Bloor interests would be excluded.

It would however appear that your client's approach has now changed in this regard, and is accepting that simultaneous exchange of agreements between (i) CPUK and your client; and (ii) your client and Bloor can occur. As has been continuously stated by CPUK, the agreement between CPUK and your client must be conditional on the simultaneous exchange of the agreement between your client and Bloor to avoid the situation above occurring.

Due to the engagement of CPUK, the financial terms themselves are very close to being settled, which we understand has removed the need for your client to insist on the structure which could result in Bloor being excluded.

Further, we understand that Bloor also wishes to proceed with conditional simultaneous exchange. This indicates that conditional simultaneous exchange is deliverable.

Amended Heads of Terms are attached.

Costs

The offer for the level of Professional Fees is only if your client accepts CPUK's proposals, which CPUK considers is an appropriate undertaking for their deal structure, being a conditional simultaneous exchange of agreements.

Under CPUK's deal structure, payment of fees on the signing of Heads of Terms is unacceptable and payment will only occur on exchange. This is an entirely reasonable approach and is also standard commercial practice.

If it is the case that your client accepts that the simultaneous exchange is conditional and that payment of fees is made on exchange, the sum of £80,000 (plus VAT) towards costs accrued to date and £60,000 (plus VAT) in respect of costs of negotiating the agreement can be agreed, to be reflective of work and progress made to date by our clients and to conclude the voluntary agreement.

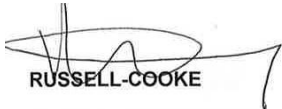
The wider TDSL

We note your comments regarding the Memorandum of Understanding between the landowners dated 30 July 2020.

You may be aware that CPUK has since 30 July 2020 signed Heads of Terms with the Pitts family and Heads of Terms are in the process of being signed with the Church Commissioners. These are for voluntary agreements to secure their interests in the TSDL. Parties have appointed solicitors and legal agreements are being progressed.

In light of this and the Council resolution to proceed with the making of the Compulsory Purchase Order, we would therefore suggest your client confirms that the CPUK deal structure is accepted and reconsiders their demands for the timing of the payment for Professional Fees.

Yours faithfully



RUSSELL-COOKE

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